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Abstract

The standard interpretation of Locke assumes symmetry between punishment by individuals in the state of nature and punishment by states in the state of nature. The standard interpretation is incorrect because in cases where the punishment is altruistic, the state is not the functional equivalent of a person, having a more restricted power to punish. The asymmetry arises from Locke's contractualism because individuals in the state of nature might reasonably refuse to give governments the power to punish altruistically. This interpretation clarifies some ongoing puzzles about Locke's theory of property where questions about coerced sacrifices to benefit others also arise. Locke's argument is vulnerable to important objections, specifically that he equivocates on the meaning of the word "body," that he places too much emphasis on the right of self-preservation, and that he legitimates nearly unlimited appropriation by states.

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Punishment, Property, and the Limits of Altruism: Locke's International Asymmetry

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The standard interpretation of Locke assumes symmetry between punishment by individuals in the state of nature and punishment by states in the state of nature. The standard interpretation is incorrect because in cases where the punishment is altruistic, the state is not the functional equivalent of a person, having a more restricted power to punish. The asymmetry arises from Locke's contractualism because individuals in the state of nature might reasonably refuse to give governments the power to punish altruistically. This interpretation clarifies some ongoing puzzles about Locke's theory of property where questions about coerced sacrifices to benefit others also arise. Locke's argument is vulnerable to important objections, specifically that he equivocates on the meaning of the word "body," that he places too much emphasis on the right of self-preservation, and that he legitimates nearly unlimited appropriation by states.

When a state attempts to punish acts committed in foreign territory by noncitizens, critics may question whether such actions violate the sovereignty of the state in whose territory the offense occurs or whether the rights of the accused have been violated in some way. Both criticisms can also be asked in a modified form when states work together through an international organization, such as the International Criminal Court (ICC), to punish offenders in analogous cases. This article examines a third way in which the question of legitimacy arises that has received much less attention: whether international punishment is in some cases illegitimate because of the sacrifices it imposes on the people who bring it about. It normally costs the state or states that are trying to punish crimes against humanity or war crimes both lives and treasure to do so. The third question is thus whether it is illegitimate for states to require such sacrifices from their own citizens. What is at stake is whether states have the same moral permissions to act as individuals do.

John Locke's influential political theory will provide the setting for exploring this question. The standard interpretation of Locke takes him to provide strong support for international punishment because he would affirm that states may punish violations of natural law wherever they occur. This article argues that in cases where international punishment is altruistic in nature, the weight of Locke's texts point toward such interventions being illegitimate.¹

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While a Faculty Fellow in Ethics at Harvard University's Center for Ethics and the Professions, I was encouraged to take a paper I presented on the ethics of humanitarian intervention that drew upon Locke and to explore its historical aspect more deeply. This article represents the long culmination of that process. I would also like to thank John Michael Parrish, Anastasia Tuckness, Anne Wiltgen, my colleagues and students at Iowa State, and the APSR referees and editors for their comments, criticisms, and editorial suggestions.

¹ Allen Buchanan (1999) has advanced a similar interpretation of Locke, but the discussion is less than a paragraph and does not provide any argument to show why the standard interpretation is wrong. This article will thus seek to vindicate Buchanan's reading

The specific issue is collective altruism as it relates to international punishment. Collective altruism here means, unless otherwise indicated, cases where a state (acting alone or in coordination with an international body such as the ICC) uses its coercive power to coordinate the actions of its citizens in a way that benefits noncitizens abroad but is not expected to create material net benefits for the citizens themselves. To say that an action is altruistic in this sense is not to prejudge the question of whether it is morally obligatory because the question of when altruistic acts are obligatory will be important in what follows.² Instances of collective altruism would include nonpunishment cases, such as using money raised through taxes to provide food for the poor in other countries, and punishment cases, such as ordering military personnel to defend victims of human rights abuses, overthrow oppressive regimes, or arrest the perpetrators of crimes (assuming, in both types of cases, that the altruistic country does not materially benefit). "Punish" is thus being used broadly. It refers to uses of force that are justified by the fact that a person or group has violated the rights of others, and so it includes intervention into ongoing crises to stop the violations as well as taking the necessary steps after a violation has occurred to bring the perpetrators to justice. "International" limits us to cases where the persons to be punished are not citizens of the punishing state, and the violations did not occur in the punishing state's territory.

This claim about international punishment raises the question of whether Locke's view of the state bars it from pursuing altruistic policies altogether. The question of how much power a state has to compel individuals to give up their property for purposes that do not benefit them has long been a vexed area in Locke

of Locke, but it will also question the ease with which he dismisses Locke's approach. A closer study of Locke's reasons for holding this position presents a stronger justification for his position, albeit one that is still problematic.

² This article does not consider cases where a state might have a duty to help individuals in other states because it has violated their rights and owes them reparations, except for a brief discussion in the conclusion.

scholarship. The explanation of the asymmetry thesis given as follows both makes sense of many of Locke's statements about international punishment and also sheds light on some ongoing disputes about the limits on the state's ability to regulate property in Locke's theory by showing us the sense that Locke was, and was not, what we would now call a "libertarian."

Section One frames the discussion within Locke's historical context to show both that Locke had the relevant concepts available to him and that there are reasons to think he was interested in the issues of altruism and international punishment. Section Two explains the arguments for the standard interpretation of Locke on international punishment. Section Three argues that for issues of international punishment, there is an asymmetry in Locke's thought that stems from his contractualism. Briefly, Locke held that in the state of nature, the right of self-preservation gives individuals the right to refuse to punish others because this normally puts the punisher's life at risk. One of the terms of the contract when individuals choose to leave the state of nature is that the state may compel citizens to use both their lives and property for the defense of the state. Without such a commitment, the inconveniences of the state of nature would remain. Individuals in the state of nature do retain the right to refuse to punish in cases where the punishment is altruistic. Section Four then takes up the implications of this contractualist explanation for Locke's understanding of property rights and argues that Locke was at best a lax libertarian because he both affirmed enforceable charity rights and did not require that government policies be narrowly tailored to the protection of rights. The contractualist international asymmetry account in Section Three can account for both Locke's libertarian sounding passages about the purposes for which governments can act and the broad latitude Locke gives them for choosing means to pursue those purposes. The conclusion evaluates the significance of Locke's argument and raises some important objections to it.

SECTION ONE: INTERNATIONAL PUNISHMENT AND ALTRUISM IN CONTEXT

The term "altruism" is used because in contemporary language it is the most usual way to describe actions that are costly to those who perform them and that are intended to benefit others. It is not an altogether satisfactory term because it was coined by Auguste Comte more than a century after Locke's death in part as a reaction against Christian understandings of charity that Comte found too individualistic (Scott and Seglow 2007, 1–2, 14–18). Because Locke's theology emphasized the need for individual rewards and punishments in the next life to motivate actions to benefit others (*E*, 2.28.5–8),³ Comte would have rejected Locke's

view and vice versa. The term "altruism" is nonetheless used here because in contemporary usage, it is the most economical way to describe actions that benefit others at a cost to oneself. As used in this article, the word does not carry Comte's specific understanding and can be used to describe sacrificial actions an individual performs in order to obtain rewards or avoid punishments in the next life.

There is, however, a deeper issue about anachronism that cannot be dealt with simply by definitional fiat. It is only permissible to use "altruism" as a convenient way to reference the set of cases under consideration if the term actually tracks concepts and arguments that Locke could actually have had in mind. At the very least, the implications from Locke's principles should be ones Locke would have agreed flowed from them. Moreover, if Locke did not have debates about the limits of self-sacrifice and the legitimacy of international punishment in mind when he was writing the *Second Treatise* and related works, his statements that seem to go against the right of states to engage in altruistic international punishment might simply reflect an oversight rather than an actual argument against such punishment.

The concepts of altruism and international punishment track several different seventeenth-century debates in which Locke was both familiar and interested. The first debate framed duties of military service against a background right of individuals to seek their own preservation. Hobbes saw the desire for self-preservation as both so strong and so obviously justified that any obligation that forced an individual to act against this desire became suspect. Hobbes was vexed by this issue and, in arguably ad hoc fashion, declared in the conclusion to *Leviathan* that "every man is bound by Nature, as much as in him lieth, to protect in War, the Authority, by which he himself is protected in time of Peace" (1991, 484). Given how reluctant Hobbes was to make even this concession regarding the individual right of self-preservation, this proviso would not seem broad enough to condemn a man who ran away when asked to fight in a war that would not protect his own state at all, but would only help distant strangers. Responding to Hobbes, Richard Cumberland claimed that the right to preserve oneself derived from the fact that we can only serve the common good if we are alive and that, therefore, "if Religion, or the public Welfare of Men, requires it, we be ready to part with the last drop of our Blood" (2005, 324). The advantages we receive from living in society are so great that we should, on those rare occasions where it is necessary, repay society with our very lives (2005, 601–2; Kirk 1987, 34).

Locke's contemporary, Samuel Pufendorf, clearly had available the relevant concept of self-sacrifice. Like Cumberland, he held that we have positive duties to help others in addition to duties to refrain from harm,

³ References to Locke's primary works are given as follows: *E* = *Essay Concerning Human Understanding* (Locke 1979) by book, chapter, and section number; *L* = *Letter Concerning Toleration* (Locke 1983) by page number; *PE* = *Political Essays* (Locke 1997) by page number; *STCE* = *Some Thoughts Concerning Education* (Locke

1996) by section number; *TT* = *Two Treatises of Government* (Locke 1988) cited by treatise and section number; and *W* = *Works* (Locke 1963) by volume and page number. The original formatting, spacing, and punctuation are retained in quotations unless otherwise noted, but spellings have been modernized.

but in contrast to Cumberland he emphasized the assistance we can provide “without loss, trouble, or labor on our part” (Pufendorf 1934, 350). He later discussed cases where a person acts to benefit someone else at cost to himself. Such actions were not described by Pufendorf as obligatory, but they could create obligations of gratitude for the recipient.⁴ His comments here also relate to a second debate, to be discussed more fully in Section Four, regarding whether giving help to the poor could be compelled by the state.

Pufendorf was also part of a third debate in the seventeenth century that framed the right to war within the context of international punishment. One of Pufendorf’s main points of disagreement with Grotius was over the permissibility of states punishing wrongs done to third parties. Grotius included the altruistic category “the Good of the Offender” as one of the three reasons to punish (2005, 963–65), but required that the one punished be guilty of some fault. He listed certain violations of natural law, such as inhumanity toward parents and eating human flesh, as ground for war (2005, 1021–25). Pufendorf disagreed (1934, 1297) and argued that for a man to wage war on behalf of others, the side for which he fights must have been wronged and “there should lie a special obligation, whereby he is bound to the principal belligerent” (1934, 1305). The strongest obligation is when one’s citizens are attacked, followed by those states one has promised by treaty to defend, and then those states that are “friends” or that have put us in their debt by some bestowed benefit. Pufendorf notes that this may happen because it is often in the interest both of the intervening country, as well as humanity in general, to punish rogue states. He then concludes, “Yet there ought to be some restraint in this, so that not every man, even though he live in natural liberty, should have the right to coerce and punish by war any person who has done any other person an injury, on the sole excuse that the public good demands that injuries to the innocent should not go unpunished, and that what concerns one should concern all” (1934, 1307). He therefore limited intervention to those cases where the injured party has called for aid (1934, 1307).

Richard Tuck argues that there is no doubt about the extent of Locke’s interest in international affairs. He suggests that Locke was writing the *Second Treatise* in 1681 while he was reading Pufendorf’s *De Jure Naturae et Gentium* (see also Marshall 1994, 203), and that although Locke follows Pufendorf in several important respects, one of Locke’s main goals in the *Second Treatise* was to refute some of Pufendorf’s views on property and international punishment that would have impeded European colonial practices (Tuck 1999, 167–76). We thus have reason to believe that the legitimacy of international punishment was a major concern for Locke at the time he wrote the *Second Treatise*. The

asymmetry thesis advanced here does not conflict with the main thrust of Tuck’s argument (advanced also by Tully 1993 and Arneil 1996) that Locke was seeking to justify English colonial policies. Because Locke’s argument only prevents states from engaging in altruistic punishment, it does not preclude international punishment for reasons of state.

Turning to the fourth debate, seventeenth-century writers sometimes used Christian charity as a frame for acts of political violence. Gentili, when identifying just causes of offensive wars, described “honorable reasons” as when we go to war “for no private reason of our own, but for the common interest and on behalf of others” (1933, 122). It is honorable when one has “incurred enmities, encountered danger, and contributed aid, interest, and labor.” Although Gentili also talks about such actions as punishment, it is clear that the justifying motive is not seeing that due punishment is received but instead doing good to others at cost to oneself. It is telling that war was one of the general topics to be covered under the subject of charity according to Suarez (1944).

One important strain of this charity argument was specifically religious. The dominant strand of argument for religious persecution in Restoration England was inspired by Augustine’s argument that “when the saving gifts of the Catholic Church are in question, then coercive discipline is charity” (Goldie 1991, 337). The good of brining others to faith tended to be used more indirectly in international cases where it was a matter of fighting those who had never accepted Christianity, and most writers stopped short of saying failure to embrace Christianity was itself a cause of war.⁵ That so many writers felt compelled to address this question indicates that it was a serious topic. A good example of the indirect international charity argument is provided by Suarez who claimed that force could be used to ensure that missionaries could go to other countries to teach people to obey God and the law of nature (1944, 827). Here, Suarez does not make the claim that force can directly convert people and the reason for war can be framed as alleviating harms to those who want to hear but cannot. The underlying justification, however, is ultimately that instruction in true religion is very beneficial and force can be used to ensure that people receive it.

The preceding discussion shows us first that Locke had available the relevant concepts to formulate a theory that rules out cases of altruistic international punishment. It also gives us reason to think Locke was interested in questions of the limits of coerced self-sacrifice, the legitimacy of international punishment, and altruistic justifications for the use of force internationally. What is distinctive about Locke, on the account developed here, is that previous thinkers who opposed war for altruistic reasons focused on the wrong done to other nations, whereas Locke focused more on the lack of authority the state had to carry out such actions.

⁴ He writes that it is particularly praiseworthy when a man “of his own good will and bent, from his own generosity, or from pity for another man’s condition does something for him without return, at considerable cost or labor to himself, whereby the other is aided in his difficulties, or else some considerable advantage is rendered him” (1934, 373).

⁵ See also Vitoria 1991, 265–75, 284–87; Grotius 2005, 1041–52; Pufendorf 2002, 12–13; and Tuck 1999, 160.

SECTION TWO: THE STANDARD INTERPRETATION

The standard interpretation of Locke's theory of international relations takes it to be parallel to his account of individuals in the state of nature.⁶ In Locke's state of nature, people are free, equal, and independent (*TT*, 2.4, 95), and they are governed by the law of nature, which Locke also refers to as the law of reason (*TT*, 2.16, 30, 56, 57, 90). The law of nature teaches people that no one may harm another in his⁷ life, liberty, and property and that there is a positive obligation to preserve the lives of others where one's own preservation is not threatened (*TT*, 2.6). Locke frequently refers to the principle that, as much as possible, mankind is to be preserved as the fundamental law of nature (*TT*, 2.7, 16, 134, 135, 149, 159, 171, 183; Simmons 1992, 46–50). Many interpreters take Locke's statement in the *First Treatise* that charity gives those in danger of starving to death a "title" to the surplus production of others (*TT*, 1.42) as a practical application of this obligation to preserve others when our own preservation is not threatened. Charity is discussed more fully in Section Four. According to the standard interpretation, Locke knew that there would be violations of the law of nature and that this raised the question of whether (and how) violations might be punished. One of the most important arguments in Locke's *Second Treatise* is the claim that all people, not just victims of an attack, have the right to punish violations of the law of nature (*TT*, 2.7–13). One distinctive feature of Locke's thought is the egalitarian distribution of this power of punishing in the state of nature and the subsequent burdens of judgment that it creates (McClure 1996, 131, 149–50). One of the judgments individuals must make is whether to pursue altruistic punishment.

The label "altruistic" distinguishes the previous case from cases where a third party punishes another individual for violating the rights of another and intends to benefit in some way. One might believe, for example, that punishing someone who has attacked a third party is to one's own advantage because the attacker is a threat or because the punishment will deter others from doing the same. One of Locke's themes is that a person who has violated the law of nature "hath by the unjust Violence and Slaughter he hath committed upon one, declared War against all Mankind, and therefore may be destroyed. . ." (*TT*, 2.11). Altruistic punishment remains a possibility, however, because any given criminal is not equally dangerous to every person. The more remote the danger a criminal poses to any particular individual, the more "altruistic" is the decision of that

individual to punish the offender for the sake of the rest of humanity.

When Locke takes up the objection that the state of nature is mere fiction, he provides textual support for the standard interpretation's claim of symmetry between the rights and obligations of individuals in the state of nature and the rights and obligations of independent governments. He writes

Tis often asked as a mighty Objection, *Where are, or ever were, there any Men in such a State of Nature?* To which it may suffice as an answer at present; That since all *Princes and Rulers of Independent Governments* all through the World, are in a State of Nature, 'tis plain the World never was, nor ever will be, without Numbers of Men in that State. (*TT*, 2.14)

Locke here follows Grotius (2005) and Hobbes (1991) in seeing the relationship between individual persons who have no common sovereign as analogous to the situation of international relations.⁸ The implication of this statement is that the same permissions and obligations that apply to individuals in the state of nature also apply to states. If one state sees another state violating the law of nature, for example, by waging a war of aggression to take away another state's justly acquired territory, it could altruistically intervene on behalf of the attacked party to help it ward off the attack and punish the attacking state, even if doing so was not in its own interests.

There are several passages that support this standard interpretation. In situations where the father of a household functions as its political leader, he has the authority to punish all violations of the law of nature, including violations by those who are not members of his family (*TT*, 2.105). In his discussion of the federative power, Locke explicitly makes the connection between the state of nature and international relations.⁹ The federative power includes the power of war and peace, of entering into treaties with both commonwealths and individuals who are not part of any commonwealth (*TT*, 2.145–46). He claims that because the commonwealth is, with respect to others, considered to be "one body,"¹⁰ it has the power to execute the law of nature with respect to the rest of mankind. All of this, according to the standard interpretation, implies wide freedom for states to intervene, although how clearly this is spelled out varies from interpreter to interpreter.

⁸ See also *TT*, 2.183.

⁹ Locke writes, "There is another *Power* in every Commonwealth, which one may call *natural*, because it is that which answers to the Power every Man naturally had before he entered into Society. For though in a Commonwealth the Members of it are distinct Persons still in reference to one another, and as such are governed by the Laws of the Society; yet in reference to the rest of Mankind, they make one Body, which is, as every Member of it before was, still in the State of Nature with the rest of Mankind. Hence it is, that the Controversies that happen between any Man of the Society with those that are out of it, are managed by the public; and an injury done to a Member of their Body, engages the whole in the reparation of it. So that under this Consideration, the whole Community is one Body in the State of Nature, in respect of all other States or Persons out of its Community" (*TT*, 2.145).

¹⁰ See also *TT*, 2.135.

⁶ Examples include Arneil 1996, 62–3; Dunn 1994; Nozick 1974, 137; Parry 1978, 133; Schiller 1972, 418–19; Scott 2000, 551; Seliger 1968, 111–13; Simmons 1992, 165 n7; Tuck 1999, 177; and Ward 2006, 703–4. I myself held the standard view until quite recently. See Tuckness 2006, 145–46.

⁷ Masculine pronouns are used so as not to prejudice the question of how the historical Locke would have seen these arguments as applying to women. Philosophically, there is no reason why the arguments would not apply equally to women.

This permission is widened even further because Locke's theory permits preemptive attacks on those who threaten to violate one's rights. In discussing war between individual persons, Locke writes that "declaring by Word or Action, not a passionate and hasty, but a sedate settled Design, upon another Man's Life, puts him in a State of War with him against whom he has declared such an Intention, and so has exposed his Life to the other's Power to be taken away by him, or any one that joins with him in his Defense, and espouses his Quarrel" (*TT*, 2.16).¹¹ Notice that these triggers for the state of war (declarations by words or actions that manifest a "settled design upon another man's life") justify preemptive attacks not only by the threatened party but also by "any one that joins with him in his Defense." This doctrine opens the way for humanitarian interventions when there is clear evidence of a "settled design" of tyranny or handing the people over to a foreign power. If a state sees clear evidence of impending violations of the right to life, liberty, or property, it could invade to stop the violations from happening. Locke is vague about the threshold for intervention, but the lack of specification itself argues for a fairly permissive set of ground rules.

The standard interpretation thus takes the situation of states to be symmetric to that of individuals in the state of nature and permits states to use the executive power of the law of nature altruistically. Section Three argues for an asymmetry between the condition of individuals in the state of nature and states in international relations in terms of their freedom to pursue altruistic policies. Although Locke does permit individuals to engage in altruistic punishment, he does not allow states to use their coercive power to do the same.

SECTION THREE: THE CONTRACTUALIST ARGUMENT FOR THE ASYMMETRY THESIS

When Locke describes the powers of the commonwealth in *TT* (2.88), he notes that it has two powers, the power to pass and enforce laws domestically and "the power to punish any Injury done unto any of its Members, by any one that is not of it, (which is the *power of War and Peace*;) and all this for the preservation of the property of all the Members of that Society, as far as is possible." This statement omits the power of punishing injuries done to those who are *not* members of the commonwealth and then specifies that the power is to be used for the preservation of members of one's *own* society. Were this passage an isolated instance, we might consider it nothing more than a slip; however, this way of talking about the powers of the commonwealth continually recurs. In the *First Treatise*, Locke

¹¹ In the following sections, Locke extends the logic to include assaults on freedom and property. If anyone would try to put me under his absolute power (*TT*, 2.17) or take my property (*TT*, 2.18), my life is implicitly threatened. Locke thus includes taking of property and attempts at gaining absolute power as legitimate causes of war. Locke reiterates in *TT* (2.19) that a declared design on another is sufficient to provoke war. Similarly, people must not wait until their freedom has been taken away to resist a government that is becoming tyrannical (*TT*, 2.220).

states that governments exist to protect the property rights of the governed (*TT*, 1.92). Locke writes that people join particular political communities to receive "greater Security against any that are not of it," but does not list more effective punishment of violations committed against or within other communities as a reason (*TT*, 2.95). Locke states that the government is to employ the force of community "abroad to prevent or redress Foreign Injuries, and secure the Community from Inroads and Invasion. And all this to be directed to no other *end* but the *Peace, Safety, and public good of the People*" (*TT*, 2.131).¹²

When Locke goes into more detail about the federative power, he frames the issue in a similar way. As noted previously, Locke describes the power of war and peace as a power to punish injuries against members of that commonwealth (*TT*, 2.88). When explaining why the executive and federative powers are, for practical purposes, entrusted to the same executive entity, Locke describes the federative power as "the management of the *security and interest of the public without*" (*TT*, 2.147). Even the passage quoted in support of the standard interpretation (*TT*, 2.145) focuses on redressing injuries against one's own citizens. Thus, although the initial presentation of the federative power made it seem strictly analogous to the situation of individuals within the state of nature, Locke's later presentations indicate an asymmetry. Although individuals in the state of nature have the right altruistically to punish violations committed against others within the bounds of natural law, the commonwealth may use its power of punishing within the bounds of natural law only when doing so is beneficial to the commonwealth itself.

The crucial shift that accounts for the asymmetry occurs with respect to the relevant society of which the individual is a member. *TT* (2.171) provides the clearest explanation of this. Locke begins by stating that the political power of the commonwealth derives from those powers that individuals in the state of nature had that were transferred to the commonwealth, to be directed by the government. This is done with the

express or tacit Trust, That it shall be employed for their good, and the preservation of their Property: Now 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; and to punish the Breach of the Law of Nature in others so, as (according to the best of his Reason) may most conduce to the preservation of himself, and the rest of Mankind. So that the *end and measure of this Power*, when in every Man's hands in the state of Nature, being the preservation of all of his Society, that is, all Mankind in general, it can have no other *end or measure*, when in the hands of the Magistrate, but to preserve the Members of that Society in their Lives, Liberties and Possessions. (*TT*, 2.171)¹³

¹² See also *TT*, 2.110, 143, 163, and 227.

¹³ On the claim that in the state of nature mankind forms a single community, see Ashcraft 1987, 107–9.

Locke here claims that in the state of nature, one is a member of the society of mankind and therefore may punish on behalf of mankind, but that when one joins a more limited political society the power to punish is used only on behalf of that more limited society. It is grammatically possible that “that Society” in the last line refers to mankind in general, but the context here and in the rest of the work strongly weighs in favor of “that Society” referring to the political society one has joined. Locke begins the section by explaining that citizens give power to the government with the condition that it be used for the protection of *their* good and *their* property. A government that brought about harm to its citizens or damaged their property in the process of pursuing altruistic goals would not be fulfilling this condition. The structure of the last sentence implies the following logic: one may use the power of punishment for the preservation of the society of which one is a member; hence, in the state of nature, one uses this power for the preservation of all mankind (for that is one’s society in the state of nature) and, in a state, for the preservation of that state.

It is significant that when Locke talks about us becoming members of a specific political community, he talks about it as also separating from the general community rather than simply adding an additional set of obligations (*TT*, 2.128). Thus, although Locke sometimes talks about the law of nature as the preservation of all mankind, it is significant that in some cases when Locke talks about the fundamental law of nature to guide the legislature, he says it is “*the preservation of the Society*” (*TT*, 2.134). In discussing prerogative, he says that according to the “Fundamental Law of Nature and Government,” as much as possible, “*all the members of the Society are to be preserved*” (*TT*, 2.159), clearly referring to the specific political community. To be sure, Locke sometimes uses the more familiar formulation when talking about the powers of government (*TT*, 2.135). The significance of Locke’s interchangeable use of the two phrases is that he believed that a government limited to pursuing the preservation of its own members was furthering, not hindering, the preservation of all mankind.

The thrust of these passages is that if a state were to use its power to punish perpetrators of genocide in a foreign country in a case where doing so was of no net benefit to the lives, liberties, and properties of its own citizens, it would act illegitimately. The punishing state would not be guilty of wronging the perpetrators of the genocide. Rather, the wrong would be against the citizens of its own state by acting beyond its proper authority. Governments are created to preserve the property of their own citizens, not engage in altruistic punishment.

There are two passages in the *Two Treatises* that might be believed to undermine this interpretation. 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” (*TT*, 2.129). Although this might be taken as evidence that the power to act for the good of mankind as a whole is transferred

to the state, the rest of the sentence reads “so far forth as the preservation of himself, and the rest of that Society shall require.” It thus confirms that the power once transferred is not to be used for altruistic purposes.

In the second passage, Locke writes, “The end of Government is the good of Mankind; and which is *best for Mankind*, that the people should be always exposed to the boundless will of Tyranny, or that the Rulers should be sometimes liable to be opposed, when they grow exorbitant in the use of their Power, and employ it for the destruction, and not the preservation of the Properties of their People?” (*TT*, 2.229). One could object that Locke here explicitly affirms that the end of government is not the good of its own people, but that of mankind as a whole, and that when Locke repeatedly says that governments may only seek the good of their own citizens, he is contrasting this with rule for the ruler’s own good, not altruistic punishment. However, the passage need not be interpreted in this way because there is ambiguity as to whether Locke is referring to the end of specific governments (each government is to promote the good of mankind) or government as such (governments are created to make mankind better off). The flow of the passage as a whole makes it difficult to insist on the first interpretation. Nothing in it even hints at altruistic obligations, and the main point seems to be subjecting claims about the rights of governments and subjects to the test “would recognition of the right in question make people more secure in their property.” It is thus similar to *TT* (2.131), where Locke argues against any interpretation that makes people worse off than in the state of nature.

The asymmetric interpretation becomes even more likely when we consider how well it fits with Locke’s contractualist argument for limited government. The logic of Lockean contractualism begins with individuals in a state of natural freedom restricted only by their obligations according to natural law. To claim that the government has the right to oblige its citizens in a particular way, Locke’s contractualism places the burden of proof on those who must show why it would have been rational for individuals to transfer a given freedom to the state. In the present case, Locke’s theory holds that individuals have the right to refuse to aid others when it would endanger their own preservation (*TT*, 2.6). Using physical force against someone who has already shown a willingness to violate the rights of others will often involve considerable physical risk (*TT*, 2.126). Locke consistently talks about the power or right to punish rather than the duty to punish.¹⁴ Thus, in Locke’s scheme, individuals in the state of nature would have had a right to refuse to engage in altruistic punishment. Within the context of civil society, people can often fulfill their obligation to preserve others via economic assistance without endangering their own preservation, but in the state of war that exists when one state punishes another, the preservation of the lives of soldiers is jeopardized. Because individuals

¹⁴ See *TT*, 2.7–13, 87, 105, 127, 128, 130, 131, and 171.

in the state of nature have the right to refuse to punish wrongdoers because of the danger to their own lives, it is reasonable for them to reserve the right to refuse to fight in wars where the preservation of their community is not threatened.

There is a tension in the fundamental law of nature arising from the fact that maximizing the total number of lives preserved and protecting each individual's right to seek his own preservation can conflict. Consider a soldier commanded to serve in a dangerous combat position in the Somalia peacekeeping operation in 1993. His own preservation is threatened by this assignment, but he may help thousands of people receive needed food. Locke's argument that the duty to preserve others does not hold when one's own preservation is threatened implies the primacy of the right to preserve oneself over the maximization of lives preserved. Because the individual had the right to refuse to risk his life to save the lives of others in the state of nature, and it is not in his material interest to give up this right when entering political society, Locke assumes that he retains this right. This argument is compatible with the state's use of an army of volunteers who agree to serve in altruistic wars, but that does not undercut the thesis under consideration because our concern is with the state's use of its coercive power.¹⁵

A different way of posing the question is to ask whether Locke's lists of the purposes of government in the *Second Treatise* are meant to be restrictive or illustrative. If they are meant to be restrictive then Locke's consistent omission of international obligations is significant; however, if the lists are only illustrative, then the fact that altruistic punishment is omitted would only mean that such cases were not his main point. The asymmetry thesis goes along with a restrictive understanding. Roughly speaking, according to the contractualist interpretation of Locke, states have a limited purpose: to use the collective force of the community in defense of the life, liberty, and property of that community within the bounds of natural law. This, and this only, is the end for which individuals join political communities. Governments are constrained both by the negative prohibitions of natural law and also by the requirement to act only for the public good, that is, the good of that community with respect to its worldly interests. When Locke says that governments exist only to promote the public good, these are the goals he has in mind. All other freedoms are assumed to be retained by the individual.

Locke's grammar in the *Second Treatise* supports the restrictive understanding.¹⁶ Locke's writings on religious toleration provide further confirmation because the whole point of Locke's toleration arguments from 1667 on was to establish a restrictive understanding of the powers of the state. Although Locke had several lines of argument that converged at this conclusion, it is

interesting to note that the contractualist understanding spans from his earliest defense of toleration to his last. In 1667, more than a decade before he wrote the *Two Treatises*, he wrote in the unpublished *Essay on Toleration* that "the whole trust, power, and authority of the magistrate is vested in him for no other purpose but to be made use of for the good, preservation, and peace of men in that society over which he is set" (*PE*, 135).¹⁷ Here, we see the same use of restrictive language coupled with a limitation of the use of that power for one's own society. After briskly setting aside arguments based on divine right, Locke provided this rationale: "it cannot be supposed the people should give any one or more of their fellow men an authority over them for any other purpose than their own preservation, or extend the limits of their jurisdiction beyond the limits of this life" (*PE*, 136). Locke goes so far as to say that avoiding violence "is the only reason" a man joins the commonwealth (*PE*, 149) and that, therefore, assuming governments can pursue other goals is illegitimate.

Locke made similar arguments after the *Two Treatises* were published. In the *Second Letter on Toleration*, Locke described nations in the West Indies "which have no other end of their society, but their mutual defense against their common enemies" and whose prince has no "authority over any of the society" in time of peace. Under such circumstances, the prince has no special jurisdiction even to redress wrongs that the citizens commit against each other (*W*, 6:121–22). Defending this example in the *Third Letter*, he asks whether in such a society the chieftain "had any power to use the force of the commonwealth to any other end but the defense of it against an enemy, though other benefits were attainable by it?" (*W*, 6:225). If Locke in this case claims that the prince or chief of such a nation had no right to use the collective power of the people to punish even domestic criminals because the people had not given him the authority to do so, it is odd to think that such a prince would have had authority to mobilize the people for altruistic international punishment. If people can give the government authority to protect them from international but not domestic threats, surely they can also authorize the government to protect them from both threats but not to engage in altruistic punishment. Indeed, one of Locke's main arguments in the later letters is that the mere fact that the state has the ability to bring about a good is not sufficient to show that it has authority to bring about that good (*W*, 6:116–21, 211–20), a principle of great importance because in cases of altruistic punishment the ability of the state to bring about a significant good is often presented as a justificatory reason.

¹⁵ Ward (2006, 703–4) mentions in passing the possibility that Locke's argument might require an all-volunteer army in cases like this, but then prefers the standard interpretation.

¹⁶ See *TT*, 2.88, 129, and 171, quoted previously, as well as 2.130 and 131.

¹⁷ See also *PE*, 141 and 142. There is a passage where Locke says that the magistrate is only concerned with virtue and vice so far as affects "the good and preservation of mankind," but he is clearly referring to laws being passed that govern the magistrate's own society (*PE*, 144). As in the *Two Treatises*, the occasional references to mankind are references to how well-functioning states benefit mankind.

SECTION FOUR: CONTRACTUALISM AND LIBERTARIANISM

The contractualist argument for limited government has implications that go beyond cases of altruistic international punishment because it speaks to the purposes of government in general. One strategy for refuting this explanation of the asymmetry thesis would be to show that it implies that Locke was a strict libertarian and then show evidence that Locke was not in fact a strict libertarian. It is true that a strict libertarian interpretation of Locke could also account for the international asymmetry. If one accepts Nozick's (1974) interpretation of Locke where governments exist only to protect the negative rights of their members, prohibitions on altruistic punishment are unsurprising. Locke was not, however, a strict libertarian. He was, at best, a lax one. For purposes of this discussion, strict libertarians hold that individuals in the state of nature have no positive obligations to help others, only duties to avoid injury. Strict libertarians would insist that government policies be narrowly tailored to protect individuals against assault, theft, and the like. A lax libertarian, in contrast, only requires that a given policy be indirectly useful to these goals. To see the practical importance of the distinction, compare a libertarian principle that says individual freedom may only be restricted when that individual directly harms another person with a principle that says any act that indirectly harms others may be prohibited.

On Nozick's strict libertarian interpretation of Locke, negative rights function as side constraints on government action and are not overridden simply by showing that there will be a net benefit for all affected. Nor can policies be justified by showing that they will minimize the number of violations of peoples' rights (a kind of "utilitarianism of rights" as Nozick [1974, 30] puts it) because this also fails to treat rights as side constraints and allows us to intentionally deprive one person of rights for the sake of others (1974, 28–35). Libertarian approaches to Locke argue that no one would be willing to grant society the power to take any of his preexisting property except what is necessary for the defense of that property (Epstein 1985, 3–18; Nozick 1974, 3–25).¹⁸ If we apply the same logic to international punishment, since people in the state of nature have only an imperfect obligation to fight to preserve others, they can only be understood to agree to fight for the protection of themselves and their property. They have no need to give up the liberty of deciding when and how to fulfill their imperfect obligation to preserve foreigners.

Locke's *Third Letter on Toleration* contains an interesting example of this style of argument:

The end of a commonwealth constituted can be supposed no other than what men in the constitution of, and entering into it, proposed; and that could be nothing but protection

from such injuries from other men, which they desiring to avoid, nothing but force could prevent or remedy; all things but this being as well attainable by men living in neighborhood without the bounds of a commonwealth, they could propose to them selves no other thing but this in quitting their natural liberty, and putting themselves under the umpirage of a civil sovereign, who therefore had the force of all the members of the commonwealth put into his hands to make his decrees to this end be obeyed. (W, 6:212)

Locke here repeats the restrictive contractualist account that was noted several times in Section Three and uses it to argue that the only purpose of government is to protect citizens from injuries, an argument a strict libertarian would applaud.

There are, however, at least two important problems with positing a strict libertarian interpretation of Locke as an explanation for the international asymmetry. The first is that it fails to account for rights of charity. That Locke believed individuals had obligations of charity in the state of nature and with respect to fellow citizens is accepted by most Locke scholars.¹⁹ Simmons gives the most thorough treatment of charity (1992, 307–54), and his account supports the argument advanced previously about international punishment, even though Simmons himself, in another section, follows the standard interpretation of Locke according to which altruistic punishment by states is permissible.²⁰

Locke, according to Simmons, believes that we have an enforceable duty of charity. The right to charity is qualified in that those who receive it may be forced to work if they are able, it applies only to those in extreme want, and it is only a right to the surplus (luxuries and unused wealth) of the rich (1992, 329–30). Locke clearly articulates this principle in the *First Treatise* (1.42) and mentions charity (*TT*, 2.5) and a duty to preserve others (*TT*, 2.6) in the *Second Treatise*. It is reaffirmed in his writings about reform of the poor laws. Although Locke set strict work requirements for receiving assistance, he also made it a punishable offense to allow a person to die from deprivation (*PE*, 198). Locke's statement that the magistrate may ban giving alms in the *Essay on Toleration* is likely part of his affirmation of a scheme like the one Locke later supported for the poor, where begging is prohibited but the deserving poor are provided for by the state. Locke's classification of "uncharitableness" as a sin but not a crime can be explained by the fact that in *The Letter*, charity is used more broadly than cases of extreme need (Simmons, 1992, 343–44). Simmons is likely correct that Locke regarded charity as an enforceable duty both in the state of nature and in the state.

Simmons then writes, "While Locke never explicitly denies there are international duties of relief, his tone certainly does not encourage one to believe that

¹⁸ Macpherson's account (1962) is on this point similar to Nozick's, except without the cheers of approval. Both see Locke justifying virtually unlimited individual appropriation of property.

¹⁹ See Tully 1980, 131–2; Sreenivasan 1995, 41–47; Waldron 1988, 39, 145–46.

²⁰ See note 6.

he considered them very seriously.” He then notes that although the needy in other countries might have valid claims, governments were not created to protect the subsistence rights of foreigners (1992, 334). Simmons explains this discrepancy by claiming that in Locke’s scheme, duties of charity are strongest in those cases where we are “specially placed” to give assistance. Locke allows us to put our own preservation before others, the preservation of our families before the preservation of strangers, and the preservation of our fellow citizens before the preservation of persons abroad (Simmons 1992, 341–52).²¹ We have already seen that Pufendorf made a similar argument concerning when international punishment was legitimate.

One text that might be used against Simmons’ conclusion is Locke’s 1695 journal entry “Venditio.” Locke states that if a merchant sells food in a famine at a price so high that people starve, he “offends against the common rule of charity as a man and if they perish any of them by reason of his extortion [he] is no doubt guilty of murder” (*PE*, 342). Because one of the examples involves ships meeting on the high seas and another international trade, it appears that “Venditio’s” principles hold in international contexts, and there can be a moral obligation to preserve citizens of other states. This text is not, however, a serious obstacle for Simmons because it does not undermine his claim about whether states can enforce international charity and the examples in “Venditio” are compatible with the claim that this duty was in practice trivial.

Simmons’ account of Locke’s views on charity shows an important sense in which Locke was not a libertarian, his belief that individuals have positive and enforceable obligations to help others both in the state of nature and within civil society. Simmons’ interpretation can also be harmonized with the contractualist account presented in Section Three. His account accepts that Locke did not see governments as instruments for pursuing altruistic purposes internationally as does the contractualist account. His account also supports the idea that governments exist to protect the rights of their own citizens and presents possible reasons why Locke might have believed that this was compatible with the preservation of mankind as a whole. The contractualist account in Section Three claims that governments exist to protect their own citizens within the bounds of natural law. Simmons’ account of charity shows that Lockean natural law does not impose any serious positive obligations on states.

It should also be kept in mind that even if strong international charity obligations did exist, it would not imply that states can engage in altruistic punishment. There is a significant difference between the two cases. Locke’s account of the state of nature supports duties of charity and affirms that this right holds only when it would not threaten the survival of the person or group

²¹ Locke wrote, in the national context, that “common charity teaches, that those should be most taken care of by the law, who are least capable of taking care for themselves” (*W*, 5:11). He makes no similar statements about those living abroad.

providing it. In cases of altruistic punishment, lives are normally put at risk, and Locke explicitly affirms the right to put one’s own preservation first. Thus, although the claims about international punishment would hold even if Locke did affirm enforceable rights of international charity, Simmons’ claim that Locke regarded such duties as trivial supports the contractualist account of the asymmetry thesis, but not the claim that Locke was a strict libertarian.

The second problem for a strict libertarian interpretation of Locke is that he was happy to argue for government programs that a strict libertarian would find illegitimate. One of the clearest statements of Locke’s contractualist criteria for legitimate government policy comes in the *Letter Concerning Toleration*:

the pravity of Mankind . . . obliges Men to enter into Society with one another; that by mutual Assistance, and joint Force, they may secure unto each other their Properties in the things that contribute to the Comfort and Happiness of this Life; . . . But forasmuch as Men thus entering into Societies, . . . may nevertheless be deprived of them [goods], either by the Rapine and Fraud of their Fellow-Citizens, or by the Hostile Violence of Foreigners; the remedy of this Evil consists in Arms, Riches, and Multitude of Citizens; the Remedy of the other in Laws. . . . (*L*, 47–48)

Notice that governments may legitimately pursue military power, wealth, and a large population because these will help the country to deter foreign attacks and defend itself in the event of war. Locke’s lax libertarianism comes out in that any policy that can be expected to produce economic growth is presumed justified because a strong economy helps national security.

Locke’s libertarianism is lax in part because of the international dimension of his thought. Even if Locke did not see international relations as a war of all against all, he did see foreign conquest as a significant threat. Locke said that conquest is the “usual, and almost only way” that political societies are dissolved and that “conquerors swords often cut up governments by the roots.” “The World,” he continues, “is too well instructed in, and too forward to allow of this way of dissolving Governments to need any more to be said of it” (*TT*, 2.211).²² In the context of Locke’s life, there is ample evidence that he was wary of a French invasion, particularly the possibility that Charles II was conspiring with the French to return England to Roman Catholicism (Ashcraft 1986, 17).

Confirmation for this is found in Locke’s other writings, where he suggests many laws that would deprive individuals of property but would make society as a whole better off. His journals suggest that he was interested in government policies to increase population growth and economic growth that would make a strict libertarian cringe. In his journal entries on “Atlantis,”

²² Interestingly, on this point, Straussian interpretations of Locke support the contractualist interpretation. Cox (1960, 164–75) uses similar passages as evidence for the Hobbesian interpretation of Locke. See also Coby 1987, 19–22, and Pangle and Ahrensdoerf 1999, 153–57. For Strauss’ original interpretation of Locke, see Strauss 1953.

probably either musings on a utopia or possible reforms in the Carolina colony, Locke proposed, as an alternative to sumptuary laws, making it impossible for those who own land to enter into enforceable debt contracts so that such men (men who have great influence over fashion) would not spend beyond their means (*PE*, 255). Everyone would be required to know a useful trade and labor at it at least six hours per week (*PE*, 253). Because a “multitude of strong and healthy people bring the riches of every country,” men who neither marry nor have children (ironically, men like Locke himself) are to be considered minors until they turn 40 and lose their birthright if there is a younger married sibling (*PE*, 255). A man who marries a woman more than five years older than himself forfeits half of the property she brings to the marriage (*PE*, 256). Men who marry before the age of 21 may not “sell, mortgage, or alienate, or lease, for any longer term than seven years any land he has any time during his life, but it shall be all looked upon as the freehold of his children amongst whom it shall be equally divided after his death” (*PE*, 258). In the published report on reform of the poor laws, the first recommendation for putting the poor to work is “the suppressing of superfluous brandy shops and unnecessary alehouses” (*PE*, 184). These passages make it hard to read Locke as a strict libertarian given his willingness to allow the government to meddle with freedom of contract for the sake of the public good. Atlantis is a far cry from the “ultramiminal state” of Nozick. Locke seems instead to be a lax libertarian who departs from even lax orthodoxy in seeing charity obligations as at least sometimes enforceable.

The contractualist explanation of the asymmetry thesis helps us understand what is otherwise puzzling about Locke’s theory of property and sheds light on the debate between Tully and his critics (Tully 1993, 118–36) on Locke’s theory of property. At first, it is hard to square Locke’s libertarian sounding passages about governments existing only to protect from injury with other passages where Locke clearly seems to give governments great latitude in pursuing the public good, as Tully argues. According to the asymmetry thesis, people give the government the limited power of protecting the lives, liberties, and properties of the members of that community, but not the power to act for other purposes, as in the case of altruistic punishment. Locke was, however, quite lax in interpreting this requirement in cases where a policy would help population growth, economic growth, or any other end that might be indirectly useful to warding off foreign attack, and thus, in practice, governments would have significant latitude in regulating property for the common good.²³ Charity is not mentioned as a goal of government because throughout it functions as a constraint on goals rather than as a goal in its own right.

²³ Aschcraft (1986, 103–4, 222, 280) notes Locke’s enthusiasm for trade. On the argument advanced here, it is not enough to show that trade is beneficial. One must also show its instrumental relationship to the preservation of the community.

SECTION FIVE: EVALUATION AND CONCLUSION

If the interpretation advanced here is correct, it means there are important asymmetries in Locke’s theory between the state of nature among individuals and the state of nature among states. In the state of nature, all individuals are part of the same society and thus have the right to punish any violation of natural law of which they are aware. In international relations, states have a more constrained power. They have been given the executive power of the law of nature by citizens, but they are only allowed to use that power for the end for which the citizens gave it up, namely, the protection of their property, broadly construed. In the state of nature, an individual who decides to engage in altruistic punishment puts only his own life at risk. Governments, because they have a delegated power, do not have this liberty. This asymmetry explains why Locke consistently says that governments exist to protect the interests of their citizens, but not to help those citizens better fulfill their duty to preserve the rest of mankind.

Locke’s argument is not so much about the prohibition of certain foreign policies as it is about the general purposes for which governments exist. A state could still use its money to provide other nations with humanitarian aid, and it could still wage wars to protect the rights of those living abroad if these actions were likely to be beneficial to the state performing them. Locke’s position is not a doctrinaire isolationism any more than it is a doctrinaire libertarianism. Although Locke’s position limits the ability of a state to pursue global economic equality at the expense of its own economic and military strength, it does not prohibit such strategies if a state believes that greater global economic equality will serve its interests. The one place where it seems that states might have a positive obligation to act altruistically, providing for subsistence needs out of surplus wealth, is presented as a limit on the normal pursuits of government, not a primary purpose of government.

Buchanan (1999) offers several criticisms of this Lockean position. He states that Lockean theories affirm universal rights, but then only enforce them locally; the Lockean theory affirms negative duties to not harm other states, and therefore has trouble justifying a prohibition on acting on positive duties toward other states. Whatever characteristics human have that make them improper recipients of intentional harm surely also make them proper recipients of benefits (79–81). Buchanan argues that we should see states not as instruments for the benefit of their own members, but instead as entities that exist to promote justice both locally and internationally (83). One potential problem for Buchanan’s view is that positive international duties are potentially incredibly burdensome (Murphy 2000). To address this, Buchanan includes an excessive cost proviso. He writes, “If we live in a powerful and rich state, there will surely be cases in which our collective resources can be used to further the cause of justice in the world, without excessive cost to us” (1999, 85).

Some of these criticisms of Locke find echoes in the following criticisms of Locke; yet, in at least one important respect, Buchanan ends up committing a different version of Locke's mistake, "equivocation on the body." A root principle of liberalism is protection of the body. The moral right of an individual to have his or her body secured from physical attack or unjust deprivation of liberty is the basis for many of the legal rights associated with liberalism. Locke uses the word "body" more than 80 times in the *Second Treatise*. On the one hand, each individual is the owner (or steward) of his own body (*TT*, 2.27), and Locke repeatedly uses phrases like "no body," "any body," and "every body" to refer to collections of individuals. On the other hand, the political community is repeatedly described as a body (*TT*, preface, 2.14, 87, 89, 95, 96, 97, 98, 118, 145, 168, 188, 205, 208, 211, 212, 219, 242). For any given individual, there is a possible tension among the preservation of one's own body, the preservation of another's body, and the preservation of the "body" of the political community of which one is a part. The tension arises because Locke is selective in when he wants to think of the commonwealth as a single body and when he wants to think of it as a collection of individual bodies. He is willing to call the commonwealth a "body" that must move "that way whither the greater force carries it" when defending the principle of majority rule (*TT*, 2.96), but when a state engages in unjust foreign aggression, guilt does not fall on the whole body politic, but only on the individual bodies that supported the aggression (*TT*, 2.179).²⁴ The political community is one body when its own preservation is at stake in that it can sacrifice the individual bodies of its citizens to preserve the whole, but when it is only the individual bodies of people abroad that are at risk, the right to refuse to protect others when one's own preservation is at stake is applied to individual soldiers, not the political community as a whole. In other words, Locke's liberalism provides both a rationale for giving priority to the preservation of one's own body and a convenient ambiguity about which body is to be preserved.

If the body to be preserved were consistently one or the other, Locke's conclusions would be more amenable to the preservation of persons abroad. If one ceases to think of each state as a single body, one is more likely to see the bodies of all human as being in need of protection. Thinking of states as single entities can distract us from the harms inflicted on the bodies of individuals within them. However, if political communities, once formed, were the only relevant bodies, then states could only refuse to protect other states in cases where the preservation of the state would be at risk, a much higher threshold than whether there would be a risk to the bodies of individual soldiers and possibly civilians as well.

Buchanan makes a similar mistake going the opposite direction. He criticizes Locke for allowing states to be indifferent to the suffering of the individual bodies in other territories; yet, when he justifies humanitarian

intervention by saying that for a powerful state intervention will not involve excessive costs, the state is a single body, and the death of a few hundred soldiers is but a paper cut. The dying soldier might assess the magnitude of the cost differently. Buchanan's arguments are strong as a defense of economic aid, but with respect to military interventions they beg what Locke would have seen as the important question. If individuals in the state of nature may reasonably refuse to risk their lives to enforce natural law, may they not refuse to give the government the right to put their lives at risk where their own security is not threatened?

This leads us to a second potential problem with Locke's argument, and one that gets closer to the heart of the matter. Perhaps the problem with Locke's argument is that the refusal to require self-sacrifice for a greater number of other people represents too great a concession to selfishness and individualism. If one takes seriously the principle of the preservation of human life, one must choose between two different interpretations of that principle. Locke's theory presents a version of the right to self-preservation, where any action that requires an individual to risk his own preservation must be justified on the basis of an agreement that person made that, at the time, could rationally have been understood to promote his preservation. Agreeing to unite with others for the common defense of each other meets this criterion, while joining together to fight for others far away does not. There is a second interpretation of this principle that is rule consequentialist, where one simply asks what understanding of rights and duties will preserve as many human lives as possible. Buchanan's way of making this point is to claim that the values that support a duty not to kill others likely also support positive duties (1999, 80–81).

One could try to use the consequentialist interpretation and still uphold Locke's distinction. One might forbid altruistic intervention because it will likely have bad consequences, for example, that it will be used by nations for self-serving reasons and lead to unnecessary loss of life. One might, therefore, think that protecting soldiers from losing their lives fighting in altruistic conflicts by banning wars based on that justification does not conflict with the goal of protecting human life overall. Unfortunately, this argument is weak as a defense of Locke's position. First, it does not actually rule out the cases where humanitarian arguments are most likely to be used speciously—cases where it is claimed that war in the national interest also happens to be justified on humanitarian grounds. Second, it is hard to imagine that no rule could specify conditions under which sacrifice for other states would generally be beneficial. One might claim, for example, that the obligation to preserve the lives of others does not cease in cases where one's own preservation is threatened, at least where the number of lives saved exceeds the number of lives lost. Because the desire to preserve one's own life is so strong, we might regard it as a factor significantly mitigating blame when individuals fail to sacrifice their lives to save others, but it would not prevent states from passing laws to force people to live up to their obligations. People who would not normally

²⁴ On Locke's use of the body metaphor for majority rule as related to his theory of consent, see Waldron 1999, 129–50.

risk their lives to save 10 others may be willing to do so if the alternative is years in jail. Thus, rule consequentialist reasoning leads to a different interpretation of the preservation principle than Locke's.

Finally, although Macpherson's claims that Locke was an apologist for unlimited individual accumulation of property were exaggerated, Locke does on the account presented here emerge as something of an apologist for nearly unlimited *state* appropriation. If we shift our concerns about global inequality from individuals to states, Locke's theory encourages states to amass as much wealth as they can in order to protect themselves from attack and, in the process, may render obligations of international charity trivial. To avoid this conclusion, one could attack Locke's notion of what counts as "injury." Locke did not see economic inequality as, in itself, an injury. However, if global capitalism has not left "enough and as good" for the world's poor, this could count as an injury requiring wealthy states to pay reparations (Pogge 2002, 137–39, 202–3). Although Locke does not appear to have applied the "enough and as good" requirement as strictly as this in the domestic case, one can argue that he should have (Sreenivasan 1995, 113–17).

The final significance of Locke's asymmetry is not so much in the specific actions it prohibits as in the general sensibility toward collective altruism that it promotes. Practically speaking, states do not engage in purely altruistic actions frequently anyway, so observing Locke's restriction would not greatly alter their behavior. The significance of Locke's argument comes from how easily and, often imperceptibly, he could move back and forth between a universal argument for the preservation of all human and repeated statements that commonwealths exist to promote the interests and protect the rights of their own citizens. Although theories of natural rights (and their current human rights analogs) encourage liberal citizens to see people everywhere as entitled to various things, Lockean contractualism encourages them to view their particular government primarily as an instrument for protecting their own rights, not for better fulfilling their duties to preserve mankind as much as possible. It is not uncommon for critics of liberalism to point to the gap between the universal claims of liberal rights and the self-interested behavior of liberal states. Although the causes of this gap are diverse, it is plausible to suggest that some of it may stem from patterns of thought encouraged by arguably the most practically influential member of the liberal canon, John Locke. His understanding of the social contract makes precisely this move from universal claims about the preservation of mankind to a more narrow understanding of governments as agents for their own citizens.

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