

Abdullah Zubair

Mr. Demaray

January 13, 2019

CLN4U1

### Positive Law presented within the United Nations Conventions

John Locke once proposed the idea that in order to achieve a well functioning society based upon the fundamental principles that adhere to protecting our rights and freedoms, the society must be built upon the cornerstone that enforces the philosophy that natural law should serve as a basis for positive law, and that the sole duty of the government was to defend the rights and freedoms of the citizens. From a legislative perspective, our legal systems have integrated this philosophy within our legal principles and most predominately, in our constitutions, whereby our rights and freedoms are guaranteed and enforced. Internationally speaking this is much more difficult to achieve due to the fact that our constitutions are limited within their own respected jurisdictions, as well as the fact that not all countries enforce their constitutions to the degree that prevents others from infringing and violating our rights and freedoms. Therefore, in order to enforce this respected philosophy, the United Nations has constructed a set of human rights conventions that strive to protect and safeguard our rights and freedoms internationally. For example, the Economic, Social and Cultural Human rights convention exists in order to mandate, promote and protect our social and economic rights and freedoms as citizens. Within this document, it is made prevalent that all member nations must construct a governmental system of authority that safeguards the rights and freedoms of the citizens. The Economic, Social and Cultural Human rights convention illustrates John Locke's theory of positive law, whereby the sole duty of the government is to defend the rights and freedoms of the citizens.

Within the Economic Social and Cultural Human rights convention, article 11 states “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.” (*ICOESC*). To paraphrase, this article states that all citizens within a respected society have the right to adequate standards of living amongst themselves and their family members, as well as the right to other essential properties to achieve a well-balanced standard of living. (*ICOESC*). The article also goes on to state that the present Covenant must recognize this right as a fundamental legislative duty enacted on the governmental authority, and that they must take the appropriate steps to ensure that this right is recognized and enforced. (*ICOESC*). Correlating this to Positive law, one of John Locke’s principles was as follows “He argued that people have rights, such as the right to life, liberty, and property, that have a foundation independent of the laws of any particular society. Locke used the claim that men are naturally free and equal as part of the justification for understanding legitimate political government as the result of a social contract where people in the state of nature conditionally transfer some of their rights to the government in order to better ensure the stable, comfortable enjoyment of their lives, liberty, and property.” (*SEOP*). John Locke believed that mankind had an essential right to an adequate standard of living and the freedom of life and liberty. (*SEOP*). Locke had also stated that in order to achieve such an intrinsic attribute of our well being, the governmental authorities must accommodate to the rights and freedoms of the people and ratify their duties which is to protect these rights and freedoms. (*SEOP*). With respect to article 11, both of Locke’s principles relative to positive law in his quotation, that being the right to living as well as the duty placed upon the governments are effectively enacted within this article, which leads to the conclusion that the Economic, Social and Cultural Human rights convention illustrates John Locke’s theory of positive law, whereby the sole duty of the government is to defend the rights and freedoms of the citizens.

Article 13 of the Economic Social and Cultural Human rights convention states “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.” (*ICOESC*). To summarize, the article states that within each member nation, there must exist a legislative structure that has implemented the cornerstone of a respected educational system that is accessible to all individuals independent of, ethnicity, minority gender, and age. (*ICOESC*). The article also goes on to state that the present Covenant must recognize this right as a fundamental legislative duty enacted on the governmental authority, whereby education must be a fundamental right provided to all. (*ICOESC*). Correlating this article to Positive law, “In Locke's book, the mind is not a blank slate. Repeatedly, he celebrates the importance of education.” (*Education Week*). Locke believed that education was an essential tool for our youth, society and is a compliment to our very nature of curiosity. (*Education Week*). Correlating this article to the heart of John Locke’s belief, the illustration of positive law and the duty that must be placed upon the governments is evidently clear when the article states that it recognizes the right to education and that it is obligatory that all member nations construct legislation that enacts an educational system that is free to all. (*Education Week*). To conclude, based upon article 13, and its relationship to John Locke’s philosophies, the Economic, Social and Cultural Human rights convention illustrates John Locke’s theory of positive law, whereby the sole duty of the government is to defend the rights and freedoms of the citizens.

Within the Economic Social and Cultural Human rights convention, article 10 states "Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law." (*ICOESC*). To paraphrase, this article states that all present governmental authorities must construct legislation that prohibits and protects the rights and freedoms of the youth. (*ICOESC*). The article goes on to state that any act of exploitation upon the child for any social or economic benefit is prohibited and is punishable by law. (*ICOESC*). Correlating this to John Locke's principles of positive law, this article coherently illustrates his principles of positive law due to the obligatory duty placed upon all member nations, whereby there must exist legislative and governmental authority with the ability to protect and defend the rights and freedoms of their citizens. (*IEOP*) In conclusion, article 10 of the Economic, Social and Cultural United Nations convention illustrates John Locke's theory of positive law, whereby the sole duty of the government is to defend the rights and freedoms of the citizens.

The Economic, Social and Cultural Human rights convention illustrates John Locke's theory of positive law, whereby the sole duty of the government is to defend the rights and freedoms of the citizens. Through the analyzation of articles 13, 10 and 11, it enlightens the fact that this respected Human rights convention is based upon some of the fundamental principles that John Locke had presented with his theory of Positive law. Because the cornerstone of this respected Human rights convention is based upon John Locke's views on Positive law, it has enabled our legislative systems to uphold the duty placed upon governmental authorities which states that they must abide their obligation which is to protect and safeguard our rights and freedoms. The Cornerstone that has been built around Positive law has also allowed for legislative procedures that have led to the enactment of educational systems, adequate

standards of living (as well as the accommodation of essential attributes of living) and the safety and protection of child exploitation for all economic and social purposes. Elements like such are crucial to a well functioning, socially coherent society and should be integrated within all the Human Rights conventions that the United Nations has constructed. To conclude, the Economic, Social and Cultural Human rights convention illustrates John Locke's theory of positive law, whereby the sole duty of the government is to defend the rights and freedoms of the citizens.

## Worked Cited

“International Covenant of Economic, Social and Cultural Rights”. *United Nations Human Rights*

January 3, 1976. Document.

“Locke’s Political Philosophy”. Stanford Encyclopedia of Philosophy

January 11, 2016. Web.

Gibbon, Peter. “John Locke: An Education Progressive Ahead of His Time?”. Education Week

August 4, 2015. Web.

Moseley, Alexander. “John Locke: Political Philosophy”. Internet Encyclopedia of Philosophy

Web.

“Positive Law”. West’s Encyclopedia of American Law

Web.