In the upcoming November election, citizens of California will vote on Proposition 83, also called Jessica's Law. "Proposition 83 is named after Jessica Lunsford, a nine-year-old girl who was kidnapped, assaulted, and buried alive by a convicted sex offender who had failed to report where he lived" (CA General Election Official Voter Information Guide, 2006). In this paper, we will argue that John Locke's contract theory allows for a just resolution of Jessica's Law. First, we will provide a summary of Jessica's Law, as well as the definition of the term, 'sexually violent predator' (SVP). In addition, we will write briefly on the aspects of California's current laws regarding SVPs that we feel need improvement, and which will be addressed, pending voter approval of this proposition. We will then discuss John Locke's theories and beliefs on social justice, and directly apply them to this proposition. Last, we will describe Jessica's Law in greater detail, and apply our own notion of justice, which also supports this proposition. In this section of the paper we will also discuss the idea of individual rights and safety—topics of importance to John Locke—through the arguments of those opposing this proposition. Ultimately, in this paper we will attempt to reveal what Locke's opinion of this proposition would have been, and how it would be handled in a true Lockian society.

"Proposition 83...is a comprehensive measure aimed at the punishment and control of sexual predators. The measure increases penalties for violent and habitual sex offenders and child molesters, restricts how close to schools and parks they may live, and requires lifetime Global Positioning System (GPS) monitoring of felony registered sex offenders" (California Family Council, 2006). Jessica's law will redefine the prison sentence for sexually violent predators, as well as the definition of an SVP itself. This law is meant to crack down on those who cause the greatest of atrocities to the most innocent of our society.

A sexual predator is a person who has offended another sexually. Specifically, a sexually violent predator is defined as "a person who has been convicted of a sexually violent offense against two or more victims" and has been diagnosed with a mental disorder which makes him or
her a danger to others because he or she will likely engage in criminal sexual behavior (Prop. 83 Official Title and Summary, 2006). More specifically, a pedophile, as defined by psychiatrist Richard von Kraft-Ebbing, is one who holds sexual interest towards children, either prepubescent or pubescent, and remains sexually interested over time (Wikipedia, 2006).

Currently SVP law, known as Megan’s Law, calls for the registration of SVPs with the state they are living in, and for the remainder of their lifetime, their information—including a picture, description of offenses, and their address—can be accessed by anyone. However, this current law has many flaws, as at least a quarter of all convicted sexually violent predators are in hiding, and another fifth of them are out of compliance with law enforcement officials (California Family Council, 2006). In addition, a person is not even considered to be a sexually violent predator until he or she has been convicted of committing the act against two or more people. It is our opinion, as well as the opinion of the many proponents of Proposition 83, that it is wrong to wait for a second victim before declaring the offender to be “sexually violent.” Many sources, including the Sacramento Bee, the OC Register, and the official text of the proposition, provide evidence that California’s laws toward SVPs are among the most lenient. The following quote taken from the Sacramento Bee is about California’s extraordinarily tough and promising program to keep the highest-risk SVPs in a maximum-security psychiatric facility for treatment:

A six-month investigation by The Bee has found [that] there is a much easier way out of Atascadero, one chosen by the vast majority of sexually violent predators housed there: Refuse treatment and bank on winning release through the court hearing each offender receives every two years. That loophole makes California’s get-tough solution in practice one of the most lenient sexually violent predator laws in the nation [and] it is precisely how 54 rapists and child molesters won release through the end of 2005 from their Atascadero commitments (SacBee, 2006).

In the text of the California sexual predator penal code we find that California automatically provides a jury trial for every SVP every two years, even if there is no evidence to show that the committed person can be considered no longer sexually violent (Prop. 83 Official Title and Summary, 2006). Other problems with current California law is that prison terms and parole terms are simply too short.

We will now introduce the theories of John Locke and attempt to discuss Jessica’s Law in light of these theories. The key notions of John Locke’s philosophy include the state of nature and individual and societal obligations. After discussing Locke’s theories, we will confront some “what-if” issues that will ultimately clear the air of loopholes and define the ideal rights to
privacy. With that said, viewing the situation through the eyes of John Locke, our argument for
Locke's support will hold true to a form of justice where man is free and liberated, lest he do
something out of line. Once man has stepped out of line, his transgressions will leave him in the
hands of those who determine the consequences. Since justice is left in the hands of people, the
maintenance of self-preservation is what justifies wrong from right. Through voting, mankind is
being preserved by means of setting apart those who harm another's life, health, liberty, or
possessions. John Locke believed that through voting or decision making, the opinion of the
majority would decide what was appropriate.

While this is a founding principle of Locke's theories on social contract, it remains
necessary to examine all of Locke's theories—concerning natural law, society living and
government, justice, and rights—in order to properly attempt to apply his theories to Proposition
83. According to Locke, humans first functioned in a state of natural law, in which they possessed
all natural and human rights. In his essay "Second Treatise on Civil Government," Locke more
clearly defines these rights: "Men being by nature all free, equal and independent, no one can be
put out of his estate and subjected to the political power of another without his consent..." (John
Locke, CP 460). Thus, Locke states here that as human beings, born into existence, rights such as
freedom, equality, and independence are all naturally given and that no being can take an
individual's natural rights unless they are willingly surrendered. However, in this natural state
each man is free to do whatever he pleases and has no obligation to another. Locke next contrasts
the natural state with his theoretical societal state, which will now be further analyzed.

And thus every man, by consenting with others to make one body politic under one
government, puts himself under an obligation to everyone of that society...or else this
original compact, whereby he with others incorporates into one society, would signify
nothing, and be no compact if he be left free under no other ties than he was in before the
state of nature (John Locke, CP 461).

Although Locke establishes and acknowledges a set of natural rights, he also provides us with
some theories concerning societal living, in which all individuals currently participate. Locke believes
that individuals willingly give up some of their natural rights when they enter into communal living:
"Whosoever therefore out of a state of nature unite into a community, must be understood to give up
all the power necessary to the ends for which they unite society to the majority of the community,
unless they expressly agreed in any number greater than the majority [...] And this is that and that
only, which did or could give beginning to any lawful government in the world..." (John Locke, CP
Thus, this is the birth of government according to Locke: the surrendering of complete freedom and independence and the agreement to societal living. One may wonder why individuals make such a decision. Locke answers that it is the lack of security and protection for one’s rights present in the state of nature that causes a person to make this choice. He says, “that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; [...] the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit this condition which, however free, is full of fears and continual dangers” (John Locke, CP 462). It is evident then, that since persons join society for protection, they expect to receive it. With this logic, Locke says that it is the duty of the government to provide such protection for its people: “The reason why men enter into society is the preservation of their property; and the end why they choose and authorize a legislative is that there may be laws made and rules set as guards and fences to the properties of all the members of society to limit the power and moderate the dominion of every part and member of the society;” (John Locke, CP 464). Security of rights is the very reason for the existence government according to Locke.

It is here that some debate may occur as to whether governments always protect the rights of the people they exist for. Defining the concept of justice or a just law would be an approach to discerning when government is fulfilling its duty. Locke defines justice in terms of the just law/appropriate legislative powers, where the majority of the people have agreed to it, and where their rights are protected: “...the power of the society or legislative constituted by them can never be supposed to extend farther than the common good, but is obliged to secure everyone’s property” (John Locke, CP 463). Phrases such as “common good”, which suggests the majority, and “secure everyone’s property,” which suggests the protection of rights of the majority, are key in interpreting Locke’s classifications for the just law or just legislative duties.

Knowing Locke’s different ideas concerning human nature and social contracts, let us now apply them to the proposition in study, Jessica’s Law. The first application of Locke’s ideas that must be established will show that sexual predators, who are the central focus of Jessica’s law, are indeed part of the social contract of the Californian community. Locke clearly states that anyone who resides within the dominions of a government, implicitly or explicitly have agreed to become part of that society, and must also consent to abide by the government’s laws: “By the same act, therefore, whereby anyone unites his person, which was before free, to any commonwealth...they become both of them, person and possession, subject to the government and dominion of that
commonwealth as long as it hath being" (John Locke, CP 461). Here, Locke says that if an individual decides to live in a place with an already established government, he or she has agreed to the laws of that government and has entered that specific social contract, even if he or she did not officially state allegiance to that society. Locke also describes the conditions of living when one formally acknowledges citizenship to a society, showing that he believes citizenry to be very binding:

...whereas he that has once, by actual agreement and any express declaration, given his consent to be of any commonwealth, is perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature, unless by any calamity of the government he was under comes to be dissolved; or else by some public act cuts him off from being any longer a member of it (John Locke, CP 462).

In light of this, one can indeed argue that Locke would believe sexual predators are also members of the Californian community (and the American society at large), whether or not they formally have acknowledged, because they do reside within the specific boundaries of the state of California. Since they are members of this society, it follows then that they were required to obey the laws of California, which they did not do as their acts of sexual crimes have shown. Therefore, the government of California has power to inflict punishment on these criminals. As we learned from Locke, as long as these sexual predators remain within the boundaries of California, their punishment will be in effect. In addition, for those predators who are citizens of the United States, their punishment will be upheld no matter where they may be.

Let us continue our focus on the rights of the sex offenders. Some may be curious as to what Locke may have believed concerning their rights. Since sex offenders are individuals and human beings themselves, they certainly do possess certain rights. However, with a proposition such as Jessica’s law, some of their rights are without a doubt restricted, especially their right to privacy with the mandate of global positioning devices. Nevertheless, we hold that Locke would still deem this law just if it proved to be the will of the majority and if it would provide a safer community. Aside from the arguments that upon entering society these criminals already surrendered some of their freedom, and that they were subject to laws—even those of punishment in the instances other laws were broken—Locke would probably hold in more esteem the preservation of the majority’s rights than those of the individual, who already broke established law. The Stanford Encyclopedia of Philosophy provides an analysis of Locke’s social contract
theory which supports this idea: "The aim of such a legitimate civil government is to preserve, so far as possible, the rights to life, liberty, health, and property of its citizens, and to prosecute and punish those of its citizens who violate the rights of others and to pursue the public good even where this may conflict with the rights of individuals" (Stanford Encyclopedia of Philosophy, 2001).

But what would Locke think of Jessica's Law itself? We believe that Locke would be in favor of this law if the majority voted for it, and if it indeed further protects the rights of the majority, thus ensuring a safer community. It would thus be a just law in Locke's view if it met these conditions. However, the following "what-if" issues will discuss how we believe Locke would view the situation depending on different factors. One may wonder whether the philosopher would still be in favor of the law if it did little to secure the rights of the people, which is the argument of the proposition's opponents, yet it was still sanctioned by the people. While this is a challenging question to answer, we assume that Locke would most likely not consider this particularly just, as it does not protect the rights of the people, which is the main purpose for legislation. One could argue that perhaps he would consider it only partially just, as the majority had voted for it, although it does not serve its purpose. This same argument of partial justice could be applied to the situation where the majority did not vote for the proposition, yet it would have proven to be beneficial in securing rights, had it been sanctioned. Again, in such a situation we believe Locke would classify it as only partially just, because although the government has respected the majority's wishes, this decision has, like the previous situation, withheld further security of their rights. However, because we believe the proposition falls under both categories—it is both supported by the majority, as we will state in the next sentence, and it will do much to secure the rights of the people, which we hope to establish in the next section of this paper—we believe Locke would have found it wholly just. In an article in the OC Register, writer Steven Greenhut writes of Proposition 83 that it has "overwhelming bipartisan support. "Put it this way," he says: "If a recent Field Poll is correct, the measure is leading by an unheard-of 65 percentage points. If every single 'undecided' voter moves into the 'no' column, the initiative still passes by 52 points" (OC Register, 2006). In addition, every major police, sheriff, district attorney organization, and every major crime victim organization in California is in support of Jessica's Law (CA General Election Official Voter Information Guide, 2006), as well as many lawmaking officials in the state of California, including Governor Schwarzenegger.
We will now discuss specific key provisions of Proposition 83, along with any objections to these provisions made by opponents. First of all, this law will increase the severity of sexual crimes, meaning longer prison sentences and harsher punishment in general. A sexually violent predator will be defined as a person who has committed a sexually violent act against one person, not two or more. This provision rids us of the concern about waiting for another child to be assaulted before proper action is taken. In addition, the following crimes will receive harsher punishment: continuous sexual abuse of a child will be charged with fifteen to twenty-five years to life and will be added to the list of offenses that qualify for sexually violent crime designations; kidnapping and/or burglary with the intent to commit a forcible sex crime will be added to the mandatory minimum sentencing of life with the possibility of parole; the attempt to commit qualifying SVP crimes will be added to the list of offenses that qualify for sexually violent crime designations; a mandatory minimum of fifteen years to life in prison will be imposed upon anyone who rapes a child under the age of fourteen; offenders who drug their victims in the commission of rape will receive an additional five years to their sentence; consecutive, full-term sentences will be imposed upon offenders for every convicted forcible sex act (Yes on 83, 2006). In addition, the possession of child pornography will become a felony charge. “FBI studies have shown that pornography is very influential in the actions of sex offenders. Statistics show that 90% of the predators who molest children have had some type of involvement with pornography. Predators often use child pornography to aid in their molestation” (Prop. 83 Official Title and Summary, 2006).

Second of all, Jessica’s Law will ensure that sex offenders serve their full sentence because it will eliminate the possibility of early release for good behavior or because of work-time credits. Third, it will increase parole terms. After release from prison, sex offenders could receive up to ten years for the most heinous sex offenses. Currently, upon release parole terms only last three to five years for various sex offenses. Fourth, it will get rid of the opportunity for an unnecessary trial every two years for sex offenders who have not shown evidence that they are no longer sexually violent predators.

Fifth, for the remainder of their lives, registered sex offenders will not be permitted to live within 2,000 feet of any school or park. In addition, local governments can deem other places as inappropriate for registered sex offenders to live. Lastly, Jessica’s Law will require people who have been convicted of felony sex crimes to be tracked by GPS for life, and, if financially able, to
pay for the GPS equipment.

There are many valid concerns regarding Proposition 83, which we will now address. First, two main concerns that were had by most opponents are overburdening the jail system and monetary limitations. In regard to overburdening and overpopulating the jail system, Steven Greenhut of the OC Register says, “The problem with overburdened prisons is that the state locks up too many people for petty offenses, especially drug crimes. It would seem foolish to be willing to set sex predators loose on the public in order to make a point about unfair sentencing in other areas of the prison system” (OC Register, 2006). Opponents also argue that within a few years of the proposition being enacted, California would be spending over 500 million dollars. They argue that California is already not in a good place financially, and if we had the money, it could be much better spent. Although issues regarding money are far from unimportant, it would seem that something like protecting children from violent and sick predators would be at the top of the list of priorities regarding where the state money goes. Granted that it is obviously much easier to argue that the state should simply find the money somehow than it is to actually produce the funds, it seems to be the opinion of many authorities that California is perfectly capable of doing so.

Another issue for opponents is that the “most punitive and restrictive measures would apply...even to those convicted of misdemeanor, non-violent offenses” (CA General Election Official Voter Information Guide, 2006) perhaps even decades ago. They use examples like the person who made lascivious comments to children at the age of twenty who is now fifty-five, or the eighteen-year-old who has consensual sexual relations with his seventeen-year-old girlfriend, saying that these people certainly don’t deserve to have a GPS tracking device permanently implanted inside of them for the remainder of their lives. However, this notion, brought up by countless people, is false. It will be those individuals who have been convicted of a felony sex offense that will be put on GPS tracking. Whereas the former examples certainly shouldn’t be candidates for GPS tracking, a man who has raped a child should, even if it was thirty years ago.

Another argument is that the provisions of this proposition would be the least effective against the most dangerous sex offenders because they would be the least likely to comply. This law, opponents say, would push the more serious offenders underground, therefore becoming less effectively monitored by the police. This argument is under the false impression that current laws have already “pushed the serious offenders underground” and because current laws are not strict enough and do not provide law enforcement with the proper resources to track sex offenders, they
are nearly impossible to find. Jessica's law, by actually putting a tracking device on each person instead of just keeping their names documented, could do nothing but improve upon this specific matter.

The next major argument was that Jessica's Law undermines individual rights by completely taking away the offender's rights to privacy for the rest of his or her life. Our response to this—and we believe it would have been John Locke's as well—is that people who have committed a felony sex act on a child have forfeited their individual rights. They deserve to be severely punished and kept track of until they are no longer capable of harming children, which is when they are dead. Years and even decades of law abiding, both before and after a felony sexual assault, do not erase it and certainly do not excuse it.

One problem that it would seem that many would have with this proposition is whether the offender would be able to remove his or her GPS device somehow, and then continue to harm children. Surprisingly, we found this argument in only one source among many. The Sacramento Bee wrote that "nothing in this initiative would prevent those intent upon harming children from removing their GPS devices and committing crimes" (SacBee, 2006). This is a very valid concern, and one that we struggle to find a good argument for. It would be easier perhaps if among any of the sources supportive of Jessica's Law we could find in what part of the body the GPS device will be implanted. Obviously, if the device is implanted in the offender's brain or somewhere else deep inside, he would not be able to remove it. It would seem that the state of California would not pay hundreds of millions of dollars to implant GPS devices in the forearms of offenders, for example.

The last, and additionally difficult, argument is against the residency restrictions imposed by Jessica's Law, which force registered sex offenders to live at least 2,000 feet away from any school, park, or any other place the local authorities deem appropriate. Opponents say that similar residency restrictions in states like Iowa have failed miserably. "The leading prosecutors' association in Iowa, which once urged the adoption of laws similar to Proposition 83, now argues that those laws be repealed because they have proven to be ineffective, a drain on crucial law enforcement resources, and far too costly to taxpayers" (CA General Election Official Voter Information Guide, 2006). They say that there are many reasons why residency restrictions are ineffective: first of all, they say that 80-90 percent of sex crimes against children are committed by relatives or acquaintances, not strangers that pick up kids on schoolyards or from their homes, like Jessica Lunsford; second, they say that restrictions will push all the sex offenders into rural areas,
where they will be less effectively controlled by law enforcement, making it easier for them to go after rural children; third, they say that restrictions will cause offenders to disappear from the registration system. In response to this, supporters of Jessica’s Law were quoted in the Voter Information Guide as saying, “Law enforcement professionals know there is a high risk that a sexual predator will commit additional sex crimes after being released from prison. Proposition 83 keeps these dangerous criminals in prison longer and keeps track of them once they are released” (CA General Election Official Voter Information Guide, 2006).

In this paper we have argued that according to the philosophies of John Locke, Proposition 83–Jessica’s Law–is defendable and the right law to enact because it is supported by the majority, as well as the lawmaking officials that Californians have voted into office. We have also argued in support of Proposition 83 from our personal notions of justice. We end this paper stating that tough, dramatic action must be taken against sexually violent predators, especially because they have the highest recidivism rate of any criminal. “According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend, and they prey on the most innocent of our society” (Prop. 83 Official Title and Summary, 2006) and “a 2003 Bureau of Justice Statistics report found that out of over 9,000 release sex offenders they were four times more likely than those not convicted of such offenses to commit a sex crime” (California Family Council, 2006). We believe that Jessica’s Law can make a difference.
Bibliography


