



The Reasonableness of John Locke's Majority: Property Rights, Consent, and Resistance in the Second Treatise

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THE REASONABLENESS
OF JOHN LOCKE'S MAJORITY
Property Rights, Consent, and
Resistance in the *Second Treatise*

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PERHAPS MORE THAN ANY OTHER modern theorist, Locke's work has been deployed variously and vigorously in light of pressing political questions of the day. Blackstone thought him a populist who would have destroyed English law and "levelled all distinctions of honour, rank, offices, and property"¹—all of which were explicitly under attack when Blackstone wrote. We see in Leo Strauss's insistence on an unfettered market society—and C. B. MacPherson's disgust with this²—attitudes that prompted inquiry into Locke's ideas of the franchise, property rights, and consent. Currently, Locke is read as a hapless protoliberal stuck with the intellectually thankless task of defending majoritarian government as well as individuals' rights to private property. It seems likely that if these antithetical institutions were less historically resilient, not only would life make more sense but theorists would be less complacent in accepting Peter Laslett's effort to explain away Locke's "inconsistencies" as a result of his being deeply engaged in the political issues of his day.³

Contrary to Laslett's claims, the difficulties ascribed to the *Second Treatise* do not arise because Locke's political commitments somehow infected and

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perverted any theoretical consistency. Rather, readers need to ascertain Locke's commitments correctly. If instead of reading Locke as a more polite Robert Nozick, we read Locke as the colleague of Leveller John Wildman, whom he was, what has appeared inconsistent is perfectly reasonable. Richard Ashcraft offers the most cogent and thorough defense of Locke's leftist political affiliations.⁴ However, his textual justifications have failed to persuade critics for two reasons.⁵ First, for the most part, Ashcraft presents only half the picture, the parts of the *Second Treatise* explicitly calling for majority rule, which, as he notes, were presented 30 years ago by Willmore Kendall. Critics counter by pointing to passages in which Locke apparently supports a strong version of private property rights. Locke thus appears inconsistent, which is what has been claimed all along. The second problem is that Ashcraft incorrectly interprets two sets of passages that critics conventionally have pointed to as favoring a limited franchise. Ashcraft is right to believe that Locke's passages on servants (*Two Treatises of Government*, II:85, 86) and apportionment rules (especially II:158) do not have conservative implications, but Ashcraft's unconvincing alternative interpretations undermine an otherwise compelling case.

For the purposes of reading Locke in his political context—to make sense of the overarching arguments in the *Second Treatise*—this essay considers the document as a 34-year-late repartee to the New Model Army (NMA) officers' "compromise" with the army soldiers at Putney in 1647.⁶ In addition to Ashcraft's guilt-by-association-with-Levellers line of argument, two reasons commend this approach. First, the language Locke uses and the problems he discusses in the *Second Treatise* are remarkably consistent with those of James Harrington in *The Art of Law-Giving* (1659), a copy of which Locke owned.⁷ Harrington's text is explicitly framed around the questions that arose during the Putney debates. It opens with a response to the army's "Agreement of the People" (1647), a document to which Harrington devotes considerable attention, and concludes with an appendix that criticizes Ireton's compromise proposal—of the House of Peers having a "Negative Vote,"⁸ that is, the authority to veto decisions of the Commons. Insofar as Harrington is responding to the questions raised at Putney, and Locke draws on Harrington, it makes sense to consider the *Second Treatise* in light of the political questions pursued by the NMA and those attending to their agendas. Second, not only was Locke familiar with the terms of the Putney debates, but leading advocates for the Leveller position were fellow travelers with Locke in Lord Shaftesbury's circle of political power during the period in which Locke wrote the *Second Treatise*.⁹ Indeed, it is possible that Wildman, who actually penned "The Case of the Army Truly Stated"—the document that served as

the basis for the soldiers' arguments for manhood suffrage—was with Locke in Holland as he was composing parts of the *Second Treatise*.¹⁰ Far from being an esoteric exchange between a bunch of farmers, craftsmen, and wage laborers on one side and some random aristocrats on the other, the Putney debates featured prominent political figures, including Oliver Cromwell. It is not surprising that historians can easily connect the conflicts given voice at Putney with more general political tensions of the day.¹¹ To be sure, 1647 was not the day of the *Second Treatise*, but the problems of natural law, consent, and property that comprise the heart of the Putney debates are also the stuff of the *Second Treatise*. Partisans of all sorts in the 1680s were quite mindful of the events of the 1640s, especially the military policies of Charles. In particular, this essay stresses conflicts over property rooted in the military policies of both Charles and Charles II.

I. LOCKE FIGHTS THE LIONS

The liberal individualist celebration of Locke is just plain wrong, as is the Marxist critique of him. It is certainly true that in the seventeenth century, some of the people were being exploited, in the traditional Marxist definition of the term, by protocapitalists. However, far more immediately oppressive for the vast majority of Englishwomen and men under Charles I, as well as Charles II, was not the inequality of civil society but the forced extraction of goods, services, and money by an absolutist state in political society.¹² The Crown, in the name of supporting the military, simply took people's lives and property (narrowly understood),¹³ and considerably constrained their liberties. J. P. Sommerville writes that under the Stuarts, "The paradoxical truth was that property could not be maintained [i.e., sovereignty could not be supported] unless the king held extra-legal powers which he could misuse to undermine property itself."¹⁴ Unlike the nineteenth century, when the exploitation of workers by capitalists was at the heart of radical critiques of political economy, in the sixteenth and seventeenth centuries, political tracts emphasized the inequities associated with the Court or an aristocratic parliament appropriating the earnings of much of the rest of the population to support the government. Until the early eighteenth century, therefore, references to the people's right to their property were not justifications of individual property rights against the power of a progressively redistributive state. Rather, pamphlet writers asserted, the King, lords, and those who bought offices should not have the prerogative to take "the people's" property

through taxes, conscription, and practices associated with forced billeting in the counties—particularly when most of the people targeted for taxation lacked any voice in setting the government's policies that were essentially robbing them. Ship money, discussed below, was a levy Charles used to raise money without Parliament's approval, and its abolition was a major objective of the Short Parliament in 1640. Sommerville writes:

Of course Ship Money did not literally deprive subject of all their goods. But it did deprive them of property in these goods. In the words of [Lucius Cary] Falkland, "though our goods were not taken away yet the property was." If the king could tax without consent in a case of necessity, and if he alone could decide what constituted such a case, then he could deprive his subjects of their goods at pleasure.¹⁵

Throughout the Putney debates, the soldiers make frequent references to "the people's liberties," "the people's properties," and "the people's sovereignty," as opposed to the liberties, properties, and sovereignty of both the aristocracy and the King.¹⁶ This is an argument on behalf of a majority's property rights, not the rights of an elite minority or individual property rights, the latter of which are simply a minority of one, according to Kendall.¹⁷ In many of the passages theorists use to show Locke believed in *individual* property rights, Locke uses the same locution as Wildman, referring to "the people's property" and "the people's liberties," not a "person's property," or an "individual's liberty."¹⁸

Taking "the people" as the unit of political analysis, and not the individual, suggests the possibility of a progressive economic agenda—assuming that wealth is concentrated. The only brakes on redistribution through representative political institutions are individual property "rights" or a restriction on the franchise—on who counts as "the people." The *Second Treatise* advocates neither. As Judith Richards et al. show, "Locke does *not* qualify his inclusion of *all the people* in political membership and the right to rebel." After reviewing other tracts written by Locke's contemporaries, by authors such as Sidney and Tyrrell, they conclude that Locke's "very omission [of qualification] acquires meaning," and continue:

Indeed this silence on who might legitimately rebel may help explain what [Martyn] Thompson describes as the curiously quiet reception of *Two Treatises*. It is not surprising that his more careful colleagues preferred the prudent incoherence of Sidney's declaration that the recognition of an agreed "natural right to vote" was simply impracticable.¹⁹

Drawing on textual evidence from the *Second Treatise* as well as Whig tracts, these authors show that Locke self-consciously included all of "the people" in his vision of a political public.²⁰

Locke's references to the rights of the "individual" can then be read as derivative of the more general understanding that everyone has the right not to be taxed without representation, as that is theft. The passages in which Locke says individual consent controls one's property refer to what happens in the state of nature. For the establishment and legitimacy of political society, however, one's consent refers to each man being counted in the political body from which a direct or indirect majority will make law. This is the difference between paying taxes assessed by an assembly and acceding to the arbitrary demands of a king.²¹ To say that no individual should be excluded from participating in the constitution of the consent of the majority (II:95, 96, 106, 119, 138-9) does not require that each individual be satisfied with the results the majority reaches. The wealthy landowner forced at gunpoint to loan the king money, as well as the individual who rents his fields from the lord, is entitled to representation, and a government that takes property from them without this condition being met is illegitimate—the polecat one would be unlikely to trade in exchange for being devoured by a lion (II:93).

One response to this line of reasoning has been to point to passages where it appears that Locke is making a strong case for individual property rights *and* for a majoritarian government. I want to argue that the positions of the soldiers at Putney manifest contradictions between the endorsements of both private property rights and majority rule (based on manhood suffrage). Although these are often ascribed to the *Second Treatise*, Locke's *Treatise* in fact makes the soldiers' claims coherent by recasting their defense of property and natural law as justifications for a political society governed by no more or less than an unfettered principle of male, adult majority rule.²² To read Locke as a progressive critic of absolutism, this essay outlines the central dilemmas posed for the Leveller positions at the conclusion of the Putney debate.²³

II. TENSIONS IN THE ARMY'S CASE AT PUTNEY (1647-1649)

Problem 1

Oliver Cromwell's son-in-law, Commissary-General Henry Ireton—the main speaker on behalf of a restricted franchise—accuses Wildman and the army of wanting to abolish property rights.²⁴ Arguing for majority rule would put the wealth of the minority in jeopardy, and hence everyone's potential wealth as well. This is a difficulty for the soldiers, because Rainborough, Wildman,

and others rely on a natural rights notion of “the people’s” rights to their property in order to attack positive law’s restrictions on the franchise. At the same time, if a natural law worldview were to prevail, then the Commons that represented the Levellers’ interests would have no prerogative to tax the estates of the lords and King—this was Ireton’s “compromise”²⁵—and so it would be impossible for Parliament to tax the wealth of lords and others.

Locke’s question. How can the natural law basis of property rights be preserved—the premise of the army’s and Locke’s criticisms of the prevailing government—without precluding progressive (or even nonregressive) taxation in a popularly represented commonwealth?

Problem 2

Ireton states that references to natural law to justify withdrawing one’s presumed consent to the prevailing Parliament are illegitimate.²⁶ He does not state that consent is irrelevant but assumes the soldiers’ consent to the prevailing franchise requirements; they cannot at will declare the Parliament illegitimate. The Levellers also believe that a strong concept of consent is absolutely necessary for a government to be legitimate.²⁷

Locke’s question. On what grounds could one argue for the abrogation of the people’s current consent (tacit or otherwise) to the government of Charles II without undermining the legitimating function of consent—without giving one’s opponents grounds for using natural rights arguments to resist or overthrow a Leveller-type government?

Problem 3

Ireton’s compromise provides for manhood suffrage but precludes the Commons from having any jurisdiction over the actions or properties of the lords or King.²⁸ This appears to comply with a central Leveller demand for manhood suffrage in voting representatives to the House of Commons.

Locke’s question. Without making an explicit argument on behalf of potentially progressive taxation, how could the divided system of representation, the Putney “compromise,” be effectively attacked?²⁹

III. LOCKE AND THE PEOPLE'S PROPERTY

The consensus of mid-twentieth-century scholarship on the *Second Treatise* holds that Locke believes that individuals have rights to their property. Strauss and MacPherson are largely responsible for this.³⁰ Jeremy Waldron states this case particularly cogently:

The key to my characterization of Locke as an SR [special rights]-based defender of private property lies in my attribution of this to him as the main argument for his claim that no derogations may be made from the private property of individuals by the state.³¹

Waldron believes that Locke's theory of property rights resembles that of Nozick. Waldron states:

Locke's theory of property is like the theory outlined by Robert Nozick: it is a theory of *historical entitlement*. Ownership rights are established contingently and historically as the upshot of what individuals have done; therefore it is not open to us to abrogate or reorder them on the basis of what we think *society* ought to do. The government—even a government acting with enthusiastic popular support—is constrained by the independently established rights of the individuals subject to it: "Individuals have rights, and there are things no person or group may do to them (without violating these rights)." The ownership of particular resources, even socially significant resources, is among the rights which define and limit the space available for governments to act.³²

My contention is that the *Second Treatise* does not represent anything close to a Nozickian defense of *individual* rights to property. In the passages Waldron quotes, Locke is describing "the people's" rights to their property against the antimajoritarian actions of the King or lords (II:138).

If Locke wanted to offer a serious defense of private property (like Nozick), he had two options. First, he could have restricted the franchise to men with a certain amount of property or income. For a variety of reasons, Aristotle, the Tories, and politicians in the seventeenth- and eighteenth-century legislatures of the United States advocated restricting political participation to those with a certain amount of property or earnings.³³ Locke did not do this. Instead, Locke begins "Of the Beginning of Political Society" by asserting *all* men's initial equality, from which he believes it follows that *all* must consent to join whatever political society might be established—not simply those who pay particular kinds of taxes, or who come from a particular family. The section opens with an obviously inclusive reference—to "Men being by Nature, all free, equal, and independent" (II:95)—but it ends with an odd-sounding requirement (odd to twentieth-century ears) of the consent of "Freemen" (II:99). In the context of seventeenth-century franchise

rules, freemen were declared such by borough officials, based on a variety of factors, including wealth. In a plurality of boroughs (by the 1660s), being a freeman was sufficient to qualify a man to vote for a borough Parliamentary representative (but not a county representative to Parliament).³⁴ Hence it is apparently plausible to read “freeman” as an effort on Locke’s part to qualify who gets to participate.

The term “freeman” was subject to different uses and interpretations during the seventeenth century. In addition to the phrase suggesting a political status, populists sometimes invoked it to suggest a natural status that the government had failed to recognize. The context in which Locke mentions “freemen” in the *Second Treatise* implies, I believe, the inclusiveness of the second use. Locke is describing what happens in the *state of nature* in order to establish political society, where no local officials exist to bequeath “freeman” as a political status.³⁵ Locke writes:

Thus that, which begins and actually *constitutes any Political Society*, is nothing but the consent of any number of Freemen capable of a majority to unite and incorporate such a Society. And this is that, and that only, which did, or could give *beginning to any lawful Government in the World*.³⁶

Locke defines a freeman in contrast to a servant (II:85) and excludes servants from the category of those capable of forming a government. It appears that this may leave them permanently subject to the will of the majority of consenting freemen, which MacPherson reads as lethal to a representative democracy, and hence as regressive. Ashcraft disagrees. The crux of the dispute is, who is a freeman and who is a servant?

If we rely on the evidence of historian Ann Kussmaul, then it appears that with respect to the Levellers, as well as Locke, both MacPherson and Ashcraft are incorrect as to the political implications of limiting the franchise to freemen. MacPherson thinks “servants” refers to anyone who worked for wages, which would mean that excluding servants would exclude 35 percent of adult men.³⁷ Ashcraft accuses MacPherson as being excessively scholastic in redefining the meaning of the seventeenth-century servant, saying that a servant in 1647 or 1683 was much the same as a servant today: a person who works as a domestic hand around the house (or estate). Hence excluding them would be to exclude “approximately 15%” of the potential electorate.³⁸ Kussmaul’s evidence suggests both MacPherson and Ashcraft are in error. She states:

A “servant” was hired by the year, lived with his or her master, and was unmarried; a “labourer” was hired by the day, week, or task, had his or her own residence, and was either married or still living with his or her own parents.³⁹

Most important, the 13.4 percent of the population Kussmaul believes were servants held this occupation, for the most part, only *between the ages of 15 and 24*.⁴⁰

Service in husbandry was the life of many an early modern youth; servants in husbandry were the work force of many an early modern farmer. Why? In ecological terms, the economic, technological, social, and demographic environment of early modern England was one in which the institution of service in husbandry flourished: it favoured the demand for, and supply of, servants, and restricted the supply of their chief competitors, day-labourers.⁴¹

Kussmaul explains how the changing labor supplies of nuclear families facilitated what essentially amounted to the exchange of youth between families at different points in their life cycles.⁴² Here, Harrington's definition of a servant, as well as his discussion of their potential enfranchisement, are consistent with Kussmaul's account. Harrington eschews old class distinctions determined by land in favor of those determined by wealth, stating that the "first personal division of a People, is into Freemen and Servants. Freemen are such as have wherewithal to live of themselves; and Servants such as have not."⁴³ That the servant is someone occupied along the lines described by Kussmaul, and is not any wage laborer, is clear from the following passage, in which Harrington quotes Moses on the freeing of slaves and hired servants in the year of Jubilee: "And then he shall depart from thee, both he, and his children with him, and shall return unto his own family, and unto the possession of his fathers shall he return."⁴⁴ That wealth is not the prerequisite of being a freeman eligible for the franchise is clear from the distinction Harrington draws between those freemen who will serve as footmen and as horsemen: Horse will be those with 100 pounds or more annual income, while Foot will be those with less than that. He specifies no minimum income for those who will be freemen on foot.⁴⁵

Locke's treatment of servants in his *Treatise* is consistent with that of Kussmaul and Harrington, in that Locke also shows an awareness of the temporary quality of the "servant" occupation:

A Freeman makes himself a Servant to another, by selling him for a certain time, the Service he undertakes to do, in exchange for Wages he is to receive: And though this commonly puts him into the Family of his Master, and under the ordinary Discipline thereof; yet it gives the Master but a Temporary Power over him, and no greater, than what is contained in the *Contract* between 'em. (II:85)

Here Locke meets the officers' objection at Putney—that servants are dependents of their Masters, and thus subject to having their votes improperly

influenced by Court sympathizers.⁴⁶ It was certainly the case that when servants were allowed to vote during the seventeenth century, they had about as much independence as dead voters in the first Mayor Daley's Chicago.⁴⁷ According to Locke, however, servants were former and potential freemen, who as such had a legitimate stake in their society. As opposed to Ireton who voices outrage that anyone born in England could claim to be a "freeman," Locke attends to the worry about the servants' votes being influenced, but without retreating from a Leveller position as to who was a freeman. That all men except servants and slaves are freemen, according to Locke, is clear from his reference to a "Freeman who makes himself a Servant": presumably, Locke is not so perverse as to believe that only those with a threshold amount of property could make themselves servants.⁴⁸ Assuming that Kussmaul's data are correct, excluding a portion of those under 24 from voting (when their votes can be assumed to be corrupted) is a far cry from excluding all wage laborers from voting. This is especially so because many of those who were servants would become "masters" of servants. There is little of a class character that can be imputed to this occupation, and hence little of a class character that can be imputed to preventing servants from voting.⁴⁹

Still, it appears as though one could read Locke as saying that the consent of a majority of all freemen (i.e., everyone except servants) is necessary only for the establishment of a legitimate political society, and not infer from this any argument for manhood suffrage once political society has been established: after that inaugural moment, whatever form of government is agreed to should prevail, even one governed by minorities.⁵⁰ Such an interpretation is flawed, I believe, since presumably such a majority would institute franchise rules of manhood suffrage that would include them as full citizens as a condition for their political society. The soldiers themselves had advocated this in their "Agreement of the People"—the adoption of which they believed was the only basis of a legitimate government. Their point was precisely that they would not consent to join a political organization in which their consent would thereafter become irrelevant.

Another passage often used to substantiate the charge that Locke quietly advocates property requirements for the franchise is II:158.⁵¹ This has been misused by MacPherson as well as Ashcraft. The part of the sentence supposedly committing Locke to a limited franchise states that a district shall be apportioned "in proportion to the assistance, which it affords to the publick" (II:158). MacPherson reads this as meaning that those who pay more in taxes, that is, the wealthy, deserve more members in Parliament. Ashcraft disagrees, believing that "assistance to the publick" refers to the public good broadly understood, not the amount of money in the Parliament's coffers. Ashcraft writes:

[Locke] says that the number of members or representatives chosen from distinct places, such as boroughs or corporations, ought to depend upon the extent to which that system of representation furthers the public good. . . . By reforming the system of representation, therefore, "and the establishing the government upon its true foundations . . . the good of the people" will be provided for. "Assistance to the public" thus has nothing to do with taxes or amounts of property ownership, which are not mentioned, but with the public good, the true foundation of government, and the good of the people, which are discussed.⁵²

Ashcraft, familiar though he is with the problem of rotten boroughs and empty tracts of land that had representatives in Parliament, still misreads this particular passage, in three ways.

First, of extreme concern throughout the seventeenth century, indeed, well into the nineteenth, were the disparities in the electoral size among boroughs.⁵³ It should come as no surprise that the disproportions favored the landed gentry. Some very small boroughs did not pay much by way of taxes but were able to send representatives to Parliament.⁵⁴ The solution of apportionment commensurate with taxes was one offered by the Levellers, indeed by John Lilburne, in a revised version of the *Agreement of the People*.⁵⁵ Cannon believes that Lilburne's proposals were based specifically on revenue from "ship money"—excise and commerce taxes for support of the Navy collected by Charles.⁵⁶ Given that virtually all people were paying ship money in some form—as levies or as higher prices—there is no obvious regressivity, even by county, associated with Locke's provision. He is simply pointing out that if counties contribute to the state's revenue—some in the form of what we would regard as sales taxes—then the people who live in these counties ought to have a say as to how that money is spent. The background interpretive difficulty is a failure to appreciate that during this period, tying the franchise to the payment of taxes is a populist maneuver—one that will increase the size of the electorate.⁵⁷ In any case, it is clear from the paragraphs surrounding the sentence in question that Locke is addressing inequities in the apportionment of county representation in Parliament, and he is saying absolutely nothing about *individual franchise requirements*.⁵⁸ Second, Locke adds that apportionment also ought to account for "inhabitants" as well as wealth (II:157) and speaks to the need for representation to be "equal" (II:158). Finally, it is worth repeating the point made by Richards et al., which is that in the seventeenth century, there was absolutely no onus associated with advocating a restricted franchise, and those who believed in such restrictions, especially those opposed to the Stuart regime, were consistently clear about the subject. (If one were not a democrat or "commonwealthman," one wanted that known, as a sign of concern for tradition and preserving elite interests.) Had Locke wanted to restrict the franchise to the wealthy,

there was no reason for coyness on his part. Locke, then, does not alleviate the Iretonian concern over the inclusion of all men in the population of those whose majority consent was necessary for political society. Locke's account provides for near universal manhood suffrage and, relatedly, the potential for a progressive redistribution of wealth.⁵⁹

The second option Locke could have pursued, were he interested in theorizing grounds for protecting individuals' property from the government, would be to develop a theory of *individual rights to possessions*. Most commentators believe Locke does precisely this, yet the evidence they offer suggests nothing of the sort. The passages below, cited as support for the reading of Locke as a "possessive individualist," in fact justify "the people's" rights en masse (or, rather, as a majority) against being expropriated by an illegitimate minority running the government. Waldron writes:

Locke is concerned to show that private property rights are possible apart from government and positive law. He wants to show that there are principles of natural justice which govern property-holdings and that these can be deployed critically against any government that threatens to interfere with or redistribute the property of its citizens. To this end, he argues that property-owning got under way at a time when there was no government, and that the function or "end" of government is to protect property holdings that it has not itself constituted.⁶⁰

In the footnote to this passage, Waldron refers the reader to II, paragraphs 3, 124, 134, and 136. Turning to these passages, we see that Locke believes political power is for the "regulating and preserving of Property" (II:3); that "the great and *chief end* . . . of Mens uniting into Commonwealths, and putting themselves under Government, is the *Preservation of their Property*" (II:124); that "the Great end of Mens entering into Society [is] the enjoyment of their Properties in Peace and safety" (II:134); and that "Men unite into Societies, that they may have the united strength of the whole Society to secure and defend their Properties" (II:136). While it is clear that Locke believes that "Men" enter government in order that their properties be made secure, there is no evidence here that Locke is offering a defense of individual rights to property per se.

For three reasons, the above passages do not warrant the claim that individuals have rights to their economic assets that trump the prerogative of majorities in Locke's *Second Treatise*. First, when Locke writes that by "property" he means "lives, liberties, and estates," he means precisely that. The twentieth-century ambiguity imputed to Locke's apparent inconsistency on this point is a symptom of the shift in the use of the word "property," and should not suggest that Locke was being either devious or sloppy. Locke's

use of "property" is similar to its use by the Levellers and others in the seventeenth century.⁶¹ It is interesting that Ireton restricts his arguments for the protection of property to the preservation of "estate, land or goods."⁶² This does not mean that Ireton believes people lack "property" in their lives or liberties. Rather, he recognizes that if the property in material possessions is not legally privileged over the rights implicit in these other properties, then goods will be redistributed and thus the particular property one has in one's possessions may no longer exist. Thus the Levellers are arguing for their properties in an expansive sense, while Ireton restricts his arguments on behalf of property to a defense of material possessions. At the crux of the debate, therefore, is what to do about the tension in the use of the word "property". To defend one's property in one's life (not to be conscripted) and liberties (to exercise one's religion and not be forced to billet the militia) requires manhood suffrage. Otherwise, an elite in Parliament could press men into armies against their wills; billet them without compensation in people's homes; arbitrarily tax people; and punish people for practicing their religion.⁶³ To defend the idea of one's property in things, however, requires a restricted suffrage; otherwise, given an unequal distribution of wealth, an enfranchised majority could dislodge the well-off few from their places at the top of the pyramid.

The Leveller response to this tension at Putney was scattered. Some of the soldiers implied that since they held sacred (as a commandment from God) the property rights individuals had in their things, any fear of wealth being redistributed was unfounded. Others simply took up the opposite position of Ireton, arguing that if it came down to a contest between one person's property in his life and someone else's property in his possessions, clearly the former should receive institutional priority. The concern over an absolutist state emerges in the *Second Treatise* in language similar to that of the Leveller arguments. A government that forcibly takes peoples' lives, liberties, and estates without their consent, that is, the consent of the majority, is one that reduces the people to slavery. Locke writes:

Whenever the Legislators endeavour to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience. (II:222)

This passage seems to refer rather pointedly to Charles II's military pursuits in cahoots with France, as well as the Anglo-Dutch War of 1666-67,⁶⁴ and to the more general belief that his and previous governments had gone too far in forcing people on pain of imprisonment or fines to participate in England's military adventures.⁶⁵

To alleviate the tension in the Leveller position, Locke develops the notion that consent does not refer to an individual's consent, but rather to the consent of the majority. This explains the awkward phrase that qualifies "one's consent" as the "consent of the majority." Locke is finessing the Leveller difficulty of facing circumstances when "consent" could be used against them—by a minority Court and lords that would not give their consent to have their wealth controlled by a popular vote. Locke's concept of consent is not an individualist ruse to support minority property rights, nor is the reference to a "majority" in tension with what Waldron refers to as "immunities against expropriation." Rather, Locke's phrasing accomplishes precisely what the Levellers at Putney were also pursuing: a defense of property, that is "Men's" property, or at least the properties of the majority. Locke simply qualifies the concept of consent to mean the consent of *the majority*. Locke does so in passages that place the origin of government in the hands of a majority, and, relatedly, refer to majorities as the source of legitimate rebellion and reconstitution of government (II:132, 212, 222). Further, only with the consent of the majority is it legitimate for the government to tax the people (II:139). By definition, there is no longer a tension between one individual's property in his life and another's property in his things, since property claims depend not on individual consent but the consent of the majority. Locke solves the problem of what we would call "competing rights" by assigning the right to govern (or legitimately overturn government) only to individuals whose beliefs coincide with those of a majority. Since the concept of "competing majorities" is an impossible one, the problem at Putney—the lack of criteria to evaluate whether property in goods or property in life and liberties should be privileged—becomes moot. Every political question involves either life, liberties, or estates—property—and so a majority regulating these matters regulates almost everything. Unless a majority would consent to it, the ruling elite could not infringe on any of the people's properties. There is one exception to this—and it is a qualified one—pertaining to religious matters of conscience.⁶⁶

Locke was writing in the aftermath of the Exclusion Bill's repeated defeats (which were from 1679-81). He shared Whig fears of a "Popish plot" in which an economic and religious minority would expropriate all forms of the Protestant majority's properties. He was not writing in the aftermath of the Glorious Revolution, when private property was reified if not invented in its current form. Bearing this in mind, it becomes more plausible to believe that when Locke insisted that the consent of the majority was the single criterion of legitimate government, this was no slip of the pen. After explaining why a minority would be unable to resist a stable government's "unlawful acts," Locke goes on to write:

But if either these illegal Acts have extended to the Majority of the People; or if the Mischief and Oppression has light only on some few, but in such cases, as the Precedent, and Consequences seem to threaten all, and they are perswaded in their Consciences, that their Laws, and with them their Estates, Liberties, and Lives are in danger, and perhaps their Religion too, how they will be hindered from resisting illegal force used against them, I cannot tell. (II:209)

It is clear from the following passage that Locke has in mind the “Popish plot.” Locke explicitly speaks to the fear of a Catholic coup from above when he writes:

If [all the World] see several experiments made of Arbitrary Power, and that Religion underhand favoured (though publicly proclaimed against) which is readiest to introduce it, and the Operators in it supported, as much as may be; and when that cannot be done, yet approved still, and liked the better: if a *long Train of Actings shew the Councils* all tending that way, how can a Man any more hinder himself from being perswaded in his own Mind, which way things are going. (II:210)

Locke is referring here to the public denouncement of Catholicism coming from the British Crown that was about to be inherited by the Catholic Duke of York, who, with Charles II, was negotiating foreign policy with the Catholic French monarchy. Locke simply is pointing out the implications of these actions, by which the majority of the country—neither Catholic nor having their interests represented in these foreign affairs—might resist this “illegal force used against them,” were the government to attempt to compel their obedience to Charles II’s plans.⁶⁷

Still, there is an obvious objection to be made against the above argument on behalf of a strict majoritarian reading of Locke’s ideas about the rules to govern property in goods. Ashcraft does not overcome the objections of those who see Locke as advocating “the people’s” property *and* individual property rights. If the majority is to be protected in their properties, that is, if protection of “the people’s” property is the goal of government, then why should individuals not also have a natural right to protect their property in goods? Why can we not read Locke as defending both the majority’s right to resist a tyrant *and* a minority’s right to resist a majority-constituted government’s appropriation of their property in their estates? Why should reading Locke’s goal of a government preserving “the People’s” property in religious freedoms, for instance, necessarily be at odds with interpreting Locke as wanting government also to protect relatively wealthy individuals’ property? The two positions are not intrinsically at odds—as shown in the Putney compromise—but the *Second Treatise* does not provide this reconciliation.

First, Locke’s concept of tacit consent makes something like the Putney compromise untenable, since everyone in the commonwealth must submit to

the laws of the land (II:87), which are kept in check by the consent of the majority (II:87, 99, 132, 134). The nobility and King, both of whom "hath any possession, or Enjoyment, of the Dominions of . . . Government," are themselves considered to have given their tacit consent (II:119) and would therefore be obligated to obey a government acting on behalf of a majority, which is at odds with Ireton's proposal. In the context of Locke's formulation of tacit consent, the possibility of a wealthy minority simply setting up its own branch of government within the same commonwealth is not an option. Second, Locke's apparent references to individuals actually resisting the government apply only to an *appeal to one's conscience*, or an *appeal to government*—not to direct individual resistance or rebellion, as we shall see below.

IV. THE PROBLEM OF PROPERTY RIGHTS

Critics commonly interpret Locke as saying that if the state attempts to take one's property, then individual resistance is justified. Waldron refers to Locke's theory of property rights as one providing "immunities against expropriation." According to this view, "Property is protected, then, to the extent that peremptory expropriation with compensation is banned."⁶⁸ Waldron writes:

Locke argues that this right, along with the rights to life and liberty, is the basis of all political morality. It follows that property must not be taken, even for the sake of the general good, without the owners' consent in civil society:

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, without which they must be suppos'd to lose that by entering into Society which was the end for which they entered into it, too gross an absurdity for any Man to own.⁶⁹

Thus, *given* a distribution of property (which Locke believes can be determined independently of political organization . . .), individual property-holders are said to have a right, against their government, that their holdings should be respected.⁷⁰

If, however, we consider this passage alongside the sentences immediately preceding and following it, it becomes clear that far from defending individuals' private property against majoritarian redistribution, Locke is explaining that the government of Charles II is absurd because it is taking "the people's" property without their consent (since the majority has not con-

sented to his government). II:138 makes specific observations about what absolutist monarchies will do in the absence of an assembly that embodies each man's consent; it does not offer a generic justification of individual rights. Locke states:

Thirdly, The Supream Power cannot take from any Man any part of his Property without his own consent. . . Men therefore in Society having Property, they have such a right to the goods, which by the Law of the Community are theirs, 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 please, against my consent. Hence it is a mistake to think, that the Supream or Legislative Power of any Commonwealth, can do what it will, and dispose of the Estates of the Subject arbitrarily, or take any part of them at pleasure. This is not much to be fear'd in Governments where the Legislative consists, wholly or in part in Assemblies which are variable, whose members upon the Dissolution of the Assembly, are Subjects under the common Laws of their Country, equally with the rest. But in Governments, where the Legislative is in one lasting Assembly always in being, or in one Man, as in Absolute Monarchies, there is danger still, that they will think themselves to have a distinct interest, from the rest of the Community; and so will be apt to increase their own Riches and Power, by taking, what they think fit, from the People. (II:138)

Far from claiming individuals have an "immunity" against the state taking their property, Locke is again echoing the sentiments of the Levellers, that the state can only legitimately pass laws regulating property (or anything else) if it has the consent of the people. Locke is not making an argument for "immunities against expropriation" of private property but an argument for an accountable representative assembly as the vehicle to pursue consent. By disallowing the "Supream Power" from taking the property of "any Man" without his consent, and by stipulating that assemblies guard against this, the correct inference is that Locke believes in a broad franchise, not in individual property rights.

In the state of nature, property can be parted with only by direct individual consent; in political society, that individual consent is implied by political membership in a community that follows the will of the majority (II:95). Consent in political society refers to the prerogative to elect an assembly, not to decide when it is OK to follow laws regulating one's own property. The association of consent with a wide franchise appears in Wildman's remarks as follows:

Every person in England hath as clear a right to elect his representative as the greatest person in England. I conceive that's the undeniable maxim of government: that all government is in the free consent of the people. If [so], then upon that account there is no person that is under a just government, or hath justly his own, unless he by his own free consent be put under that government. Thus he cannot be unless he be consenting to

it, and therefore, according to this maxim, there is never a person in England [but ought to have a voice in elections].⁷¹

Like Wildman (who strongly opposed the committee's compromise), Locke believed that laws enacted without the consent of the majority of adult men were invalid, and that laws that were passed by a majority were binding on everyone (II:96-99).

MacPherson is wrong when he suggests:

The agreement to enter civil society does not create any new rights; it simply transfers to a civil authority the powers men had in the state of nature to protect their natural rights. Nor has the civil society the power to override natural law.⁷²

Individuals in civil society legitimately constituted do not have inviolable property rights, but as Locke points out, they "have such a right to the goods, which by the Law of the Community are theirs" (II:138). Government accountable to the preferences of a majority might very well limit one's "natural rights" to goods. Locke writes:

The first Power, viz. of doing whatsoever he thought fit for the Preservation of himself, and the rest of Mankind, he gives up to be regulated by Laws made by the Society, so far forth as the preservation of himself and the rest of that Society shall require; which Laws of the Society in many things confine the liberty he had by the Law of Nature. (II:129)⁷³

This last sentence undermines any natural rights claims in property (or anything else) imputed to Locke by MacPherson and others. It is curious that this paragraph is so little commented on in the secondary literature, since it seems dispositive on the apparent contradiction attributed to Locke in the matter of majority rule versus individuals' natural rights. In the state of nature, individuals are obligated by the laws of nature; in political society, they are obligated by the "laws made by the society."⁷⁴ Locke establishes a two-tiered system of legitimacy throughout the *Second Treatise*, distinguishing the "Natural Liberty of Man not to be under the Will or Legislative Authority of Man, but to have only the Law of Nature for his Rule," from the "*Liberty of Man in Society*," which is to be "under no other Legislative Power, but that established, by consent, in the Commonwealth, nor under the Dominion of any Will, or Restraint of any Law, but what the Legislative shall enact, according to the Trust put in it" (II:22). Locke continues by saying that "*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). Liberty in the state of nature is regulated by the laws of nature; liberty in society is regulated by the legislative power. Similarly,

“wherefore any one unites his Person, which was before free, to any Commonwealth; 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 Commonwealth, as long as it hath a being” (II:120).

Locke pursues the same strategy of invoking natural rights as that followed by the Levellers: his arguments about the people's rights to property *before* the establishment of political society provide grounds for disenfranchised and taxed individuals to attack current positive law that leaves them vulnerable to the absolutist state. It is not the case that God gave the earth to Adam who then passed it on to the Stuarts (Locke's response to Filmer in the *First Treatise*). Rather, everyone has the natural right to constitute the conditions of society's rules regulating property, in the state of nature, over which no particular royal family can lay claim. Waldron's criticisms of Locke's labor-mixing theory of ownership astutely reveal the tensions in Locke's account of property acquisition and ownership,⁷⁵ *but only in the state of nature* (II: chap. 5). However, if we read these passages as part of a strategy to explain how people could lay claim to their property against the reigning positive law—to justify the reconstitution of political society on a majoritarian as opposed to an absolutist basis—then Locke's claims make sense.

The large scope Locke affords to government regulation of private property is not presented in a moment of idiocy or trickery but, rather, is consistent with his belief in the sanctity of majority rule—over possessions and everything else except religion. Locke writes, “When any number of men have so consented to make one Community or Government, they are presently incorporated, and make one Body Politick, wherein the Majority have a right to act and conclude the rest” (II:95). In the next paragraph, Locke states, “Every one is bound by that consent to be concluded by the majority” (II:96). It is only in the context of current practices in representative democracies that contemporary critics can charge Locke with a conservative understanding of majority rule, by which his concept of tacit consent is said to further elite interests.

For instance, a widely held interpretation of the chapter “Of the Beginning of Political Societies” misunderstands Locke's efforts here as antimajoritarian, as a semantic ruse meant to convince us that “dumb clods” (Hanna Pitkin's phrase) who are not interested in government still are obligated to obey the laws of the land passed by a presumably more clued-in elite. Pitkin, for instance, notes that mere use of roads within national borders constitutes a form of consent. Such a broad notion of consent appears to render it an abysmal concept for justifying individuals' obligation to the government. “Why all the liberal protestations at the outset about the need for voluntary

consent," asks Pitkin, "if the net result in the end is that everyone has to obey anyway?"⁷⁶ Yet, if we understand Locke's notion of consent in the context of late seventeenth century political debates, one's "own consent (i.e., the consent of the majority)" (II:140) was an important hedge against the tyranny of a monarch, while the concept of tacit consent is crucial to guarantee the obedience of the wealthy few—not the "dumb clods"—to a majoritarian government. Wealthy people benefit from commerce, which requires the use of roads, and hence there are grounds for subjecting them to the laws of those who are responsible for keeping up these roads, that is, to the laws of the majority. The notion that inheritance signifies consent obligates the wealthy, not those without property. This country's government has been one questionably responsive to the interests of majorities, despite their formal enfranchisement. The gap between the political elite and everyone else became taken for granted among many in the 1960s, and hence disparagement of government responsiveness in the midst of universal suffrage made sense.⁷⁷ This is not, however, Locke's plight. In the seventeenth century, people were not thinking about political action committees or the military-industrial complex; Locke believed a government formally dominated by a majority would in fact be one most representative of "the people" (II:138). There would be no need to coerce the less-well-off to join. Presumably, the plebeian sorts whose interests would be protected by a government that would not arbitrarily take their property would not be adverse to volunteering their consent.⁷⁸

Locke is not against government expropriation of property per se, only a government that is insensitive to its people's preferences. A government acting consistent with the wishes of the majority has absolute power over everything except one's life. Locke writes:

By the same Act therefore, whereby any one unites his Person, which was before free, to any Commonwealth; 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 Commonwealth, as long as it hath a being. *Whoever* therefore, from thenceforth, by Inheritance, Purchase, Permission, or otherways *enjoys any part of the Land*, so anext to, and under the Government of that Commonwealth, *must take it with the Condition* it is under; that is, *of submitting to the Government of the Commonwealth*, under whose Jurisdiction it is, as far forth, as any Subject of it. (II:120)

Before, one was free, and so were one's possessions, but in joining the government, one's body and things are subject to its laws. To explain this passage as a lapse, as Locke being inconsistent with other passages supporting individual rights to property, is to believe Locke to be seriously remiss

in attending to his own prose. The text does not offer arguments for “immunities against expropriation,” but rather describes how joining a commonwealth subjects one to its laws—depriving one of the freedom one had in the state of nature. Only when a minority attempts to expropriate the property of the majority does Locke say something may be amiss. In that case, he provides for a majority to resist the tyranny of the minority (II:168).

That is why Locke believes, as opposed to Ireton, that a legislature with members who are “Subjects under the common Laws of their Country, equally with the rest” (II:138), not a government with one set of laws for the rich and another for the not rich, will best protect “the People’s” property. As opposed to Ireton, Locke emphasizes that the main threat to property does not come from a Parliament that is popularly elected at regular intervals but, rather, from “Governments where the *Legislative* is in one lasting Assembly always in being, or in one Man, as in Absolute Monarchies” (II:138). Again, the problem with the Stuarts was their tendency to bypass what was regarded as the legitimate routes of raising revenue.⁷⁹ This is not the conclusion one would expect from a text supposedly committed to preserving an elite’s prerogative to control their own possessions.

V. THE RIGHT TO RESIST

The above reading indicates Locke’s consistency on the point of majority rule. In response, one might point to passages that support the rights of individuals to resist the government and say that all that’s been done above is to make Locke’s theory appear even more scattershot than before. However, the passages frequently used to show Locke as justifying individual acts of resistance or rebellion do not support that interpretation. In fact, while Locke does provide for individuals to appeal to heaven and their consciences to make private judgments about whether their laws are just (II:176, 221), the *Second Treatise* does not give grounds for individuals to take matters into their individual (or even minority) hands and to resist the government. Locke needs to provide for something like individual appeals to heaven to allow for the possibility of people arriving at a critical understanding of a tyrannical regime, since positive laws provide no space for their own external evaluation. But such appeals themselves are not the same as a rebellion or resistance, which require a majority for their success, as well as their legitimacy.⁸⁰

The passage Waldron cites in support of the claim that not only does the state have a duty to respect private property, but that “the violation of

this duty is a legitimate ground for violent and even revolutionary resistance"⁸¹ states

Whenever the Legislators endeavour to take away, and destroy the Property of the People they put themselves into a state of War with the People, who are thereupon absolved from any further Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence.⁸²

Again, this reads less like a justification of private property, and more like an argument for the non-Catholic English to rise up in opposition to a Popish plot, or, similarly, like the natural rights logic Wildman invokes at Putney—an early form of the demand “No taxation without representation!” Later in that same passage, Locke writes:

Whensoever therefore the *Legislative* shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, endeavor to grasp themselves, or put into the hands of any other an *Absolute Power* over the Lives, Liberties, and Estates of the People; By this breach of Trust 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 (such as they shall think fit) provide for their own Safety and Security, which is the end for which they are in Society.⁸³

The reference to the Legislative putting the people’s property into the hands of “any other” points not to a redistribution of wealth, but to a fear that the Duke of York and his friends would turn England over to France and the Pope.⁸⁴ Again, insofar as we do not take Locke to be worried about staving off the potential of a government to redistribute wealth, we do not need to impute individual or minority rights to the *Second Treatise*, since presumably a majority can take care of itself. (The reasons underlying Locke’s faith in majority rule will be discussed below.)

Here, Locke’s discussion of the People’s “original Liberty” and their prerogative to establish a new legislative “such as they shall think fit” to protect their “safety and security” reiterate central points in Wildman’s “Case of the Army Truly Stated”:

Whereas all power is originally and essentially in the whole body of the people of this nation, and whereas their free choice or consent by their representers is the only original or foundation of all just government, and the reason and end of the choice of all just governors whatsoever is their apprehension of safety and good by them, that it be insisted upon positively, that the supreme power of the people’s representers, or Commons assembled in Parliament, be forthwith clearly declared.

In the next sentence lies the source of Locke's concern with apportionment:

Upon the aforesaid considerations, it be insisted upon, that all obstructions to the freedom and equality of the people's choice of their representers, either by patents, charters, or usurpations by pretended customs, be removed by these present Commons in Parliament, and that such a freedom of choice be provided for, as the people may be equally represented. This power of Commons in Parliament is the thing against which the King hath contended, and the people have defended with their lives, and therefore ought now be demanded as the price of their blood.⁸⁵

Like Wildman, Locke believes that "the people" are the original source of governmental legitimacy, and any new government has to respect their prerogative (as did the government under Elizabeth). Both Wildman and Locke (among other Whig and Leveller voices of the period) pointed to unequal apportionment as a source of regressive inequalities, and they advocated reapportionment in the name of egalitarianism.⁸⁶

If we review other passages where Locke conventionally is read as providing grounds for individual resistance to the sovereign, we see that this is precisely what he is careful to avoid. The place to begin is the chapter "Of Tyranny."⁸⁷ Locke asks whether the commands of a King may be opposed, since if individuals may disobey the magistrate every time they disagree with the justice of a law, it appears "this will unhinge and overturn all Politie, and instead of Government and Order leave nothing but Anarchy and Confusion."⁸⁸ Locke then gives examples of what he has in mind when he speaks of individual resistance, none of which undermines the legitimacy of the government nor justifies individuals violating the law.

Locke's first response is that "opposition may be made to the illegal Acts of any inferiour Officer, or other commissioned by [the Prince]." We might want to understand such confrontations, insofar as they are random and at the margins, as resistance to petty corruption. Refusing to pay extortion to a neighborhood cop is not illegal, nor likely to provoke a majority to overthrow city government. Further, when the king acts as a private person and does not use the resources of his office, he cannot do much harm, and for the sake of preserving the appearance of government legitimacy, he should not be attacked, "it being safer for the Body, that some few Private Men should be sometimes in danger to suffer, than that the head of the Republick should be easily, and upon slight occasions exposed" (II:205). Locke is apparently working off a quasi-utilitarian calculation, by which the safety of the republic being held together is of greater value than the costs of sporadic graft, for instance. Sometimes the cop may be rotten, and the king may commit minor infractions, but, compared to anarchy, these are small difficulties. One simply

refuses to oblige them. A government with a few bad eggs is better than no government.

Locke's second response, expanding on the distinction between a magistrate and the King, is that the commands of a magistrate "where he has no Authority," that is, where he is in violation of the King's law, is "void and insignificant, as that of any private Man." Locke concludes, "But, notwithstanding such Resistance, the King's Person and Authority are still both secured, and so *no danger to Governor or Government*" (II:206). A magistrate acting outside the bounds of law no longer has the authority of the King, and thus no special duties are imposed on an individual to obey such a person. Therefore, disobeying this private individual is a categorically different matter than resistance to the government.

Locke's third response to criticisms that individuals resisting magistrates will lead to anarchy is perhaps the most telling. Locke compares one's common law right to kill a thief with the lack of such a prerogative when someone "draws his Sword to defend the possession of [loaned money] by force, if I endeavour to retake it." Locke states that the logic behind the disparity "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, 'twas too late to appeal. The Law could not restore to life my dead Carcass" (II:208). Here Locke points out that magistrates in violation of the law cannot be legally killed as one might kill a thief, because "my Life not being in danger, I may have the *benefit of appealing* to the Law, and have Reparation for my 100 l. that way" (II:207). Even though a magistrate might actually threaten more of one's personal assets than a thief, one still may not attack the magistrate, because one's life is not immediately in danger. Thus one must endure an important trade-off that arises upon entering political society: one is no longer judge in one's own case. Just as a private individual cannot legitimately punish another citizen (II:88), one must leave the retribution of magistrates acting without authority to the appropriate judges or juries. Far from allowing an individual the right to personally resist an illegal act, Locke is instructing those who feel mistreated by the local authorities to "tell it to the judge."

Finally, Locke states that if the judge is also on the take, then the individual may use force to resist his or her illegal treatment. Again, note that Locke is careful to point out that only "unlawful exercises of his Power" (II:207, i.e., acts to which the majority does not consent) may be resisted in such a fashion, not acts with which one simply disagrees because of an appeal to heaven. Two things follow from this. First, one cannot simply refuse to pay income taxes, for example, on the basis of ad hoc references to one's natural right to

property, since a tax is not an unlawful act but a law passed with “one’s own consent, i.e., the consent of the majority,” and therefore is legitimate. Second, and here Locke reiterates the gist of II:205, sporadic violations of the law by the magistrates will *not* engender a revolution: “it being impossible for one or a few oppressed Men to *disturb the Government*, where the Body of the People do not think themselves concerned in it, as for a raving mad Man, or heady Male-content to overturn a well-settled State; the People being as little apt to follow the one, as the other” (II:208). Although this passage is frequently read as giving individuals the right to resist the government, while denying the likelihood of minority resistance accomplishing anything, it is important to stress that Locke provides only for the legitimacy of resisting *illegal* acts of the magistrate. Thus Locke appears to be telling people that, in political society, they must obey the laws, but that sometimes the magistrates themselves will not obey the laws—for instance, by enforcing extra-constitutional or simply unlawful measures that oppress “the people”—in which case a majority may overthrow the magistrates (II:209). In his concluding paragraph, Locke echoes Harrington, emphasizing that the “*Power that every individual gave the Society*, when he entered into it, can never revert to Individuals again, as long as the Society lasts” (II:243).

VI. JUSTIFICATION FOR MAJORITY RULE

Various commentators on Locke, after pointing out the weight he gives to majority rule, question the legitimacy of such a criterion. The closest Locke comes to an argument on behalf of majority rule is to analogize political society as a whole to an assembly: in an assembly, “the *act of the Majority* passes for the act of the whole, and of course determines as having by the Law of Nature and Reason, the power of the whole” (II:96). But Locke never says why this is so. Even Kendall, who offers a strong version of Locke’s faith in the sovereignty of the majority, is at a loss as to the source of this faith.⁸⁹ Likewise, Pitkin asks

Can majorities never be wrong? Are there no occasions in the history of mankind when it was right for a dedicated minority to begin agitating for a revolution, or even to lead or make a revolution? And finally, *why* should what the majority (or any other proportion) of your fellow-subjects think be binding on you? What justification is there for that? Why should that obligation seem more basic or natural or self-evident than the obligation to obey laws and authority? Because you have consented to majority rule? But then the cycle of difficulties begins again.⁹⁰

There are several possible responses to the above questions. We could address Pitkin's query at the level of metatheory at which it is posed, that is, "What justifies majority rule?" and simply shrug the question off. No political theorist has offered an irrefutable self-justificatory defense of his or her criteria for legitimate government. Locke says a government is legitimate if it is endured by a majority, and shouldn't that be enough for us? Yet, while no one has built an ironclad set of justifications for a set of criteria by which to apprise whether a government is legitimate, there are efforts to build a case for one's criteria based on amassing lots of what we might think of as circumstantial evidence. We might not see the justification itself shining in a band of pure light, but there are political theorists who go to considerable lengths to make a case on behalf of the criteria they select, and Locke certainly is not among them.

In fact, given my presentation of Locke as pinning virtually his entire argument about obligation on the criterion of majority rule, he is remarkably silent on the questions Pitkin raises. This is not, however, a reason to conclude that Locke was not serious about majority rule, and that really he meant that one was obligated to obey if the government acted consistently with "the terms of the original contract which the founders of the commonwealth made, no more and no less."⁹¹ If Locke's *Second Treatise* is as potentially majoritarian a document as I believe it is, then, given the antipopulist fervor among some of Locke's audience, there is little reason to believe that he would want to make the egalitarian telos and foundation of majority rule more explicit than it is.

The closest Locke seems to come to a justification of majority rule is one based on pragmatism. If a majority wants a government to do one thing, and it does something else, then Locke does not see what can be done to stop them (II:209). But, as the form of my crude paraphrasing of Locke's position here makes clear, this is less a justification of the principle's legitimacy than a description of when governments are able to compel obedience and when they are unable to make people listen.⁹² If a majority agrees with the laws and actions of a government, then the government will be stable; if not, then the government risks being overthrown.

One might extrapolate a utilitarian logic from Locke's position, along the lines of Rainborough's question at Putney, which, paraphrased, reads something like this: if the choice is between 20 percent of people determining the lot of 80 percent of the people or 80 percent of the people determining the lot of 20 percent of the people, isn't the latter preferable?⁹³ That is, if we assume that people are going to vote on the basis of their self-interest, then doesn't adherence to the principle of majority rule guarantee that for any given

decision, happiness, at least calculated in its crude form, will be maximized? It may, but it is not at all clear that Locke cared one bit either for the fulfillment of individual self-interest or the social maximization of happiness.⁹⁴

The explanation of Locke's faith in majorities is most clearly articulated in passages where he points to the ability of most people to reason. Locke states:

Every man carries about him a touchstone, if he will make use of it, to distinguish substantial gold from superficial glitterings, truth from appearances. And indeed, the use and benefit of this touchstone, which is natural reason, is spoiled and lost only by assuming prejudices, overweening presumption, and narrowing our munds.⁹⁵

It is intriguing that it is the metaphor of a touchstone that Harrington uses to justify majority rule. Harrington ironically repeats worries about a popular assembly under conditions of manhood suffrage: "An Assembly of the People Sovereign! Nay, and an Assembly of the People consisting in the major vote of the lower sort! Why sure it must be dull, an unskilled thing." He goes on to write:

But so is the touchstone in a Goldsmith's Shop, a dull thing, and altogether unskilled in the Trade; yet without this, would even the master be deceived. And certain it is, that a well-ordered Assembly of the People is as true an index of what in Government is good or great, as any touchstone of Gold.⁹⁶

Clearly Harrington is not Locke, but both were advocates of reason, and despite worries about prejudice, neither believed one sort of person (the poorer sort) to be especially susceptible to prejudice or stupidity. Locke establishes that everyone has the capacity to reason—this is what distinguishes us from beasts: "God has not been so sparing to Men to make them barely two-legged Creatures, and left it to *Aristotle* to make them Rational God has been more bountiful to Mankind than so."⁹⁷ Here Locke's epistemology is consistent with his belief in majority rule. First, on most questions, particularly those involving nonmathematical matters, there is no certainty, no demonstrable truth. Second, the way that most decisions are reached are through rules of probability.⁹⁸ And third, class position does not affect one's ability to use reason and apply rules of probability.⁹⁹ Locke believes that people from all walks of life are equally likely to be untrained in the art of using proofs to arrive at knowledge. While day laborers are hindered because "their whole time and pains is laid out to still the croaking of their own bellies, or the cries of their children," people in business and "men of leisure" "satisfy themselves with a lazy ignorance." Locke continues:

This, at least, is worth the consideration of those who call themselves "gentlemen," that, however they may think credit, respect, power, and authority the concomitants of their birth and fortune, yet they will find all these still carried away from them by men of lower condition, who surpass them in knowledge. They who are blind will always be led by those that see, or else fall into the ditch.¹⁰⁰

Even absent recourse to syllogistic proofs, most people are fairly successful in using rules of probability to make decisions.¹⁰¹ To answer Pitkin's question, sure a majority can be wrong. Any group of people may be wrong: experts, interested parties, legislators, astrologists. But given Locke's trust in the ability of human beings to reason, and hence to understand right from wrong, a majority is the most appropriate Lockean unit to come to a right judgment. Each individual is likely to make a right judgment. Thus, according to the laws of probability, a majority is the minimum needed for society to make a safe bet on the truth, which draws nearer as the percentage supporting a position increases.

Thus Harrington's premises, which I believe Locke shares, anticipate Condorcet's theorems on the question of majority rule. Condorcet writes:

If the probable truth of the vote of each voter is greater than $\frac{1}{2}$, that is to say if it is more probable than not that he will decide in conformity with the truth, the more the number of voters increases, the greater the probability of the truth of the decision.¹⁰²

This suggests that not only is a majority the optimal number of votes for a good decision, but also that the probability of a truthful decision being reached increases as the size of the electorate as a whole increases. If it is true that Locke had faith in everyone's ability to reason, then majority rule in a commonwealth with a broad franchise makes a lot of sense.

CONCLUSION

Returning, then, to the three questions facing Locke from the officers' compromise at Putney, we may note the following. First, Locke meets the challenge of preserving the institution of property without allowing individuals to resist taxation by using a broad definition of property and then equating "one's own consent" with the "consent of the majority." Second, and relatedly, Locke delineates the right of "the people" to rebel against a minority of either Catholics or wealthy landowners—on the grounds that the founding of government and its subsequent legitimacy depends on the consent of "the people." Finally, Locke renders Ireton's "compromise" unworkable by

grounding the origins of society in the consent of a majority, thus allowing for a wealthy minority to be subjected to laws of the majority.

All this is to say that on the matters of governmental rules, the *Second Treatise* is remarkably consistent. This is not to suggest that there are no difficulties in Locke's work, especially taken as a whole. Locke on occasion was a rather nasty fellow, as can be seen in his role in drafting the Carolina constitution, as well as in his later writings on the Poor Law.¹⁰³ So one problem is to reconcile his enlightened Dr. Jekyll side with his darker Mr. Hyde. And yet, in its absolutist and monarchist tenets, Locke's early *Essays on the Law of Nature* (1663) and the antitolerance positions of his *Two Tracts on Government* (1661) are as removed from stances taken in the *Second Treatise* as the assumptions in his later treatise on the poor. If we do not read the *Second Treatise* as the work of an absolutist, I see no reason to read it, on the basis of these other texts, as one advocating economic conservatism. If libertarians want a hero (and Marxists a villain), they need to look in places other than Locke's *Second Treatise*, which both textual and contextual readings¹⁰⁴ demonstrate is a deeply majoritarian, not individualist, document.

Crucial to understanding the source of misinterpretation is a consideration of what Locke does *not* describe, namely, the proportionate size of a legislative assembly. The specific implications of majority rule in a representative as opposed to direct democracy contain crucial pieces of the liberal puzzle. Taking seriously dynamics of representative institutions might lift a good deal of the weight now placed on competing interpretations of the *Second Treatise*. Questions posed of the concepts of the franchise, property rights, and consent in that text might be more effectively addressed to the problem of majoritarian assemblies, which Locke does not discuss, although Harrington does.¹⁰⁵ Strauss, MacPherson, and Ashcraft raise many issues that only a consideration of the franchise, property rights, consent, *and* the proportionate size of the representative assembly can answer. Locke's silence on this last issue means it is impossible to ascertain the limits of the redistributive potential of the *Second Treatise* in a society with an unequal distribution of resources.

In conclusion, I want to explore briefly our own constitutional context to show the reciprocal relation between questions about our political institutions and those directed to Locke's texts. It is indeed intriguing that a legal environment that includes universal suffrage, an equal protection clause in the Fourteenth Amendment, and regular elections for representative assemblies has not led to more redistribution of wealth. The American political science literature contains a range of accounts as well as critiques of this.

When the franchise became truly universal, at least formally, in the 1920s—when women were allowed to vote—two things occurred: first, the

ratio of the representatives to the electorate (and other legislative bodies) was halved; second, the ratio of representatives to the population as a whole began to sharply decrease as well. These developments may hold part of the answer to the question of why large numbers of Americans experience themselves as disenfranchised even when they technically have the vote. In 1790, there was one representative for every 30,000 inhabitants, resulting in a House with 65 members. The membership of the House increased every decade, following the census. When representatives were reapportioned, the size of the House also increased. This occurred every decade until 1910 when the House voted to increase its size from 391 to 435 members. This increase is a statutory matter,¹⁰⁶ but it was put off following the 1920 census because this was the first that showed more people living in urban than in rural areas—which frightened the rural legislators in office at the time. They used their majority to block, unconstitutionally, any reapportionment until 1928, when the House obliged President Hoover's executive order to reapportion, although they did not increase their size. The matter of increasing the size of the House has not been broached since.

If Americans were to have the same level of representation today that they had in 1790 there would be over 8,500 members in the House. Compared with other national assemblies, as well as with England's in the seventeenth century, ours is puny, which has numerous implications for questions of redistribution. In the context of single-member, winner-take-all districts, these include the following:

1. Larger districts require more resources to be elected, favoring those with more personal wealth and those networked to those with wealth.
2. A two-party system will tend to prevail—whereas districts with only 30,000 members could elect a Green in Santa Monica and a Libertarian in Orange County.
3. There will be less contact between representatives and their constituents.
4. Highly organized groups are more likely to prevail. All of these factors engage central problems of participation and representation, along with the ones Locke discusses.

My own belief is that these practices of representation—not capitalism per se, not false consciousness, and not a private property rights tradition—mean that the principle of majority rule does not lead in the direction feared by opponents of Leveller principles then and now, and why discussions of Locke's lessons for contemporary democracies must be qualified ones.¹⁰⁷

NOTES

1. William Blackstone, *Commentaries on the Laws of England* (Philadelphia: J. B. Lippincott, 1859), 1, 213, quoted in Willmore Kendall, *John Locke and the Doctrine of Majority Rule*, (Urbana, 1959), 97.

2. C. B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Clarendon Press, 1962); Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953).

3. Introduction to John Locke, *Two Treatises of Government*, ed. by Peter Laslett (Cambridge, UK: Cambridge University Press, 1960), 95. Jeffrey Friedman attributes the tensions in Locke's work to the "modern pragmatism that underlies contemporary norms of private property rights and taxation." "Locke as Politician," *Critical Review* 2 (Spring/Summer, 1988): 95.

4. Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton, NJ: Princeton University Press, 1986). The revisionist trend was initiated most emphatically by James Tully, who stresses the importance of Christian charity in Locke's writings. *A Discourse of Property: John Locke and His Adversaries* (Cambridge, UK: Cambridge University Press, 1980). This essay is sympathetic with Tully's rejection of the view that sees Locke as a radical individualist. However, Tully premises his arguments on natural rights positions he imputes to Locke, whereas the objective of this article is to show Locke's rejection of natural rights doctrine altogether, once a majority has inaugurated political society. My argument here is consistent with the majoritarian reading of Kendall, *Locke and the Doctrine of Majority Rule*. However, Kendall sees these strains as being in tension with Locke's ideas about natural rights, and I do not find natural rights in Locke's descriptions of political society. Further, as opposed to Ashcraft, Mark Goldie, and David Wootton, I am uninterested in Locke's personal psychology—Locke, the man—and engaged strictly with the issues presented through his *Second Treatise*, in relation to pressing political questions of seventeenth-century England. For criticisms of Ashcraft's revisionist thesis, see Mark Goldie, "John Locke's Circle and James II," *The Historical Journal* 35 (1992): 557-86; Gordon Schochet, "Radical Politics and Ashcraft's Treatise on Locke," *Journal of the History of Ideas* 50 (July/September, 1989): 491-510; David Wootton, "John Locke and Richard Ashcraft's *Revolutionary Politics*," *Political Studies* 40 (1992): 79-98. Ashcraft responds to Wootton (and Schochet) in "Simple Objections and Complex Reality: Theorizing Political Radicalism in Seventeenth Century England," *Political Studies* 40 (1992): 99-115.

5. Richard Ashcraft, *John Locke's Two Treatises of Government* (Boston: Allen and Unwin, 1987). Ashcraft's *Revolutionary Politics* is a work of history and historiography; *Locke's Two Treatises* focuses on the text of the *Two Treatises*. Friedman writes, "Knowledge of Locke's actual historical context does not automatically translate into clearer understanding of what he meant to say in the *Two Treatises*. [The argument for Locke's economic beliefs] requires the abundant use of textual interpretations that are strained at best. [Ashcraft] does not seem to me to have produced an interpretation of the text that adequately reflects the context he has assiduously uncovered." "Locke as Politician," 82, 83, 96. Schochet states that Ashcraft's book is a "seductive reading without textual warrant." "Radical Politics," 502; although Schochet discusses only *Revolutionary Politics*, the textual analysis Ashcraft offers there displeases Schochet (pp. 502, 505, 510). Intriguingly, Wootton offers the opposite analysis, stating that the *Second Treatise* is a "radical text, even though we cannot locate a radical author." "John Locke and Richard Ashcraft's *Revolutionary Politics*," 96, emphasizes in original. Similarly, Lois Schwoerer, who believes Locke sympathetic with some positions of Wildman as well as of conservative Whigs, concedes the majoritarian strains of the *Treatise* but thinks this an oversight,

writing that he "did not apparently perceive the possibility of majority tyranny." "Locke and the Glorious Revolution," *Journal of the History of Ideas* 51 (October/December, 1990): 542.

6. A. S. P. Woodhouse, *Puritanism and Liberty: Being the Army Debates (1647-9) from the Clarke Manuscripts with Supplementary Documents* (London: J. M. Dent, 1938). For an explanation and interpretation of the Putney debates' relevance to seventeenth-century political theory, see Don Herzog, *Happy Slaves: A Critique of Consent Theory* (Chicago: University of Chicago Press, 1989), esp. chap. 1.

7. Laslett, *Two Treatises of Government*, 154.

8. James Harrington, *The Art of Law-Giving: In Three Books*, bk. 3 (London: Henry Fletchers, 1659), 6, 142.

9. It is interesting that "revisionist" research on Locke has created such a stir, since Laslett in his 1960 introduction to the *Two Treatises* notes: "The resemblance between Locke's final political doctrines and those of the English radicals writing and acting between 1640 and 1660 is most marked. It is so close in some respects that direct influence would seem obvious, through his personal experience amongst those of the 'honest party' and through his reading." Introduction to *Two Treatises of Government*, 34. Julian Franklin also finds Locke's questions intimately tied to those of political writers in the 1640s, especially Henry Parker and George Lawson. *John Locke and the Theory of Sovereignty* (Cambridge, UK: Cambridge University Press, 1978). Ashcraft notes that copies of Leveller tracts were in the library of the home where Locke lived for two years during his exile. *Revolutionary Politics*, 165 n. 145. After William III's ascension, Locke continues to associate with radical Whigs, including Wildman. Mark Goldie, "The Roots of True Whiggism, 1688-94," *History of Political Thought* 1 (Summer, 1980); David McNally, "Locke, Levellers and Liberty: Property and Democracy in the Thought of the First Whigs," *History of Political Thought* 10, no. 1 (Spring, 1989): 23. My intention in pursuing this history of Locke's political education is to show that Locke was familiar with particular currents of thought.

10. Ashcraft, *Revolutionary Politics*, 377, n. 472. Ashcraft believes the *Second Treatise* was written earlier than this, but I find his evidence inconclusive. Franklin believes Wildman, an intimate of Locke, writing that a "letter from Locke's friend, Martha Lockhart, informs him of Wildman's dismissal from the royal court as though Wildman were a mutual acquaintance." Franklin, *John Locke and the Theory of Sovereignty*, 121. In any case, Wildman's presence indicates if not a political endorsement of the Leveller cause, then at least a familiarity with their tenets by virtue of contact with the circle of people frequented by Wildman. Regardless of when one dates Locke's writing the bulk of the *Two Treatises*, there is consensus that he revised at least parts of it before publication. (See Laslett, *Two Treatises of Government*, 60 n. 6, 64, 66, 77.) For another opinion on the dating of these manuscripts, see David Wootton, introduction to *John Locke: Political Writings*, (New York: Mentor, 1993), 54.

11. Critics of various stripes point to a connection between Locke's political theory and that of the Levellers. MacPherson understands the Leveller position as one favoring a limited franchise, and believes Locke's political theory is in keeping with a "possessive individualist" ideology expressed in the Putney debates and elsewhere; Ashcraft believes the Levellers were radical and Locke was radical; and more recently David McNally, in "Locke, Levellers and Liberty," 17-40, argues that the Army position at Putney was radical, in contrast with Locke's *Second Treatise*, which he believes is conservative.

12. Paschal Larkin writes, "The social question in [Locke's] time was, if one may so speak, largely a political one." *Property in the Eighteenth Century* (Dublin: Cork University Press, 1930), 79. Throughout the seventeenth century, the state continued to (a) arbitrarily determine which regions would be enclosed, which open; (b) sell monopoly franchises at various times in tobacco, soap, and cloth; (c) collect ship money at a higher rate in some regions than others; and

(d) give the color of law to magistrates operating poor law policies of various degrees of cruelty. In addition, tariffs were imposed on imports, including wine, beer, cloth, sugar, coffee, soap, and tobacco. The hearth tax was also a source of acrimony. Protested because of its "great oppression of the poorer sort" in the 1660s, and seen as antipopulist (despite its initial passage by Parliament), it was "abolished as a popular gesture" immediately upon William's ascension. That the Commons always sided with taxpayers against the Crown when disputes arose illustrates Chandaman's point that the Commons opposed the tax. C. D. Chandaman, *The English Public Revenue, 1660-1680* (Oxford: Clarendon Press, 1975), 86. That the property rights of Englishwomen were at times at issue is suggested by a 1679 franchise agreement stating that widows would not be allowed to vote, implying that in some times and places their franchise was permitted. Mark Kishlansky, *Parliamentary Selection: Social and Political Choice in Early Modern England* (Cambridge, UK: Cambridge University Press, 1986), 184, citing C. Clarkson, *The History of Richmond* (1814), 117.

13. "Property" in the seventeenth century referred to a broad set of rights. In addition to its contemporary meanings, "property" idiomatically referred to ownership of a seat in Parliament, a military commission, a Court office, university fellowship, or the right to vote. J. H. Plumb, *The Growth of Political Stability in England, 1675-1725* (London: MacMillan Press, 1967), 26; Timothy Harris, "'Lives, Liberties, and Estates': Rhetorics of Liberty in the Reign of Charles II," in *The Politics of Religion in Restoration England*, ed. Timothy Harris et al. (London: Basil Blackwell, 1990), 220. According to Ian Hampsher-Monk, "The *Oxford Etymological Dictionary* notes that the meaning of 'property' as 'things owned' dates at the earliest from the fifteenth century, and is uncommon before the seventeenth." "The Political Theory of the Levellers: Putney, Property and Professor MacPherson," *Political Studies* 24, no. 4 (1976): 409 n.

14. J. P. Sommerville, *Politics and Ideology in England, 1603-1640* (London: Longman Press, 1986), 151.

15. *Ibid.*, 159.

16. See also Michael Levy, "Freedom, Property, and the Levellers: The Case of John Lilburne," *Western Political Quarterly* 36 (1983): 116-33.

17. Kendall writes that Locke was not concerned with the problem of "society's power over the individual member *as such* . . . any more than, in his discussion of the majority's power over the minority, he was concerned with the question of possible abuse by a governing majority of its power over a governed minority." Kendall, *Locke and the Doctrine of Majority Rule*, 103.

18. John Yolton attended to this convention of Locke's decades ago, when he observed that "The 'good of the people' " is a "phrase frequently used by Locke" to refer to "private goods and possessions," and points out *Two Treatises*, II:212 as evidence of Locke's "insistence on majority rule and a unified political body." "Locke on the Law of Nature," *Philosophical Review* 67 (1958): 496.

19. Judith Richards et al., "'Property' and 'People': Political Usages of Locke and Some Contemporaries," *Journal of the History of Ideas* 42 (1981): 50. The article to which they refer is by Martyn Thompson, "The Reception of Locke's *Two Treatises of Government*, 1690-1705," *Political Studies* 24 (1976).

20. Perhaps their most compelling piece of evidence is their interpretation of II:223, which takes account of the possibility that "the People" might rebel. Richards et al. write: "Particularly when compared with the utterly unambiguous statements made about the people by the other writers, this was a remarkable turn to Locke's argument. Other authors of the time forestalled such a challenge by redefining *the people* to mean *some of the people*, and preferably only the most substantial men of the community." "'Property' and 'People,'" 46.

21. As early as the 1620s, "The argument that the king possessed no powers which he could misuse was bogus and anarchic." Sommerville, *Politics and Ideology in England*, 151.

22. Even though gender is not a topic of this article, I believe it a crucial category for understanding the broader context of social contract thought, as well as Locke's, more particularly. The most influential work in this field is Carole Pateman, *The Sexual Contract* (Cambridge, UK: Polity Press, 1988). Elsewhere I show the centrality of gender to the key contradiction that does pervade the *Two Treatises*: gendered inheritance practices and majority rule. "The Politics of Identity: From Property to Empathy" (Ph.D. diss., University of California at Berkeley, 1993), chap. 2. This chapter shows the places in which Locke believes that sons owe specific "debts" to their mothers. These can be discharged only by their accumulation of wealth, as fathers, to educate, and eventually to leave to their sons. Daughters repay the debt by giving birth. The inheritance principles Locke describes are potentially in tension with a majoritarian government—but they do not rest on a concept of individual property rights.

23. Elsewhere I consider the historical context and arguments of the Putney debates in detail. This reading provides the basis for my focus on the three problems that I believe Locke's *Second Treatise* addresses. Stevens, "The Politics of Identity," chap. 2.

24. Woodhouse, *Puritanism and Liberty*, 26, 79.

25. Ireton's proposal sounds like it came from Solomon's evil twin. He says that his plan "gives the negative voice to the people, that no laws can be made without their consent. And secondly, it takes away the negative voice of the Lords and of the King too, as to what concerns the people { Ireton earlier refers to criminal laws }; for it says that the Commons of England shall be bound by what judgments and also [by] what orders, ordinances, or laws, shall be made for that purpose by their [representatives]; and all that follows for the King or Lords is this, that they consent to it for their own persons or estates, as the Commons are." *Ibid.*, 115. {} indicate my insertion; [] mark Woodhouse's additions.

26. Ireton points out that since the army had not raised the problem of enfranchisement before fighting for Parliamentary supremacy, raising the issue at the conclusion of the civil war put the army in breach of the terms of their original agreement to fight against the Crown. The soldiers do not dispute this—by saying, for instance, that they had contracted to serve in exchange for the right to vote—but argue that any contract that did not stipulate this must be invalid since prohibiting their franchise is at odds with "natural law." *Ibid.*, 52.

27. *Ibid.*, 53.

28. *Ibid.*, 115.

29. I am only making the claim that the text of the *Second Treatise* nowhere forecloses governmental redistribution of wealth, provided the government is supported by a majority of its citizens. I am not arguing that Locke advocated this, only that he recognized this possibility and included no language in the *Second Treatise* that would have prevented it.

30. Strauss himself mentions the similarities of his thesis with that of MacPherson, in *Natural Right and History*, 234, n. 106. Strauss is fighting communism, MacPherson capitalism. Perhaps now that the cold war has drawn to a close, these anachronistic readings will also. For a sociology of Locke knowledge, see "A Critical Note on Locke Scholarship," which appears as an appendix in Ashcraft, *Locke's Two Treatises*, 298-305.

31. Jeremy Waldron, *The Right to Private Property* (Oxford, UK: Clarendon Press, 1990), 140.

32. *Ibid.*, 138, quoting Robert Nozick, *Anarchy, the State and Utopia* (New York: Basic Books, 1974), ix.

33. For a study of those debates during the founding of the United States, see Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism* (Chicago: University of Chicago Press, 1990).

34. In 1660 there were 52 counties, each with one representative, and 215 parliamentary boroughs—for a total of 507 members in the Commons. After “freemen” the next most common franchise was that awarded to those who paid “scot and lot” (supported the church and the poor); then “freemen and others” (the latter of which generally were ratepayers). Franchise requirements varies among and within boroughs over time, although the number of members is fairly constant through 1690. Basil Henning, *The House of Commons, 1660-1690* (London: Secker and Warburg, 1983), 104-5.

35. The distinction Locke makes between freemen and servants is followed a century later by Whig radical Thomas Oldfield: “According to what has been traced of our ancient government, every person who was not absolutely a bondman [sic], not only had, but exercised, the franchise of a citizen. To be free, just, and honest were, then, the only claims that entitled to franchise. Thus, every freeman, from every tything, had a right to be present in this sovereign council. [This right] was a general blessing dispensed to all that were possessed of property and probity: nor was this right of voting controlled by qualification; for it was not confined to the quantity or quality of possession. Every freeman who had an interest in the government, either with respect to the security of his person, or the preservation of his property, claimed and enjoyed a share of the legislature.” *An Entire and Complete History, Political and Personal, of the Boroughs of Great Britain*, vol. 1 (London, 1792), 104-5.

36. Locke, II:99. The fact that this passage refers to the origins of political society, not the franchise per se, is discussed on pp. 13-14.

37. MacPherson, *Political Theory of Possessive Individualism*, 107, 119.

38. Ashcraft, *Revolutionary Politics*, 158, 160. Hampsher-Monk also takes issue with MacPherson's definition of a servant. “Political Theory of the Levellers,” 412.

39. Ann Kussmaul, *Servants in Husbandry in Early Modern England* (Cambridge and New York: Cambridge University Press, 1981), 135.

40. According to Kussmaul, servants were 13.4 percent of the total population between 1574 and 1821, and constituted 60 percent of the population aged 15 to 24 (*Ibid.*, p. 3). According to her calculations, this means that 75 percent of all servants were between the ages of 15 and 24 (p. 173). The time period of Kussmaul's study is too broad to be of use in calculating the percentage of servants between 1640 and 1689. What is most relevant to this essay is her characterization of a servant as a transitory occupation. For a similar definition of a servant see D. C. Coleman, *The Economy of England, 1450-1750* (Oxford: Oxford University Press, 1977), 8-9.

41. Kussmaul, 22.

42. *Ibid.*, 24.

43. Harrington, *Art of Law-Giving*, bk. 3, p. 28.

44. *Ibid.*, 29.

45. *Ibid.*, 28-9.

46. Woodhouse, *Puritanism and Liberty*, 83.

47. The form of election varied by location. Stories about lords marching their tenants and servants into the polling areas (which appear frequently before the 1660s) suggest that what Kishansky terms “selection” by acclamation lent itself to this kind of abuse. For discussion of progressive arguments for franchise restrictions, see Tim Harris, *Politics under the Later Stuarts: Party Conflict in a Divided Society, 1660-1715* (London: Longman, 1993), 90; Henning, *The House of Commons*, 105-6.

48. In *Locke's Two Treatises*, Ashcraft states that Locke's definition of freemen included everyone “capable of possessing property” (p. 167), an interpretation at odds with the contrast Locke draws between a servant and a freeman, since both are capable of possessing property, but at a particular point in time, the servant is not a freeman (II:85). Ashcraft discusses II:86 and

II:87 extensively, but is silent on II:85—not mentioned once in his twenty-plus page discussion of this topic. *Locke's Two Treatises*, chap. 7, "The Structure of Constitutional Government." Further evidence that every subject is fundamentally a freeman with reason is Locke's use of the term in his *Essay*, where he writes, "If to break loose from the conduct of Reason, and to want that restraint of Examination and Judgment, which keeps us from chusing or doing the worse, be Liberty, true liberty, mad Men and Fools are the only Freemen." *An Essay Concerning Human Understanding* (Oxford: Clarendon Press, 1975), 265. That this use is idiomatic, at least in some circles, is attested by Samuel Johnson's inclusion of this precise phrase in his *Dictionary of the English Language* (1755)—as exemplary of the definition of "freeman," which is "one not a slave, not a vassal" (London: W. Strahan, 1755).

49. Kussmaul, *Servants in Husbandry*, states that 57 percent of farmers and 36 percent of crafts and tradesmen who lived in parishes in early modern England kept servants, a category she is careful to distinguish from apprentices (pp. 173-4).

50. McNally, "Locke, Levellers and Liberty," 22, 23, 26, reads Locke in just this way, in light of the property requirements in the Carolina constitution and property requirements advocated by Whigs after William III's ascension. Pointing out that Locke does not call for a democracy, McNally infers that Locke was categorically opposed to democracy. According to McNally, Locke's innovation was to broaden the Leveller understanding of "property" to include estates: "Since 'lives, liberties and estates' were all interconnected aspects of property—indeed of 'self-propriety' to use Overton's term—any attack on estates was by definition an attack on persons. Locke's wide definition of property thus delegitimized all levelling notions. Resistance [against James II] could thus be legitimized without thereby justifying attacks on property" (p. 37). The main difficulty with McNally's argument is that nowhere does he come to terms with the fact that Locke does not exclude democracy as a form of government for a commonwealth and that he explicitly describes a community with the power in the majority as being a democracy (II:132). In moments of crises, when the government is illegitimate, society must be founded anew, which suggests that the ultimate organization deciding on what political institutions are legitimate is always a majority of a society, which by Locke's own definition is a democracy.

51. The whole, badly written sentence reads:

If therefore the Executive, who has the power of Convoking the Legislative, observing rather the true proportion, than fashion of *Representation*, regulates, not by old custom, but true reason, the *number of Members*, in all places, that have a right to be distinctly represented, which no part of the People however incorporated can pretend to, but in proportion to the assistance, which it affords to the publick, it cannot be judg'd, to have set up a new Legislative, but to have restored the old and true one, and to have rectified the disorders, which succession of time had insensibly, as well as inevitably introduced. (II:158)

Although grammatically, the "it" in question should refer to "assistance," "it" really refers to the system of apportionment, as can be seen in the *its* use in the rest of the sentence.

52. Ashcraft, *Locke's Two Treatises*, 178.

53. John Ashton Cannon, *Parliamentary Reform, 1640-1832* (Cambridge, UK: Cambridge University Press, 1973), 30.

54. Cannon refers to one case of 13 men electing an MP, *ibid*. It should be reiterated here that franchise rules varied widely.

55. *Ibid.*, 10.

56. Cannon writes, "Though there is no direct evidence that the ship money assessment was used as the basis for redistribution [of representation], the degree of correlation is quite high" (ibid., 264).

57. No one charges American revolutionaries with economic conservatism because of the battle cry, "No taxation without representation!" even though this too associates a territory's representation with the possibility that it indeed has resources, albeit often meager ones, that the government is extracting.

58. Locke refers to the "gross absurdities" of seeing a place that is but a "bare Name of a Town" send "as many Representatives to the grand Assembly of Law-Makers, as a whole County numerous in People, and powerful in riches. This Strangers stand amazed at, and every one must confess needs a remedy" (II:157). He also states, "For it being the interest, as well as the intention of the People, to have a fair and *equal Representative*, whoever brings it nearest to that, is an undoubted Friend, to, and Establisher of the Government" (II:158). There is nothing here qualifying the amount of individual wealth necessary for participation. There is no more here than the statement that if people pay taxes, then they deserve representation.

59. The other passage used to defend the view that Locke favored a property franchise is II:140. This passage so weakly states this case that it is only under the heavy weight of MacPherson that one might plausibly read it as a defense for understanding the *Second Treatise* as a conservative tract (see, e.g., MacPherson, *Political Theory of Possessive Individualism*, 249). In this passage Locke merely says taxation is premised on one's own consent, that is, the consent of the majority. It seems that Locke's invocation of property rights being violated—regardless of the fact that he is referring to the violation of a majority's property rights by an absolutist monarch—serves for some as a code for him being a rabid individualist. I offer this conjecture because there is absolutely nothing in this passage supporting the conventional interpretation, and one is curious as to how Locke was so misunderstood in this place in particular.

60. Waldron, *The Right to Private Property*, 162.

61. See note 13 above. Tracy Strong interprets the slippage between references to one's things and one's person as symptomatic of an age in which one's possessions were regarded as intrinsically part of one's person. Hence references to one's possessions, body, or beliefs are all statements about oneself, this period being before the age of capitalist alienation. *The Idea of Political Theory: Reflections on the Self in Political Time and Space* (Notre Dame, London: University of Notre Dame Press, 1990), 28-9.

62. Woodhouse, *Puritanism and Liberty*, 26, 50, 55.

63. Indeed one way the Crown raised revenues in the 1670s and 1680s was through fining people for not attending Anglican church services. Recusancy fines had been state policy under Elizabeth, but were more strictly enforced under the Stuarts.

64. Thanks to Steven Pincus for suggesting this to me.

65. Lois Schwoerer writes that the primary cause of the civil war in the 1640s was the caprice of Charles's policies with and toward the militia. Throughout his reign he was dissatisfied with the amounts of revenue raised through commerce taxes and frustrated in his efforts to have Parliament raise additional funds. Through a set of policies that Charles II reenacted with the same degree of success (not much), Charles I attempted to gain autonomy from Parliament through independently financing the militia to invade Scotland, while Charles II had his eye on Holland. This entailed for Charles I conscripting troops and billeting them without compensation—since Parliament would not give him the money—in the homes of British subjects. Schwoerer writes, "Quartered free, billeted soldiers became, from the subjects' point of view, a tax or confiscation of property." Wealthy gentry were also forced to loan money to the King, or risk having their homes burnt. In addition, the counties in which soldiers stayed were responsible for coming up with "coat and conduct" funds. This required that they pay for their uniforms and

the maintenance of the horses, in addition to the housing and feeding the soldiers themselves. Schwoerer, *No Standing Armies! Anti-army Ideology in the Seventeenth Century* (Baltimore: Johns Hopkins University Press, 1974), 21, 26-7, 22. For specific examples of Parliament's rebukes to Charles I, see Larkin, *Property in the Eighteenth Century*, 42-8; Schwoerer, *No Standing Armies!*, 19; John Stevens, *The Royal Treasury of England, or an Historical Account of All Taxes Under what Denomination Soever* (London: T. Tebb and J. Wilcox, 1725), 274-85. See also William Kennedy, *English Taxation, 1640-1799* (London: G. Bell and Sons, 1913), 9, 12, 13. For a history of English taxation policies, see Stephen Dowell, *A History of Taxation and Taxes in England, from the Earliest Times to the Present Day*, 5 vols. (London: Longmans, Green and Co., 1884). A solid overview of the details of the fighting against Scottish Protestants, one that discusses Charles's legitimacy and financial problems is Mark Fissel, *The Bishops Wars: Charles I's Campaigns against Scotland, 1638-1640* (Cambridge, UK: Cambridge University Press, 1994). He writes, "Since the 1620s Charles I had been accused of imposing illegal taxes and failing to uphold godly religion in the face of popish threats" (p. 2). On the earlier background of this conflict, see Richard Cust, *The Forced Loan and English Politics, 1626-1628* (Oxford: Clarendon Press, 1987).

66. The focus of this paper is on whether Locke's majoritarian impulses are countered by a competing rhetoric of natural rights to wealth. That Locke himself singles out religion for special treatment—that he writes lengthy treatises on the topic of individual religious conscience—suggests his endorsement of the majority's sovereignty in all matters save religious conscience. Locke writes, "I regard it as necessary above all to distinguish between the business of civil government and that of religion, and to mark the true bounds between the church and the commonwealth. The commonwealth seems to me to be a society of men constituted only for preserving and advancing their civil goods. What I call civil goods are life, liberty, bodily health and freedom from pain, and the possession of outward things, such as lands, money, furniture, and the like." *A Letter on Toleration*, ed. by J. W. Gough (Oxford: Clarendon Press, 1968), 65, 67. In the only series of arguments in which Locke explicitly limits the prerogative of government—those pertaining to religious toleration—he specifically grants the government the right to regulate the "possession of outward things." This is only a contradiction if we read Locke through the lens of possessive individualism that he supposedly invents. Locke's formulation is consistent with other Whig writers, and it is consistent with our own political norms—those of the most possessive individualist country in the history of the world. No one professes confusion or believes our majoritarian system contradictory, because the U.S. Constitution grants individuals the right to exercise their religion without government interference while it offers no rights or provisions for property. Harrington offers precisely that distinction when he chides the "Agreement of the People" for granting individuals the potential liberty to disobey the government—with the single exception being his endorsement of this practice in religious matters. Harrington characterizes the passage in the Agreement that states, "That these representatives have sovereign power, save that in some things the people may resist them by arms" as a "flat contradiction and next is downright Anarchy." He continues, again, along lines I believe Locke follows: "Where the Sovereign power is not as intire and absolut as in Monarchy itself, there can be no Government at all. In the Religious part onely, proposing a *National Religion and Liberty of Conscience*, though without troubling themselves much with the means, they are right in the end" (*Art of Law-Giving*, 8). Locke had read this book, and like Harrington, held that there should be a national religion and liberty of conscience—even as he wrote that a representative body elected by a majority should be sovereign in all other matters.

67. The worry about popery under Charles II also found expression in anxieties about economic and political deprivations. Andrew Marvell in a 1679 pamphlet equates representative democracy with good English government and characterizes what he believes is an incipient

popery as antipopulist: "Here the Subjects retain their proportion in the Legislature; the very meanest Commoner of England is represented in Parliament, and is a party to those Laws by which the Prince is sworn to Govern himself and his People. No money is to be Levied but by Common Consent." *An Account of the Growth of Popery and Arbitrary Government in England* (Amsterdam, 1679), 3.

68. Waldron, *The Right to Private Property*, 17-8.

69. *Ibid.*, 18, quoting II:138.

70. *Ibid.*

71. Woodhouse, *Puritanism and Liberty*, 66.

72. MacPherson, *Political Theory of Possessive Individualism*, 218.

73. Locke also states, "Political Power is that Power which every Man, having in the state of Nature, has given up into the hands of the Society, and therein to the Governours, whom the Society hath set over it self . . . this Power, which every man has in the state of Nature, and which he parts with to the Society, in all such cases, where the Society can secure him, is, to use such means for the preserving of his own Property, as he thinks good, and Nature allows him" II:171, emphasis added.

74. Strauss notes that "once civil society is formed, if not before, the natural law regarding property ceases to be valid" (p. 235; see also p. 241), but his distaste for the Soviet Union apparently prohibits any further exploration of the significance of this. Strauss concedes an "absolute right to property" is an "absurdity," but simply recasts Locke as John Galt, nobly defending capitalism on the grounds that "acquisitiveness" is "conducive to the common good" (p. 242). *Natural Right and History*.

75. Jeremy Waldron, "The Turfs My Servant Has Cut," *Locke Newsletter* (1982), 13; "Two Worries About Mixing One's Labour," *Philosophical Quarterly* (1983), 33.

76. Hanna Pitkin, "Obligation and Consent—I," *American Political Science Review* 59 (December 1966), 997.

77. This is not the case for Pitkin, who has as the target of her critique the Nazi's genocidal policies, which, but for a notion of "hypothetical consent" could be understood as legitimate government practices obligating citizen participation.

78. Ashcraft reads Locke's passages on tacit consent in a manner consistent with the above interpretation. *Locke's Two Treatises*, 181.

79. In other passages in the *Second Treatise* and elsewhere, Locke appeals to the original grounds of England's constitutional monarchy as a basis for rebellion and criticism of governmental practices. During the Civil War, and especially during the controversies over William III's ascension, references to Elizabeth, a presumptive Queen of the people, were quite frequent. Locke's circular letter to members of Parliament in 1695, encouraging them to recall the rule of Elizabeth, is one indication that Locke continued to voice populist political opinions after the Revolution. Locke writes, "I say she often did things which looked irregular, but, when those things were well considered, they had a popular root and bottom, or at least no tyrannical one. Whereas we have known things done in the late reigns which had a face of popularity, but, when narrowly inspected, were found to have had either an arbitrary root or none at all; and heaven knows what fruits they produced." Quoted in H. R. Fox Bourne, *The Life of John Locke*, vol. 2 (London: Henry S. King & Co., 1876), 323.

80. It is worthwhile to note that while Jephtha's appeal to God was individual (in that he spoke to God alone) and resulted in violence, it was made at the instigation of "the people" of Israel, and thus not a result of Jephtha's private decision to go to war. Judges 11. Locke situates Jephtha's appeal in this context, noting that if there is no judge on earth, then "they may appeal, as Jephtha did, to Heaven, and repeat their appeal, till they have recovered the native right of their ancestors, which was to have such a legislative over them, as the majority should approve,

and freely acquiesce in" (II:176, emphasis added). Majority approval and acquiescence is hardly a condition one would impose were one to impute the right of resistance to the individual. Similarly, Locke quotes with approval Barclay, an absolutist, who writes, "Self-defence is a part of the law of nature; nor can it be denied the community, even against the King himself. This therefore is the privilege of the people in general, above what any private person hath; that particular men are allowed by our adversaries themselves, [Buchanan only excepted] to have no other remedy but patience; but the body of the people may with respect resist intolerable tyranny" (II:233, emphases added). The text explicitly precludes resistance on the part of the "private person," or "particular men," allowing it only for the "community" and the "body of the people." Ashcraft reads these passages similarly but does not attend to the distinction Locke makes between resistance of the people and that of particular individuals. *Locke's Two Treatises*, 223.

81. Waldron, *The Right to Private Property*, 137.

82. *Ibid.*, citing II:222.

83. II:222. cf. Laslett's note on James II, *Two Treatises of Government*, n. 29-70, p. 461.

84. Harris writes, "The Whigs viewed Exclusion as essential because they felt the 'lives, liberties, and Estates' of Protestants could not be safe under a popish successor." *Politics Under the Later Stuarts*, 85.

85. Woodhouse, *Puritanism and Liberty*, 434.

86. It was just this "slippery slope" attribution to those wanting reapportionment—"first empty villages won't be allowed to vote, then communism"—that allowed the "ridiculous" system to stay intact until the nineteenth century. For Locke to side with the voice of reason was, politically, for him to side with the radicals. Cannon, *Parliamentary Reform*, 27

87. Kendall provides a thorough account of why we should read the chapter on the dissolution of government as requiring a majority, so I won't review those sections here. Kendall, however, reads this chapter as being in tension with Locke's earlier defenses of private property and individuals' rights to resist the government, the latter of which I do consider here.

88. II:203. This phrasing reiterates Harrington's worry about the results of the "Agreement of the People," which has a clause on resistance that is "contradiction" and may lead to "Anarchy," see note 57 above. Note also how Locke turns the table on Ireton, reiterating verbatim the Leveller sensitivity to the criticism that their approach will result in anarchy. Sexby, a soldier, says that those who demand manhood suffrage are "as free from anarchy or confusion as those who oppose it." Woodhouse, *Puritanism and Liberty*, 70.

89. Kendall, *Locke and the Doctrine of Majority Rule*, 111.

90. Pitkin, "Obligation and Consent—1," 994.

91. *Ibid.*, 995.

92. Jean Condorcet writes, "When the practice of subjecting all individuals to the will of the greatest number was introduced into society, and men agreed to regard the decision of the majority as the common will of all, they did not adopt this method as a means of avoiding error and acting according to decisions based on truth. On the contrary, they found that for the sake of peace and the general utility it was necessary to place authority where the force was." *Selected Writings*, ed. by Kenneth Michael Baker (Indianapolis: Bobbs-Merrill, 1976), 34-5.

93. Woodhouse, *Puritanism and Liberty*, 66.

94. The sixth essay in Locke's *Essays on the Law of Nature*, ed. by W. von Leyden (Oxford: Clarendon Press, 1954), is titled: "Is Every Man's Interest the Basis of the Law of Nature? No."

95. "Conduct of the Understanding," in *Works of John Locke: Locke's Philosophical Works*, vol. 1 (London: George Bell and Sons, 1877), 31.

96. Harrington, *Art of Law-Giving*, 61-2.

97. Locke, *An Essay Concerning Human Understanding*, bk. 4, chap. 17, p. 671. Ruth Grant also infers representative popular government from Locke's discussions of reason, in *John Locke's Liberalism* (Chicago: University of Chicago Press, 1987), 192-7.

98. Locke, *An Essay Concerning Human Understanding*, bk. 2, chaps. 14 and 15.

99. *Ibid.*, 672.

100. *Ibid.*, 599, 600.

101. *Ibid.*, 558.

102. Jean Condorcet, "Essay on the Application of Mathematics to the Theory of Decision-Making," *Selected Writings*, ed. by Baker, 48-9.

103. While he was a commissioner of trade and plantations in the mid-1690s, Locke drafted some absolutely brutal recommendations on policies toward the poor, including the working poor. Among his proposals were seizing their children when they were three years old, educating them in work schools, and apprenticing them off at the age of 14 to whomever wanted them. In addition, Locke said that every "master of a ship" was entitled to a servant for a period not less than nine years. The penalty for arrested beggars who tried to escape, he believed, should be to have their ears cut off. Locke's draft amendments to the Poor Law, included in Fox Bourne, *The Life of John Locke*, 375-91.

104. Again, by "contextual" I have in mind the phrases and arguments circulating during this period. As opposed to Ashcraft, I am arguing that Locke's position in Shaftesbury's circle shows us a certain set of discursive possibilities available to the author of the *Second Treatise* and not strictly reducing the text to the political inclinations of his colleagues during this period.

105. Harrington, *Art of Law-Giving*, 7. For a review of a range of concepts of representation, see Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967).

106. Article 1, Section 2 (3) of the U.S. Constitution states: "The Number of Representatives shall not exceed one for every thirty Thousand." The setting of the number is a matter of internal housekeeping that is to happen within three years of each decennial census. My information on the changes is in U.S. Census Bureau, *Strength in Numbers* (Washington, DC: U.S. Government Printing Office, 1990).

107. For recommendations on alternative rules for Congressional apportionment, see Lanu Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (New York: Free Press, 1994).

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