Summary of Locke's *Second Treatise* [T2]

I. Introduction

"Political power" is defined as the right to make laws and to enforce them with penalties of increasing severity including death. The purpose of the laws is to protect property and to secure peace for the sake of the common good. [3]

So one central task of T2 is to justify political power.

II. Of the State of Nature

According to Locke, people are either in a state of nature or a state of civil society.

Locke defines "the state of nature" in terms of autonomy and equality. [4] In a state of nature, all human beings are free, equal, and independent, governed only by "natural laws". [4-6]

"Natural laws in Locke are laws in accordance with which human conduct ought to occur, not laws in accordance with which people always act."[2]

Natural law is

1. distinct from positive law and social conventions;
2. in accordance with reason;
3. the law of God which we are all obligated to obey; and
4. universal.

There is also a fundamental law of nature from which subordinate laws of nature are derived. The fundamental law is that, as far as possible, all human beings should be preserved. [183]

But this is justified on the basis of a theological postulate, viz. that human beings are the work of God and, thus, the property of God. [6] Without this theological premise, Locke's argument that it is rational to accept the fundamental law of nature fails.[4]

The state of nature is "a state of perfect freedom" to do as one sees fit independent of the interests of others. It is also a state of equality, i.e. where political power is distributed equally. [4]

Since legitimate authority requires a form of inequality (obedience), Locke must show that this condition follows legitimately from the natural equality that exists in the state of nature.[5]

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1 Numbers in brackets refer to the section numbers.
3 Ibid., 16f.
4 Ibid., 17f.
5 Ibid., 20.
He also defines political liberty as constrained by the **harm principle**. [6] In the state of nature one is free to act in one's own interest provided it does not bring harm to others.

The harm principle itself is justified by appeal to God in roughly the following manner:

1. Since all humans are created by God, they are the property and servants of one master.
2. Their duty is to do the work God sent them into this world to do.
3. The duration of life is subject to the discretion of God, not to God's servants.
4. Since they are created equal, i.e. with one nature and a common set of faculties, there is no *a priori* basis for one person being subordinate to another.
5. Thus, each person is bound to preserve his or her own life, liberty and health and the life, liberty, and health of others when one's own life is not threatened or the needs of justice are not at issue.

Locke also invokes in passing a principle of human dignity and respect for the **autonomy** of the individual.

…[T]here 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 ours. [6; emphasis added]

In other words, Locke is adopting, in addition to the harm principle, the **moral** principle that human beings should never be treated simply as a means to an end. [Cf. Kant]

Locke claims that all human beings in a state of nature have a right to punish those who violate these principles. This is the only condition under which harm may be inflicted on another. The purpose of the punishment, however, must always be for purposes of **reparation** and **restraint**. He refers to this right as "the **executive power of the law of nature**" [ELN].

Thomas characterizes Locke's argument for the existence of the **right to punish in the state of nature** in the following way:

The law of nature would be 'in vain' if there were no power to enforce it. God does nothing in vain. Therefore, as God has made such a law there must always be an appropriate power. Now in the state of nature there is no civil power, and therefore the earthly power to enforce the law of nature must lie in the hands of persons as individuals. The standing of persons is equal in the state of nature. Therefore if anyone has the power to enforce the law of nature, everyone must have it. So, everyone has it (with the usual exceptions, such as children and the insane). [7]

Locke also offers a justification for punishment in the state of nature, in part, by appeal to "alien transgressors". Assuming the laws of a country apply to all and only its citizens (who enter into

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6 Ibid., 21. Thomas attributes his formulation of the argument to Jo Wolff.
an agreement by either explicit or tacit consent), and assuming that it would be reasonable and just to punish a visitor from another country who violated one's laws (but who has not joined the civil society by means of consent), this only makes sense if we assume that there is some justification independent of a country's positive laws. The justification that would apply here must be the needs of restraint (deterrence) and reparation as a means to self-preservation (the fundamental law of nature).

Locke goes on to claim that since one cannot be trusted to judge in one's own case, and since absolute monarchs are susceptible to the weaknesses of all human beings, no one can be trusted in the role of absolute sovereign [pace Hobbes]. [8]

Thus, the absence of a common judge is an essential feature of life in the state of nature.

III. Of the State of War

Self-preservation is a fundamental law of nature. Thus, if attacked, one has the right to defend oneself. [16]

Since one who seeks power over another can be expected to take away that person's freedom, and since freedom is the basis of everything that we have as humans, it follows that to seek to take away one's freedom is to enter into a state of war. [17]

Thus, the potential for personal attack and harm is a standard feature of life in the state of war, whether or not there is a common judge. [19]

It follows that the state of nature is not identical with the state of war. (Cf. Hobbes.) [19]

In order to avoid the state of war it makes sense for people to form a society. [21]

IV. Of Slavery

"Liberty in society" is living under no power but that which has been established by consent of the governed. Thus, freedom is not license to do whatever one pleases. Rather it is the ability to live under a common rule of law that issues from a government chosen by the consent of the governed. This includes doing what one wishes in cases where there is no law governing such actions. It also includes not being subject to the arbitrary will of another. [22]

Locke claims that slavery is, in general, illegitimate because one cannot relinquish their right to life to another since it is not theirs to give. (All human beings are the property of God.) However, when the right to life is forfeited in just punishment for a crime deserving death, slavery is justified. [23]
V. Of Property

It may seem strange that a chapter on the justification of private property plays such a significant role in a book devoted to establishing the basis for state authority and the conditions for legitimate rebellion. Some have argued that the chapter should be taken more or less in isolation from the main argument and treated as a source of arguments for discussion and assessing the relative value of private property rights and economic equality.  

Thomas suggests that Locke's argument for natural property rights is a defense against arbitrary encroachment by the state. If there are no natural rights to property, the monarch could be seen as holding all rights to property, consistent with the feudal tradition. Thus, all rights to property would exist only if bestowed by the monarch as gifts to his or her subjects. [138] Such a situation, if it were to obtain, would give the monarch considerable power. In attempting to ground property rights in natural law, Locke is defending the propertied from unconstrained encroachment. Thus, Thomas claims, the chapter does fit into the argument of T2 on the limits of political authority. 

Locke's Argument

Locke sets out to prove that, although the earth was given to all human beings in common by God, there is a justification for the ownership of private property independent of an explicit common agreement or contract among all parties. [25]

The claim that human beings have a natural right to private property can be understood in two ways:

- There are good reasons for people to have private ownership of property, e.g. it may be argued that the right to private property tends to increase material prosperity. However, this does not explain how an individual can be thought to have a right to any particular object.
- It is possible for an individual to act in such a way so as to create a natural right to ownership of a particular thing. This is the approach taken in Locke's "labor-mixing" argument.

Locke's Labor-Mixing Argument

The first part of Locke's argument for the natural right to private property in the state of nature goes as follows:

1. God gave the earth "and all inferior creatures" to all human beings in common so that they could use it "to the best advantage of life, and convenience". [26]
2. But to be of any use, natural elements must be "appropriated" in some way. [26]
3. One's person is one's own property and no one else has a right to it. [27]
4. One's labor is also the rightful property of the laborer. [27]
5. Thus, anything appropriated from the earth through one's labor is thereby "mixed" with that labor, making it the rightful property of the laborer, provided "there is enough, and as good, left in common for others". [27]
6. This appropriation is justified and cannot be considered theft because something was added to that which was given by nature. [28]
7. Furthermore, this does not entail the securing of the assent of all with whom nature is shared since that condition would lead to starvation. [28-9]

Assessment of the Argument

Setting aside the complex assumption contained in the first premise, viz. that there is a God who created all things and gave the earth to human beings for their use, and granting that premise 2 is, one the face of it, not unreasonable or terribly controversial, I'll move directly to premise 3. This proposition, which expresses part of the "Thesis of Possessive Individualism", must be reconciled with the claim of divine ownership from §6. It's not clear how the two are compatible, although some credence can be gained by assuming Locke is viewing human beings' relation to God and their relations to one another as conceptually distinct, as mentioned above. But premise 3 faces other problems, as well, since it's not clear what support Locke can provide for it. Are we to accept it as self-evident? He doesn't assert it as such. Is it something we perceive? Since ownership is not typically a perceptual property, it's hard to see how it could be established on such grounds. So, we're left wondering what basis there is for accepting the claim as true. The next premise and the claim that one "owns" one's labor are open to similar questions and objections.

The conclusion reached in (5) is puzzling, to say the least. As Thomas points out, Locke appears to be appealing to the following general principle: "If that which is owned by you is mixed with something still in common, then you acquire ownership rights over that which was in common." Thus, any action of mine that I "own", if mixed with something still in common, gives me natural ownership rights in it, i.e. it makes it legitimately mine. But in order for ownership to be a natural right, it must follow from the fundamental law of nature, i.e. one must labor productively on it. Since there seem to be many ways in which one could mix one's labor with a thing in an unproductive way, e.g. by idly playing with it, damaging it, or attempting incompetently to make something out of it, the labor-mixing condition by itself is not sufficient.

Furthermore, it is absurd to claim that mixing something you own with something held in common is sufficient for legitimate ownership rights. If I pour the bottle of wine that I own on the ground, do I own the land which absorbs it? If I pour it down the drain, do I own the river into which it flows? Why not?

10 Ibid., 107.
Finally, in what metaphysical sense can we say that labor is "mixed" with an object? The very concept seems to be merely metaphorical, or to rely on a category mistake. Labor is just not the kind of thing that can be mixed with something else in the way two fluids can be mixed, or two poems, etc.

Locke goes on to argue that nature was given to human beings by God not only for survival but to enjoy. Thus, we are entitled to whatever we can appropriate and use without waste and spoilage on the condition "there is enough, and as good, left in common for others". [31]

Property, i.e. land, is also a natural resource available for individual appropriation and ownership. It is, however, subject to the same conditions as everything else, that it be used productively and that sufficient land of equal value is left for others. [32]

1. God gave the land to human beings with the command to "improve it for the benefit of life".
2. By following God's command and mixing one's labor with it, the land becomes one's property.

The justification for taking what is found in nature provided enough of equal value is left for others is grounded in Locke's appeal to "common sense". [33]

Argument for the vastness of nature's bounty. [36]

Labor is value added to nature which enriches it for all. [37]

Locke argues that there is no limit on the extent of one's possessions provided nothing is wasted and no one is deprived of what they need for life. [46]

Emergence of money. [47] The artificial value of certain items (e.g. gold, silver, etc.) that are not themselves readily perishable has led to a consensual agreement whereby individuals can possess more (e.g. land) than they can use. This, in turn, contributes to an inequality of possessions among persons.

Justification of inequality. [50]

VI. Of Paternal Power

Power over one's children resides equally in both parents, contrary to what is suggested by the term "paternal power". [52f; anti-patriarchal view of family relations?]

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11 Ibid., 109.
12 My term, not Locke's.
Equality: To claim as Locke does "that all men by nature are equal" is to say that everyone has an equal right to his or her own freedom without being subject to the will or authority of another. [54]

Children are not equal to mature adults but must grow into equality through the help of their parents to whom they are subordinate. [55]

It is the obligation of parents "to preserve, nourish, and educate" their children as the "workmanship" of God. [56]

We are all governed by "the law of reason". Law "is not so much the limitation as the direction of a free and intelligent agent to his proper interest". Thus, self-government according to the law of reason is necessary for human freedom. [57]

[Cf. 63: "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 that law he is to govern himself by, and make him know how far he is left to the freedom of his own will."]

It follows that children cannot be free and equal until they have reached the stage at which they have full use of reason. [57]

Parental power arises from the duty the parents have to take care of their children until the child can act freely in accordance with reason. [58]

One power does reside in the father, viz. the power to bequeath an estate to his offspring. [72; the return of patriarchy.]

VII. Of Political or Civil Society

Societies emerged naturally from the bonds between husband and wife and among parents and their children. Families ("conjugal societies") however are not the same as political societies. [77]

Conjugal society arises from a voluntary and mutual agreement between a man and a woman. [heterosexuality assumed] The chief purpose of such an agreement is procreation. [78]

The conjunction should last long enough for the offspring to be able to provide for themselves. [79]

Locke argues for a relative sexual equality. [82; I would qualify his statement in light of his views on inheritance and paternal power to make bequests, and his claim in §86 that wives are subordinate to their husbands ("masters").]

Locke distinguishes between servants and slaves. The former exchange service for wages. The latter are taken captive in just wars and are "by right of nature subjected to the absolute dominion
and arbitrary power of their masters". Slaves can not own property and are not part of civil society since they have forfeited their lives and liberty. [85]

Political society is arrived at by consent of its members who must relinquish their natural power to preserve property and punish offenses. The community rules all individuals equally, determines rights, draws necessary distinctions among individuals, and punishes offenders with the overriding aim of preserving property. [87; cf. 95, 96, 99, 130 on the concept of community which is distinct from, and prior to, civil society.]13

"Where-ever therefore any number of men are so united into one society, as to quit every one his executive power of the law of nature, and to resign it to the public, there and there only is a political or civil society." [89]

It follows that absolute monarchy is inconsistent with civil society. [90] The argument is as follows:

1. The end of civil society is to avoid the inconveniences encountered in a state of nature which result from every one being his or her own judge.
2. This is accomplished by setting up a common, impartial authority and common judge to which each and everyone may appeal and who all must obey.
3. Anyone who has no such authority to appeal to is in a state of nature.
4. But then an absolute monarch would, with respect to these conditions, be in a state of nature and outside civil society since he would have no impartial and common judge to whom he could appeal in cases of injury or offense.

Locke argues that power corrupts and thus absolute monarchs are likely to be ruthless, greedy, and dangerous. Thus, it would be irrational to submit to an absolute (Hobbesian) power. [92f]

"By an 'absolute' monarch Locke meant a form of government in which the king is held to be above the law, and can do as he pleases. It is a form of government in which there is no acknowledgement that political power ultimately rests on the consent of the people, and therefore it cannot be consistent with Locke's theory of political legitimacy. Louis XIV was its principal exemplar at the time Locke was writing."14

[Is there an inconsistency here with Locke's early claims about life in a state of nature? Why wouldn't a monarch be rational and act according to the law of nature?]

VIII. Of the Beginning of Political Societies

The only way civil society can be formed is through mutual consent. [95]

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13 See also Thomas, 25f.
14 Ibid., 85.
Note that in arguing against absolute monarchy, Locke does not rule out the possibility and rationality of a **constitutional monarchy**. The latter would be freely chosen; the former imposed without consent. Note also that, while Locke believed in the consent of the majority as the basis for political legitimacy, it follows from the statement above that Locke was not a democrat in the modern sense of the term, i.e. not in the sense that democratic rule is a **necessary** condition for the existence of legitimate political authority. [132]$^{15}$

Locke argues that since a **community** (civil body) must move together as one entity, and since it would be impossible for it to move only if every member agreed on the nature and direction of movement, it follows that the community must be governed by the **majority**. [96]

Thus, when one joins a community or a civil society, one gives up one's power to the majority. [99]

Some objections entertained by Locke:

1. There are no accounts of a group in a state of nature who agreed amongst themselves to set up a civil society. [100]

Lack of an historical account is not proof that something has not occurred. In fact, one would not expect much documentation in a state of nature. Such things generally arise with the emergence of civil society. [101]

But in spite of that, we do in fact have accounts of the founding of civil societies, e.g. Rome and Venice. [102]

2. Since all human beings are born under a government and subject to it, none are free to form a new lawful government. [113]

Locke responds, by appealing to political equality, that if any one person born "under the dominion of another" is free to set up a government, then everyone is. Thus, either all are free or there is one lawful government in the world.

**Tacit Consent:** Anyone who enjoys any part of a government gives **tacit consent** and is obligated by its laws as long as such benefits are enjoyed. [119] However, tacit consent does not make one a member of that society. Tacit consent subjects one to laws but does not make one a member. For that, express consent and "positive engagement" are required. [122] [Cf. Thomas, 34ff.]

In a state of nature, people are subject to constant threat and insecurity. Thus, while they are all free and equal, the interest in preserving their property is sufficient to warrant their joining together in a civil society and subjecting themselves to a common rule of law. [123]

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$^{15}$ Thomas 27, 85.
Those things that are lacking in a state of nature that one gains in civil society are the following: [124ff]

1. laws arrived at by common consent.
2. impartial judgment.
3. centralized executive power to enforce laws.

In joining civil society, one gives up the power to do whatever one sees fit for self-preservation, consistent with the law of nature, and one gives up the power to punish others for crimes committed. [128]

In exchange for giving up the power to do whatever one sees fit for self-preservation one gains a legal framework designed to protect everyone. [129]

In exchange for the power to punish one gains the executive power of society as a whole. [130] "[A]ll this to be directed to no other end, but the peace, safety, and public good of the people."

**Comments on Consent and the Social Contract**

Note that "[f]or Locke the only contract is that between you and each of your fellow citizens to give up individual control of your respective executive powers of the law of nature. If you fail to obey your legitimate government the obligation you ignore is one owed to your fellow citizens rather than to the government directly."\(^{16}\) This allows for rebellion since the only legitimate political authority derives from the people. The government has authority only on trust from the people, not in virtue of a contract which would entail reciprocal obligations to obey. [149]

We can summarize Locke's position by reviewing the progress from the state of nature to political authority. There are three stages. In the first, the state of nature, each person has the right to control his or her own executive power of the law of nature. The second is the community, which comes after the contract 'collectivizing' the executive power of the law of nature, but before the collective power has been entrusted to a system of government. The third is the commonwealth. By this stage the community, by majority vote, has entrusted its executive power of the law of nature to a system of government, for it to exercise on the community's behalf so long as the trust continues. The state vests this power in the appropriate institutions, the legislative, the executive and the judicial, and a political order, properly speaking, now exists.\(^{17}\)

T. R. Quigley, 2003
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16 Ibid. 31f.
17 Ibid. 33f.