

## **Locke and the Right to (Acquire) Property: A Lockean Argument for the Rawlsian Difference Principle**

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### **I. Introduction**

The purpose of my paper is to show the derivation of what has sometimes been called the ‘new liberalism’ (or, as we might now call it, ‘progressive liberalism’) from the basic principles of classical liberalism. In particular, I wish to argue that a careful analysis of the right to property as developed by John Locke shows that this right is neither absolute nor unlimited. Indeed, analysis shows that, considered in the light of modern capitalist society, to honor this right will demand a fairly robust and ongoing program of progressive taxation, aid to the poor, and social programs sufficient to bring the distribution of property into accord with John Rawls’ difference principle.

To properly grasp Locke’s theory of property rights it is first of all necessary to make a distinction between the natural right to property as it exists in the Lockean ‘state of nature’ and the societal right to property as it may be established by consent in a socio-economic political system. I begin, then, with an examination of the natural right to property and then proceed to consideration of the societal right to property.

### **II. The Natural Right to Property**

Of classical liberalism’s celebrated triad of natural rights – life, liberty, and property – the right to property is distinctive. Unlike the others, it is a right to something not inherent to our individual natures. Whereas life belongs to us as biological entities and liberty, arguably, as

rational agents, material property does not naturally inhere in us at all. We are all born propertyless and would remain so if we did not somehow acquire property from without. It follows that the right to possess and/or dispose of ‘private’ property must be based in a prior right to *acquire* such property; i.e., a right to appropriate to ourselves what does not originally belong to us. Only property justly acquired can be justly possessed. This then leads to the question: what is the basis of the natural right to acquire property?

This is one of the primary questions John Locke takes up in his *Second Treatise of Government*. Locke begins by arguing, in opposition to the views of the royalists of his time, that the earth must be thought of as originally belonging to all humankind in common: “Whether we consider natural *reason*, which tells us, that men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence: or *revelation*, which gives us an account of those grants God made of the world to *Adam*, and to *Noah*, and his sons, it is very clear, that God, as king *David* says, *Psal.* cxv. 16. *has given the earth to the children of men*; given it to mankind in common.”<sup>1</sup>

Given this, it becomes necessary to identify the normative principle that would allow such common property to be appropriated as private property by private individuals or groups. That there must be some such normative principle is clear the moment we reflect on the need that each person has for the natural goods the earth provides. As Locke writes: “The earth, and all that is therein, is given to men for the support and comfort of their being. And tho’ all the fruits it naturally produces, and the beasts it feeds, belong to mankind in common . . . there must of necessity be a means to appropriate them in some way or other, before they can be of any use, or at all beneficial to any particular man.”<sup>2</sup> Were there not some means and right of appropriation, writes Locke, “man had starved, notwithstanding the plenty God had given him.”<sup>3</sup>

On the basis of this a couple of points might be made. First, as already mentioned, the natural right to property is to be understood, fundamentally, as a right to *acquire* property from the earth. It is only secondarily a right to possess and/or dispose of the property acquired. Next, this natural right to acquire property is itself derivative of the even more fundamental (and universal) right to life. Given that life requires material sustenance, it follows that in the state of nature all human beings have a natural right to acquire from the (commonly owned) earth the material sustenance needed, in Locke's words, "for the support and comfort of their being." The natural right to property, in other words – unlike the other natural rights – is not predicated upon an original possession of that to which it confers a right. Thus, it is a right as applicable to the propertyless as to the propertied. It is the right to *acquire* the material property necessary to a satisfactory life.

Locke employs his labor theory of property to explain the means through which such material property, originally belonging to all humankind in common, may be rightly appropriated so as to become the private property of a single individual or group. When a person goes out into the common nature and labors upon some part of it, says Locke, that part rightly becomes his or her own. This theory is well known and is consonant with the intuition, found in theorists as diverse as Milton Friedman and Karl Marx, that one has a right to the fruits of one's own labor. What has, perhaps, been too frequently overlooked with respect to it, however, is that it is based on the assumption that, in the state of nature, there will always be sufficient property available for anyone who would but labor to procure it. Locke writes: "He that had as good left for his improvement, as was already taken up, needed not complain . . . if he did, it is plain he desired the benefit of another's pains."<sup>4</sup>

In other words, given that all have equal access to nature and, hence, equal opportunity to acquire property from it, to desire to take property from another is, in effect, to desire to

appropriate for oneself, not the material of the other's property (which is abundant in nature and always there for the taking) but the *labor* the other employed in extracting and shaping that material. Whereas nature belongs to everyone in common, each person's labor is rightfully his or her own; hence, property extracted from nature through one's own labor becomes private property.

But because this natural right to acquire property is universal and the material of the earth is finite, the natural right to extract property from the earth through labor cannot be unlimited. However much one may be willing to labor, says Locke, one only has the right to as much property as one can put to use before it spoils. Locke writes: "It will perhaps be objected to this, that if gathering the acorns, or other fruits of the earth, etc., makes a right to them, then any one may *ingross* as much as he will. To which I answer, Not so. The same law of nature that does by this means give us property does also *bound* that property too . . . As much as anyone can make use of to any advantage of life before it spoils, so much he may by his labor fix a property in: whatever is beyond this, is more than his share, and belongs to others."<sup>5</sup>

At this point we must make an hermeneutical digression. Locke's treatment of the state of nature often conflates natural conditions with normative principles. He takes it for granted that God has set up the natural world in a manner that accords with justice. This means that in interpreting Locke we are often in the position of having to extract the normative principle at stake from the natural conditions he describes. We must ask then: what is the normative principle reflected in the natural fact that goods of nature have a limited shelf-life, such that it is unreasonable (and hence wrong) for anyone to appropriate property beyond that naturally fixed limit?

In this case Locke has made the interpretation simple for us. So long as natural and rational limits were observed in the state of nature, says Locke, “there could be . . . little room for quarrels or contentions about property.”<sup>6</sup> The reason for this is that, in the state of nature: “[N]o man’s labour could subdue, or appropriate all; nor could his enjoyment consume more than a small part; so that it was impossible for any man, this way, to intrench upon the right of another.”<sup>7</sup> In discussing the appropriation of land, Locke makes this point even more explicitly: “Nor was the appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough, and as good left; and more than the yet unprovided could use . . . he that leaves as much as another can make use of, does as good as take nothing at all. No body could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst; and the case of land and water, where there is enough of both, is perfectly the same.”<sup>8</sup>

The normative principle behind these statements is clear: One only has the *natural* right to acquire as much property as is consistent with every other human being’s ability to acquire a similar amount of property of comparable quality.<sup>9</sup> Beyond that one exceeds one’s rightful bounds. In the state of nature under natural law, then, a great deal of the earth must be, should be, and will be, left unowned, so as to be available for appropriation by others.<sup>10</sup>

### **III. The Societal Right to Property**

We must now consider how this natural right to acquire property in the state of nature undergoes change under the conditions of society. As Locke points out, the natural-normative limits of the state of nature are superseded in society by the use of money, which makes possible, and, *conditionally*, right, an acquisition of property far exceeding natural bounds. As Locke puts

it, “It is plain that men have agreed to a disproportionate and unequal possession of the earth, they having, by tacit and voluntary consent, found out a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, gold and silver, which may be hoarded up without injury to any one; these metals not spoiling or decaying in the hands of the possessor.”<sup>11</sup>

With the use of money natural limits are overcome. It is now possible to make productive use of property far in excess of the limits set by nature, by exchanging one’s excess property for money that does not spoil and that can itself be exchanged, at some future convenient date, for someone else’s excess property. This, of course, is a great boon. It allows us to plan and provide for our future. Thereby, it allows a degree of material security that would be impossible otherwise. It makes leisure possible. It facilitates the division of labor, etc. In all these ways the invention of money is a positive advance.

But it presents its own normative problems. In particular, if left unchecked it can allow for the acquisition of so much property by some as to make it no longer possible for others to go into common nature and stake their claim. Whereas no one could complain of another’s drinking from a river where there is a whole river left to be drunk from, one might certainly complain of another’s taking legal title to a river so as to divert its waters to his or her own private fields, precluding others forevermore from access to it.

In other words, far from merely facilitating the natural right to (acquire) property, the use of money is a potential threat to it. How is this threat to be overcome? Locke never answers this question explicitly, but his implicit answer can be found on virtually every page of the *Second Treatise*. Let’s listen to Locke’s words again: “It is plain that men have *agreed* to a disproportionate and unequal possession of the earth, they having, *by tacit and voluntary*

*consent*, found out a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, gold and silver, which may be hoarded up *without injury to any one*” (my emphases). In other words, the societal right to property, like all societally based (as opposed to naturally based) rights, receives its justification through societal *consent*.<sup>12</sup> Property within civil society, thus, is to be subject to laws based in the principle of universal consent. It is this principle that must do the job that spoilage does in the state of nature; to ensure that property is acquired, regulated, and distributed in a manner that continues to be “without injury to any one.”<sup>13</sup>

#### **IV. An Objection**

Our conclusion clearly implies that, on Locke’s principles, there is no right to unlimited private property either in the state of nature or in civil society. Where society withdraws or modifies the terms of its consent the right to private property (beyond natural limits) is modified as well. There are some, however, who have read Locke quite differently on this. In particular, C.B. Macpherson’s *Possessive Individualism*,<sup>14</sup> as well as his much-read introduction to the Hackett edition of Locke’s *Second Treatise*, rather forcefully maintain the opposite. In his introduction to the *Second Treatise* Macpherson sums up his view: “Locke makes a unique and ingenious case for a *natural right of unlimited private property, with which society and government are not entitled to interfere*: no one, before or since, has come near his skill in moving from a limited and equal to an unlimited and unequal property right by invoking rationality and consent” (my emphasis).<sup>15</sup>

The first thing we must do in considering Macpherson’s claim is to untangle it. As Macpherson himself notes, Locke begins by arguing for a ‘limited and equal’ property right.

According to Macpherson, he then moves to arguing for an ‘unlimited and unequal’ property right by invoking the institution of money, justified by societal consent. But on what grounds does Macpherson call a right based in societal consent a ‘natural’ right? Macpherson seems to do so on the grounds that the institution of money occurs while human beings are still in the ‘state of nature.’<sup>16</sup> But this is to exploit an ambiguity in Locke’s use of the term ‘state of nature’ that it would be better for us to resolve. Locke first defines the ‘state of nature’ as the “state all men are naturally in . . . a *state of perfect freedom* to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.”<sup>17</sup> But surely any right based in societal consent, as is the right to the disproportionate possession of the earth introduced by money, does indeed depend upon the ‘will of other men,’ in that it receives justification only through their consent. This implies that, to the extent that the introduction of money confers new rights, it takes us out of the state of nature, at least in respect to those new rights. But Locke later says that only entry into political society takes human beings out of the state of nature, and that a mere compact between human beings does not.<sup>18</sup> So the term ‘state of nature’ has an ambiguous meaning in Locke. On the one hand, it can mean the state of being bound only by natural law. On the other, it can mean the state of being outside of civil/political society. These two meanings do not perfectly coincide, because it is possible to bind oneself to obligations beyond those imposed by natural law while still outside of political society. How do we resolve this conflict in meaning? Actually the resolution is rather simple. What we need to say is that, with respect to the specific rights and obligations established by mutual consent while outside of political society, the state (of being bound only by natural law) is superseded by the terms of the agreement, but in other respects it remains in place. This is clearly what Locke means to say.

So even if it is the case that the institution of money establishes a “right of unlimited private property” it is not the case that it establishes a “*natural* right of unlimited private property.” At most it establishes a *societal* right of unlimited private property based in societal consent. Locke never claims more than this. But does he claim even this?

Nowhere in the *Second Treatise* does Locke speak of a ‘right of unlimited private property,’ either natural or societal. Indeed, he states quite explicitly that political society does not confer such a right: “By the same act [of consent] therefore, whereby any one unites his person, which was before free, to any common-wealth, by the same he unites his possessions, which were before free, to it also; and they become, both of them, person and possession, subject to the government and dominion of that common-wealth.”<sup>19</sup> A right to private property ‘subject to the government and dominion’ of the commonwealth is quite obviously not (quoting Macpherson) a “right of unlimited private property, with which society and government are not entitled to interfere.”<sup>20</sup>

Given how flagrantly Locke’s own words contradict Macpherson’s reading we are left to wonder how he can have gotten Locke so wrong. Macpherson seems committed to a reading of Locke that sees him as bent on defending the class divisions of his society along with the newly emerging capitalist system.<sup>21</sup> But it’s not likely that these were Locke’s concerns. We know that Locke wrote in response to the Exclusion Crisis of 1679-81 with the specific intent of defending the rights of the individual against the absolutist claims of the royalists, and saw the assertion of an individual, natural, right to private property as necessary to this.<sup>22</sup> While it is certainly possible that Locke did not deeply consider the extent to which his own principles presented a challenge to the class system of his time, there is little to nothing in the *Second Treatise* to

support the view that Locke overtly set out to champion this system. Indeed, the indisputable egalitarianism of his fundamental principles rather strongly suggests otherwise.

Locke's principles, and the explicit statements he makes about them, leave no doubt that the individual's right to acquire property, both in the state of nature and in civil society, must be limited by the right of all others to be able to acquire comparable property for themselves. Under natural law, as Locke argues, these limits are set by nature itself; in civil society, as Locke clearly implies, these limits must be set by legislation based in the principle of universal consent.

## **V. The Problem of Universal Consent**

But this raises another problem. How is universal consent to be achieved? As an empirical claim, of course, the statement that we have all consented to the system of money use is simply false. We have not, as a matter of fact, each voluntarily consented to it but are born subject to it whether we like it or not. Nor is there any practical way we could have been given the opportunity to consent to it. In this sense, the idea of a society founded upon the principle of universal consent is a fiction.<sup>23</sup> Locke's discussion of consent, in sections 113 through 118 of the *Second Treatise*, furthermore, is not of great help. He states that a person gives tacit consent to a societal system insofar as he or she makes use of the property governed by the laws of that system, and seems to think that so long as one has the right to emigrate one's native freedom remains intact.

But this fails to take into account the extent to which one may be coerced by societal circumstances. Suppose, for instance, that all societies to which it is practically feasible for one to emigrate have discriminatory policies against persons of one's own race. Surely the fact that one is thereby forced to use property in one of these discriminatory systems does not imply

*consent* to such discrimination. We thus require a more robust account of what counts for consent than Locke provides. The question to be asked is not whether or not one may emigrate, but whether or not one's society is such as would elicit consent if it were indeed possible to confer or withhold it.

But this criterion raises its own problems. Suppose some would only consent to a system that discriminates in their favor? We might imagine a white supremacist, for instance, who would only consent to a society that privileges whites. Clearly, the non-white and the white supremacist will not consent to the same system. Does this, then, doom our commitment to a society grounded in universal consent? Is a liberal society incoherent in its very idea?

The answer is that the principle of universal consent is a normative ideal that does not itself derive its justification from such consent, but from the non-consensual (or trans-consensual) moral standard that Locke calls 'the law of nature.'

The grounding ethical assumption of political liberalism is that all human beings are to be regarded as free and equal under the constraints of natural law, which enjoins each to recognize and respect the freedom and equality of all. White supremacist principles, thus, are illiberal as such. Liberal society is not liberal in regard to illiberalism; that is, it does not and cannot claim to reflect the consent of those who eschew liberal principles themselves. A liberal society will be coercive to those (and, ideally, only those) whose political views are themselves coercive. Liberalism's defense of this is that, in such a case, its coerciveness is forced upon it by the very coerciveness of the illiberal.

Once we understand this we are able to craft principles for the construction of a society that might reasonably be said to merit the consent of those who accept the principle of universal

consent itself. Our question is: what sort of society is consistent with this principle? This question leads us directly to John Rawls and his ‘original position.’

## **VI. Rawls’ Original Position and the Difference Principle**

Rawls ‘original position’ may be thought of as a heuristic device for identifying those societal principles that would receive universal consent were the obtainment of such consent practically feasible and the parties to such consent liberal (in Rawls’ terminology, ‘rational and reasonable’) in their basic political commitments. It resolves three related problems in Locke’s account of consent that may be seen to conflict with Locke’s own principles: First, that the obtainment of universal consent at the founding of civil society is a practical impossibility (if only because not all members of society are *alive* at that time), forcing Locke to rely, for his legitimizing principle, on what has been called ‘joining consent,’ i.e., consent given by those already belonging to society, and, according to Locke, ‘tacitly’ given by any who so much as use property in that society; second, that such ‘joining consent,’ proffered under the constraints of unequal political and socio-economic circumstances, does not correspond to the non-coerced consent Locke’s own principles demand; and, third, that, therefore, a society justified merely on the basis of such ‘joining consent’ will not be reflective of true universal consent, and, hence, not truly liberal.

Rawls’ ‘original position’ procedure is designed to overcome these three problems, through imagining hypothetical participants who negotiate the basic structure of society under a ‘veil of ignorance’ that masks their actual advantages/disadvantages vis-à-vis one another. It thus provides a more faithful mechanism for envisioning a society based upon Locke’s principle of universal consent than does Locke himself.

On the basis of it Rawls derives his famous and controversial ‘difference principle’: “Social and economic inequalities,” writes Rawls, “are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).”<sup>24</sup> This principle is based upon the inference that no one would (or should) consent to participation in a social system that might place him or her at a material disadvantage relative to others, unless there were compensatory benefits that would make that system more desirable to him or her than a more egalitarian one. It is derived from a principle stated more broadly in Rawls’ *Theory of Justice*: “All social values – liberty and opportunity, income and wealth, and the social basis of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.”<sup>25</sup> Rawls’ designation of ‘income and wealth’ as *social* values (or goods) fully corresponds to Locke’s recognition that the system of money use, which allows for such income and wealth, is a social (as opposed to strictly natural) system. As such, the enjoyment of its benefits is rightly subject to the principle of universal consent.

To summarize: To the extent that the societal system of money use extends the right to property beyond the natural-normative limits imposed by nature, it can only be justified on the basis of the principle of universal consent. This principle, in turn, requires that the laws governing this system, in any given society, be such as would elicit the (rational and reasonable) consent of every person affected by it, and especially those least advantaged by it.

## VII. Progressive Liberalism

Once we clearly distinguish between the natural right to property and the societal right to property we see how the economic principles associated with what may be called ‘progressive liberalism’ are a direct implication of the principles of classical liberalism, at least as we find them explicated in the work of Locke. Whereas classical liberalism sets out to articulate the meta-societal (*natural*) rights which must serve as the basis for any just society, and concludes that a just society must be based in the principle of universal consent, the ‘new liberalism,’ or ‘progressive liberalism,’ seeks to work out the societal framework for just such a consensual system. Such a system must meet two criteria: First, it must not violate the meta-societal rights that are ours by nature – in the case of property, for instance, it must not deprive any member (or even anyone affected) of the ability to acquire as much property as is necessary for ‘the support and comfort of his or her being’ – but beyond this it must be organized in a manner that can reasonably claim to be acceptable to every ‘rational and reasonable’ member of that society; where (in Rawls’ terminology) a ‘rational’ member is one who pursues his or her own true interests, and a ‘reasonable’ member one who recognizes and affirms the fundamental right of all others to do the same.

From a policy point of view, this means that, except for the amount of wealth reasonably necessary to provide for ‘the support and comfort of one’s being’ (which might well serve as the ‘poverty line’ in any given society), every society has a right to utilize the wealth generated in it in the manner it deems best to promote the universal good. Thus, a robust system of redistributive, progressive taxation for the sake of financing (for instance) universal health care, aid to the poor, public education, even promotion of the arts, is entirely consistent with the principles of classical liberalism. Indeed, to the extent that a case could be made that the least

advantaged members of our society, thinking rationally and reasonably, would not consent to a system that did not provide such benefits, we could go so far as to say that such programs are mandated by classical liberalism. Absolutist principles of property rights, as advanced, for instance, in libertarianism, make the mistake of conflating a particular, and unsupportable (because non-consensual), version of societal property rights with natural property rights. In so doing they undermine the very principles of liberty and equality upon which they themselves profess to be based.

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(Note: This article was originally published in *Social Philosophy Today*, Issue 26, 2010)

## Notes

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<sup>1</sup> John Locke, *Second Treatise of Government*, editor, C. B. Macpherson (Indianapolis: Hackett Publishing Co., 1980), sec. 25.

<sup>2</sup> *Ibid.*, sec. 25.

<sup>3</sup> *Ibid.*, sec. 28.

<sup>4</sup> *Ibid.*, sec. 34.

<sup>5</sup> *Ibid.*, sec. 31.

<sup>6</sup> *Ibid.*, sec. 31.

<sup>7</sup> *Ibid.*, sec. 36.

<sup>8</sup> *Ibid.*, sec. 33.

<sup>9</sup> That Locke's 'spoilage rule' is not based in a concern with spoilage *per se* is evident upon reflection. In unpopulated regions of nature unutilized resources will naturally 'spoil,' i.e., decay. There is no reason to think Locke sees this as a problem in itself. The spoilage rule is nature's way of setting the rightful limits to individual appropriation in the state of nature, where human beings cannot negotiate these limits among themselves.

<sup>10</sup> This rule – that in the state of nature appropriations must be such as to leave 'enough and as good' for others – has come to be known as the 'Lockean Proviso.' Many discussions of the proviso center around the question of what baseline standard of living it prescribes. Thus, for instance, Robert Nozick argues that, so long as the system of societal property distribution leaves everyone with a standard of living equal to or better than they would have were the system not in place, the proviso has been honored (see *Anarchy, State, and Utopia*, New York: Basic Books, Inc., 1974, pp. 174-182). Critics of Nozick have taken issue with this and have suggested other baselines. Steve Daskall, for instance, argues in a recent article that the baseline should be the standard of living people would enjoy were there no excessive appropriations (see Steve Daskall, "Libertarianism Left and Right, the Lockean Proviso, and the Reformed Welfare State," *Social Theory and Practice*, vol. 36., no. 1, January 2010, pp. 21-42). My view is that the proviso's purpose is broader than this. The proviso ensures that, in the state of nature, all will continue to have *equal access* to the natural system from which material property is acquired. As Locke writes, "he that leaves as much as another can make use of, does as good as take nothing at all." In other words, so long as the proviso is honored equal access to nature remains undisturbed. Such equal access, however, is radically disturbed under the conditions of modern, capitalist, society. This can only be justified (as I argue below) through the principle of universal consent. It is the principle of universal consent that becomes, in effect, the new proviso under the conditions of society.

<sup>11</sup> *Ibid.*, sec. 50.

<sup>12</sup> It has been pointed out that Locke makes a false inference here. Consent to the use of money does not amount to consent to the "disproportionate and unequal possession of the earth," even if it may result in such. This is true; still, the fact that Locke feels called upon to make this inference indicates his recognition that, on his principles, such disproportionate possession can only be justified through societal consent.

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<sup>13</sup> A commentator has noted that, read strictly, Locke seems to be saying in this passage that it is the mere durability of gold and silver that serves to prevent ‘injury.’ If we read the passage in this way, however, Locke’s conclusion would be a non sequitur. The ‘injuries’ to which Locke repeatedly refers in this chapter are those that would occur were the excessive accumulations of some to leave insufficient potential property for others. The mere durability of gold and silver would not prevent this; indeed, it makes it more likely. What Locke appears to mean here, though, is that, by liberating people from the limitations of natural spoilage, the durability of gold and silver *makes it possible* for a “disproportionate and unequal distribution of the earth” to occur “without injury to anyone.” But the realization of this possibility, as I argue (and as the passage itself suggests) is contingent on the observance of the principle of universal consent.

<sup>14</sup> C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*, (Oxford: Oxford University Press, 1962).

<sup>15</sup> C. B. Macpherson, “Editor’s Introduction,” in Locke, *Second Treatise of Government*, xxi.

<sup>16</sup> *Ibid.*, xvi-xvii.

<sup>17</sup> Locke, sec. 4.

<sup>18</sup> *Ibid.*, sec. 14.

<sup>19</sup> *Ibid.*, sec. 120.

<sup>20</sup> It’s true that Locke writes “Government has no other end but the preservation of property” (*Ibid.*, sec. 94), which at first seems to support Macpherson’s reading. But Locke is here using the word ‘property’ in a very broad sense, to mean, in effect, whatever is *proper* to a person. He writes, for instance, that the primary reason people enter society is “for the mutual *preservation* of their lives, liberties and estates, which I call by the general name, *property*” (*Ibid.*, sec. 123). Again, “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” (*Ibid.*, sec. 173). In this broad sense the ‘preservation of property’ refers to the protection of natural rights in general.

Again, though Locke writes, “The supreme power cannot take from any man any part of his property without his own consent” (*Ibid.*, sec. 138), he does not mean that every individual must explicitly consent to every positive law concerning taxation or the regulation of property (a principle that would be entirely unworkable). Locke clarifies what ‘consent’ means in this context a few paragraphs down: “It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be *with his consent, i.e., the consent of the majority, giving it either by themselves, or their representatives chosen by them*” (*Ibid.*, sec. 140, my emphasis). In other words, the executive and/or members of the legislature may not take property *except* through legitimate legislative measures. They may not do so arbitrarily: “They [the legislature] must *not raise taxes on the property of the people, without the consent of the people*, given by themselves, or their deputies” (*Ibid.*, sec. 142). What Locke is saying in these passages is not that every individual should have veto power over every tax law, but that (in the words of the American Revolution) there should be ‘no taxation without representation.’

<sup>21</sup> Locke’s theory, writes Macpherson, “justifies, as natural, a class differential in rights and in rationality, and by doing so provides a positive moral basis for capitalist society.” *Possessive Individualism*, p. 221.

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<sup>22</sup> For one of many discussions of this, as well as a more extensive critique of Macpherson's reading of Locke, see John Dunn, *The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treatises of Government,'* (Cambridge: Cambridge University Press, 1969).

<sup>23</sup> John Rawls writes, in this regard, "No society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense; each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects." John Rawls, *A Theory of Justice*, (Cambridge: Harvard University Press, 1971), 13.

<sup>24</sup> John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge: Harvard University Press, 2001), 42-43.

<sup>25</sup> Rawls, *A Theory of Justice*, 62.