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# SPEECH LOCKED UP: JOHN LOCKE, LIBERALISM AND THE REGULATION OF SPEECH

By

Alex Daniel

## PART I: INTRODUCTION

In his seminal work discussing the development, utility and application of the liberal science, Jonathan Rauch held that John Locke was the “father of liberalism itself,” whose arguments in favor of the social contract theory and the rectitude of constitutional, republican government underscored not simply the rise of liberal democracy, but also the rise of liberal epistemology.”<sup>1</sup> Yet Jeremy Waldron, a professor of law and noted advocate of hate speech regulations, claimed Locke as his intellectual forbearer and concluded that in a Lockean world, the government would be required to regulate abuses of speech. Nevertheless, neither Rauch nor Waldron fully manages to capture Locke’s position on free speech. Waldron entirely misinterprets Locke’s *A Letter Concerning Toleration* by reading it in a vacuum and failing to observe Locke’s rejection of government interference with fundamental liberties. While Rauch is correct in concluding that Locke would be opposed restrictions on an absolute right to free speech, his reasoning is fails to account for Locke’s strong belief in individual autonomy. While Locke would certainly agree with Rauch that absolute speech rights are necessary to ensure the

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<sup>1</sup> JONATHAN RAUCH, *KINDLY INQUISITORS* 59 (1993). Rauch is an advocate of what he has term “the liberal science,” a form of social organization in which individuals enjoy a virtually unregulated right to free speech apart from the provisos that no one person can claim a special authority over knowledge such that they cannot be questioned and that no idea is beyond scrutiny. Rauch bases this position on the observation that a world in which all people enjoy the same unlimited right to speak, knowledge will be arrived at by a means of public discourse wherein all ideas are continuously vetted and subject to constant review. In light of this, Rauch concludes that society benefits from speech that is hateful or obnoxious to the extent that it causes individuals to constantly scrutinize their own positions, preventing knowledge from going stale and denying any one person the opportunity to declare themselves the final arbiter of knowledge.

orderly and efficient discovery of knowledge, the true basis for Locke's rejection of speech regulation derives from his belief in inherent individual liberty—for Locke, speech was not simply a means to arrive at the truth, but rather it was an absolute right guaranteed to citizens by virtue of their status of autonomous, individual beings living in a free society.

According to Rauch, Locke's advocacy for modern constitutional government was not a coincidence, but rather stemmed from Locke's epistemological belief that the key to a stable society was not stasis, but rather social and intellectual dynamism.<sup>2</sup> Although Rauch noted that the connection between Locke's epistemology and Locke's political philosophies was never made textually explicit by Locke himself, Rauch argued that there was an implicit connection in light of Locke's laissez-faire positions on both epistemology and government.<sup>3</sup> According to Rauch, the liberal science is not merely a method of discerning truth by means of public discourse, social consensus and intellectual scrutiny, but rather it is a way of ordering society such that the scrutiny of ideas is welcome, restrictions on speech and discussion are abolished and no individual can claim the singular right to declare truth and knowledge.<sup>4</sup> The crux of Rauch's theory of liberal science hinges on two essential positions: first, no one has the final say on what is true, and second, no one has any personal or superior authority in determining what is or is not the truth.<sup>5</sup> The first tenet, the absence of final say, derives from philosophical skepticism and holds that because there can never be certainty in knowledge, all ideas are subject to scrutiny, and "no one can legitimately claim to have ended any discussion—ever."<sup>6</sup> The second tenet, against personal authority, holds that because all people are prone to error in their belief or judgments, "no one can legitimately claim to be above being checked by others..." and

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<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id. at 45-47.

<sup>5</sup> Id. at 46.

<sup>6</sup> Id.

as a result, “no one can claim to have any unique or personal powers to decide who is right or who is wrong.”<sup>7</sup>

Rauch observed that these two tenets were apparent in the epistemological and philosophical writings of John Locke.<sup>8</sup> Rauch found that Locke’s inherent fallibilist skepticism and belief in the “mutual ignorance” of mankind indicated Locke’s belief in a public means for selecting truth in which men, by means of their shared capacity for reason, seek to persuade each other in an environment steeped in mental equity.<sup>9</sup> However, Rauch concluded that Locke’s skepticism of self-claimed intellectual authority and belief in the uncertainty of human knowledge did not simply support a liberal epistemology, but also a liberal society in which men were free to engage in public discourse free from government regulation and to pick leaders by means of a constitutional, republican government.<sup>10</sup> Rauch connected Locke’s belief in the social contract to his epistemology and found that in a Lockean world, speech would ultimately be free from government regulation and public restriction.<sup>11</sup> Rauch concluded that in a Lockean world, social and political systems would be ordered to promote the free exercise of speech and the toleration of the expression of any and all ideas and opinions, even those deemed offensive, hateful or dangerous.<sup>12</sup> Rauch found that in a Lockean society, “Nazis, Communists, [and] racists” are free to express their views because they may be right, and even if they are not right, hearing their views helps those who oppose them refine their opinions and prevents their knowledge from becoming stale.<sup>13</sup> Yet while Rauch finds the Locke agrees with the tenets of the liberal science, Rauch fails to articulate or explain Locke’s view that certain rights are simply

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<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 59-60.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id. at 60.

<sup>13</sup> Id.

guaranteed to human beings by virtue of the individual autonomy. Rauch's positivist position denies the reality that Locke's opposition to speech regulation has a basis in his normative belief that all human beings have certain inalienable rights that are simply beyond the scope of government's authority to regulate.

Reading the same texts and observing the same history, Jeremy Waldron drew a dichotomous conclusion about speech in a Lockean world: it could and should be regulated to promote civil discourse, free from the hyperbolic and the vituperative.<sup>14</sup> Waldron found that in reading Locke's *Letter Concerning Toleration*, strains of thought could be parsed that supported the conclusion that in a civil society, regulations and laws were necessary to ensure that individuals and groups were not excluded from the process of public discourse by those who used "furious vituperations" to frighten and isolate opponents.<sup>15</sup> Although Locke's *Letter Concerning Toleration* dealt heavily with the concept of using the coercive force of the state to convert individuals to a single religious belief, Waldron concludes that Locke supported a vision of a society in which people engaged in speech free from "fiery zeal" and hateful, virulent words.<sup>16</sup> Waldron noted that Locke opposed the use of coercion to promote beliefs, and concluded that Locke did not simply oppose the coercive force of government in bringing about conversion, but also the use of "attacks on people's honor, as well as...attacks on their person and property" by anyone in supporting different religious beliefs.<sup>17</sup> To this extent, Waldron found that three central themes pervaded Locke's *Letter Concerning Toleration*. First, "public expressions of hatred and vilification were typical of an intolerant rather than tolerant society."<sup>18</sup> Second, individuals have a duty, both moral and legal, to avoid the usage of "rough words" and

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<sup>14</sup> JEREMY WALDRON, THE HARM IN HATE SPEECH 210-13 (2012).

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. at 212.

<sup>18</sup> Id. at 213-14.

actions against those with whom they disagree if those words are calculated to have a damning effect on the life, honor or property of their opponent.<sup>19</sup> Lastly, Waldron found that Locke bound up his belief in the need for a tolerant society free from hateful speech in the affirmative duty of men to share in charity with others, thus creating an affirmative duty to protect and promote peace in a diverse society.<sup>20</sup>

It seems impossible that two men could read the same texts, yet draw virtually dichotomous opinions on the political and intellectual teachings of John Locke. Rauch finds in Locke a supporter of not only laissez-faire economics, but laissez-faire speech and thinking, concluding that in a Lockean world there would be no regulation on the use of speech, hateful or otherwise. Waldron concludes that Locke is much more moderate in his stand on speech regulation, and to the extent that Locke opposes coercion by any group against another, argues that Locke would support laws that promoted public discourse free from hate speech. This Comment addresses the dichotomous positions held by Rauch and Waldron with regards to the regulation of speech in a Lockean world. This Comment is not intended to support or decry the positions held by Locke, but rather assumes, *arguendo*, that Locke's conclusions are correct, his reasoning sound, and parses his work to determine whether he would support the regulation of hate speech or denounce any attempt by government to restrict the free exercise of speech. Part II of this comment will provide a brief history of John Locke, focusing on the political and social context in which he drafted his principle works. Part III will examine Locke's epistemology and will conclude that Locke shares Rauch's belief in the major axioms of liberal science. Part IV will explore Locke's moral and political writings, in particular his opposition to hereditary, absolutist monarchies and his conceptualization the autonomous individual in a free society. Part

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<sup>19</sup> Id.

<sup>20</sup> Id. at 214-15.

IV will conclude that Locke supports an absolute right to free speech and that this stemmed not simply from his nascent approval of the tenets of liberal science, as concluded by Rauch, but also his belief that certain rights are ultimately inalienable and thus beyond the power of the government to regulate. Part V will address Locke's position on tolerance in a free society and will conclude that Locke's chief concern in his work *A Letter Concerning Toleration* was the wrongful use of force by both government and individuals to regulate the moral sentiment and expressions of moral sentiment held by others. Part V will reject Waldron's contention that Locke would support government regulation of hate speech, and will demonstrate that a Lockean society would not suffer content based restrictions. Part VI will conclude by rejecting Waldron's specious reading of Locke, and by supporting Rauch's initial claim that Locke was the father of liberalism and an opponent to speech regulation. However, Part VI will end by stating that Locke's opposition to hate speech regulation would stem not simply from his support of the basic tenets of the liberal science, but also his belief in the inherent rights of autonomous people to express their beliefs free from unlawful restrictions.

## PART II: LOCKE IN HIS LIFETIME

Perhaps unsurprisingly, Locke developed his liberal epistemology, moral philosophy and political ideology in the midst of crisis. Locke was born to a family of extremely minor gentry—his father, a landed property owner, held small posts in local government and served as in the parliamentary armies during the English Civil War.<sup>21</sup> While natural philosophy was the subject of some of Locke's study, his education chiefly centered on the study of analytical medical science.<sup>22</sup> It was during this period that Locke developed his much lauded belief in empiricism

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<sup>21</sup> J.R. Milton, *Locke's life and times*, in *THE CAMBRIDGE COMPANION TO LOCKE* 5, 5 (Vere Chappell ed. 1994).

<sup>22</sup> *Id.* at 9.

and the need for observable facts and demonstrable findings to prove truth.<sup>23</sup> It was Locke's chance introduction to Lord Shaftsbury<sup>24</sup> in 1666 that would begin Locke's interest in moral and political philosophy.<sup>25</sup> Shaftsbury was a member of the radical wing of the British Whig party, and an opponent to King Charles II and his son James II, a Catholic who was suspected by the Whigs of plotting to return England to the Catholic faith.<sup>26</sup> Beginning in 1679, Shaftsbury and his Whig compatriots in parliament made numerous attempts to exclude James from the English throne, but each attempt proved fruitless as King Charles simply dissolved the parliament each time a bill was passed that threatened to remove James from the order of succession.<sup>27</sup>

Shaftsbury's efforts would ultimately culminate in his 1683 flight from London and his death while in hiding.<sup>28</sup> It was during the period between 1679 and Shaftsbury's death in 1683 that most scholars agree Locke wrote his work the *Two Treatises of Government*, Locke's foremost piece describing the need for limited, republican government in a free and civilized world.<sup>29</sup> The *First Treatise* was written in opposition to Thomas Filmer's *Patriarcha*, a text which advocated absolutist, hereditary, divine-right monarchies as the only legitimate form of government. The *Second Treatise* was likely written during the peak of Shaftsbury's efforts to exclude James II

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<sup>23</sup> Id. at 9-10.

<sup>24</sup> For an illuminating piece discussing the relationship between Locke and Shaftsbury see J.R. Milton and Philip Milton, Introduction to JOHN LOCKE, AN ESSAY CONCERNING TOLERATION 1, 1-11 (J.R. Milton & Philip Milton eds. 2006). The introduction discusses Locke's chance meeting with Shaftsbury, his time spent in Shaftsbury's home and a critical incident in which Locke recommended and supervised surgery that saved Shaftsbury's life. The introduction also details Shaftsbury's efforts to introduce Locke to English politics and the ideology of the radical wing of the Whig party. Shaftsbury's influence is highlighted by the fact in 1668, Locke, in his "Essay Concerning Toleration" advocated a strong tie between Church and State and the seeming use of coercive means to enforce religious conversion. After witnessing Shaftsbury downfall during the Exclusion Crisis and the dissolution of parliament, Locke completely reversed course and denounced efforts by government to coerce or cow the public into submission.

<sup>25</sup> Id. at 8.

<sup>26</sup> Id. at 13.

<sup>27</sup> Id.

<sup>28</sup> Id. at 14.

<sup>29</sup> Id.



from the English throne, and contains Locke's justification for "an altogether more radical, indeed insurrectionary type of politics" in the face of capricious government.<sup>30</sup>

The origins of Locke's *Essay concerning Human Understanding* are unfortunately vaguer, but the earliest drafts of the texts indicate that Locke began writing it sometime around 1670, well before the Exclusionary Crisis of James II, but still within the period in which Locke was engaged in study of the medical sciences. Indeed only two years prior Locke helped draft a short piece called "De Arte Medica," in which Locke expressed profound skepticism of the various (and scientifically false) theories surrounding the nature of disease.<sup>31</sup> In the piece, Locke advocated a purely empirical approach to medical science, rejecting methods that could not be reduced to observable phenomena.<sup>32</sup> It is clear however from his writings that the budding empiricist found in "De Arte Medica" would inform the remainder of Locke's philosophical undertakings.

In 1783, a member of the radical Whigs plotted to assassinate King Charles and his son James, and while the plot was ultimately unsuccessful, Locke's connection to Shaftbury and his association with the Whigs forced him into flight.<sup>33</sup> It was not until William of Orange ousted James II from the English throne in 1688 and parliament was restored that Locke was free to return to England. In 1690, the first copy of the *Two Treatises of Government* was published and around this time the first copies of Locke's *Letter concerning Toleration* appeared. Locke would eventually go on to write two more letters in defense of religious tolerance following vigorous attacks by the Oxford clergyman Jonas Proast.<sup>34</sup> Following this period, Locke spent the

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<sup>30</sup> Id. at 14-15.

<sup>31</sup> Id. at 9.

<sup>32</sup> Id.

<sup>33</sup> Id. at 14.

<sup>34</sup> Id. at 17-18

remainder of his career advising the government on public policy and devoted his philosophical talents to addressing controversies in Christian theology.<sup>35</sup>

### PART III: LOCKE AND LIBERAL EPISTEMOLOGY

Locke's epistemology is premised on the understanding that even though the human capacity for reason is profound and distinguishes human beings from all other creatures<sup>36</sup>, while simultaneously being shared in equity by all men, knowledge is not certain and in fact can never be certain.<sup>37</sup> According to Locke human understanding and reason "comes exceedingly short of the vast Extent of things," yet reason was bestowed upon humanity in a share far greater than the remainder of Creation, and as a result human beings can still understand some elements of the universe despite their inability to have total and full comprehension of all things.<sup>38</sup> Locke states that boundless enquiry into the nature of all things, when untempered by the recognition of the limited and finite nature of human reason, is dangerous because it leads to absolute and undue certainty of knowledge in some and absolute skepticism in others.<sup>39</sup> In essence, Locke begins his discussion of knowledge with the demand that those seeking truth accept that they can never have certain knowledge.<sup>40</sup>

What is essential to Locke's theory of liberal epistemology is his rejection of the concept of "innate ideas." Rene Descartes, a Rationalist contemporary of Locke, posited that human beings were born already having certain ideas in their minds, ideas neither gleaned from

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<sup>35</sup> Id. at 18-23.

<sup>36</sup> JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING 13 (Oxford Univ. Press 2008) (1690).

<sup>37</sup> Roger Woolhouse, *Locke's Theory of Knowledge*, in THE CAMBRIDGE COMPANION TO LOCKE 147, 148 (Vere Chappell ed. 1994).

<sup>38</sup> Locke, *supra* note 36, at 15.

<sup>39</sup> Id. at 16.

<sup>40</sup> Id.

experience or the external world.<sup>41</sup> Locke rejects this theory and asserts that while human beings are born with equal shares of reason, it is truly experience and external stimuli that are the fodder of knowledge. For Locke all knowledge begins as an empirical experience of the external world; such experience is taken into the mind and understood, analyzed and refined by the mind's application of reason.<sup>42</sup> Locke's rejection of innate ideas and knowledge is essential to his theory that human beings are born as blank slates, *tabula rasa*<sup>43</sup>, without any impressions on them that are not derived from some experience of the external world.<sup>44</sup> By rejecting innate ideas and embracing empiricism as the only true source of ideas, Locke essentially states that all human understanding is dependent upon reason and that because human reason is by its nature limited and finite, all human knowledge is subject to uncertainty.<sup>45</sup>

In light of Locke's belief in the frailty and finite nature of human reason and the necessary role reason plays in the discernment of all human knowledge, Locke's suggestion that all beliefs be subject to scrutiny becomes obvious. Locke states, "Knowledge then seems to me to be nothing but the perception of the connexion [sic] and agreement, or disagreement and repugnancy of any of our Ideas. In this alone it consists."<sup>46</sup> Furthermore the agreement or repugnancy of ideas that sustain knowledge results from two human faculties: intuition and demonstration.<sup>47</sup> Intuition is the capacity the mind to compare two ideas and instantly assent to their rectitude. Locke cites mathematical equations as an example of intuitive knowledge to the

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<sup>41</sup> D.J. O'CONNOR, JOHN LOCKE 39 (1967).

<sup>42</sup> *Id.* at 39.

<sup>43</sup> Locke, *supra* note 36, at 55.

<sup>44</sup> *Id.* at 39. For a brief description of Locke's arguments rejecting the theory of innate ideas, *see* Woolhouse, *supra* note 37, at 146-50. For a modern philosophical refutation of Locke's attack on innate ideas, *see* J.L. MACKIE, PROBLEMS FROM LOCKE 202-223 (1976).

<sup>45</sup> Locke believes that all human knowledge is gathered initially from sensation of the external world and that once those sensations are contained and ascertained within the mind, they can be further built upon by the human tool of reflection. For a discussion of Locke's theories on sensation and reflection in the acquisition of knowledge, *see* O'Connor, *supra* note 41, at 42-44.

<sup>46</sup> Locke, *supra* note 36, at 332.

<sup>47</sup> *Id.* at 337.

extent that once the logic of math is understood, no other idea is necessary to understand to two is less than three, but greater than one.<sup>48</sup> According to Locke, next degree of knowledge is demonstrative knowledge, which he defines as all forms of knowledge that do not immediately occur within the mind. “The Reason why the Mind cannot always perceive presently the Agreement or Disagreement of two Ideas is, because those Ideas, concerning whose Agreement or Disagreement the Enquiry is made, cannot by the Mind be so put together, at to shew [sic] it.”<sup>49</sup> Where the mind cannot immediately compare two ideas, intervening ideas inform the mind and allow it to arrive at the agreement or disagreement of ideas.<sup>50</sup> Locke suggests that to have demonstrative knowledge, it is necessary to compare and contrast known ideas within the mind—without ideas, even those which are repugnant or disagreeable, demonstrative knowledge remains impossibel.

With the capacity of human error in mind, Locke reminds readers that the greatest error in the pursuit of knowledge is the belief that one has certain knowledge that is beyond scrutiny.<sup>51</sup>

According to Locke:

We should do well to commiserate our mutual Ignorance, and endeavour to remove it in all the gentle and fair ways of Information; and not instantly treat others ill, as obstinate or perverse, because they will not renounce their own, and receive our Opinions, or at least those we would force upon them, when ‘tis more than probable that we are no less obstinate in not embracing some of their. For where is that Man, that has uncontestable Evidence of the Truth of all that he holds, or of the Falsehood of all he condemns.<sup>52</sup>

Locke in essence acknowledges first that no knowledge is capable of perfect certainty and second that absent perfect certainty and, in light of the each individual’s proneness to error, no opinion should be barred from public discussion simply because it is offensive. “All men are

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<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id. at 338.

<sup>51</sup> Id. at 428.

<sup>52</sup> Id. at 432.

liable to error” and because “[t]here is no error named, which has not had its Professors,” no individual may claim superior authority over another in the arena of knowledge.<sup>53</sup>

Locke’s stance on the uncertainty of human knowledge and the absence of a monopoly over intellectual authority closely tracks Rauch’s theory of liberal science. Locke acknowledges that human reason, though powerful and given in equal measure to all people, is still a finite tool in comparison to the scope of creation and the vastness of reality. By rejecting innate ideas, Locke makes it clear that all human knowledge is derived through experience and reflection, as perceived through the lens of reason. Locke’s rejection of innate principles underscores his belief that no individual should have the authority to dictate truth to others: “Nor is it a small power it gives one Man over another, to have the authority to be the Dictator of Principles and the Teacher of unquestionable Truths; and to make a Man swallow that for an innate Principle, which may serve to his purpose, who teacheth them.”<sup>54</sup> Because man’s sense of reason is not flawless, all knowledge is inherently prone uncertainty, and, as a result, should be subject to constant scrutiny. Locke states that all knowledge begins and ends with the agreement or disagreement of ideas within the human mind. Furthermore, his theory of demonstrative knowledge indicates his belief that it is through the combination and constant reassessment of ideas, especially intellectually repugnant ideas, that knowledge is attained.

Locke takes the position that uncertain knowledge inherently breeds error, and because all people have uncertain knowledge, all people are prone to error. This human proneness for error deprives any person from claiming a monopoly on intellectual authority because simply put, anyone can be wrong. However, in light of Locke’s position on demonstrative knowledge, he seems to embrace the idea that there must be an arena of public discourse to vet knowledge

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<sup>53</sup> Id. at 461.

<sup>54</sup> Locke, *supra* note 36, at 52.

and subject it to public scrutiny. Because all people share an equal claim to a limited sense of reason, and because no one person can claim person authority over truth, Locke's public process for selecting right knowledge would welcome all individuals to participate. As stated by Rauch, the defining characteristic of Locke and all liberalism thus emerges: "rule by rule, and not by persons."<sup>55</sup> As a result, all ideas, even those which are repugnant and deemed wrong, have value to the extent that they can be used to demonstrate the veracity or error of a claim. In the context of speech, Locke would likely oppose content-based restrictions because they deny people access to the fodder of knowledge: ideas. Locke holds that no one can be excluded from the public process of discerning truth, no matter how wrong or offensive their ideas may seem to be, simply because there is always the chance they could be right. Even if they are not right, the participation of those harboring undesirable ideas benefits the process because it allows for the demonstration of knowledge by agreement and disagreement. While Locke's epistemology agrees with Rauch's conceptualization of liberal science and his position in favor of an open, public and rules based system for vetting ideas, Locke's stance on speech regulation is further refined by his moral and political philosophies. The crux of Locke's opposition to government regulation of hate speech is twofold: first Locke rejects absolutist governments as destructive of liberty and second, Locke concludes that certain inalienable freedoms are simply beyond the scope of governmental authority.

#### PART IV: LOCKE, AUTONOMY AND THE TWO TREATISES ON GOVERNMENT—

##### WHAT RAUCH MISSED

Although Locke's epistemological findings in *An Essay Concerning Human Understanding* roughly track Rauch's market-based model of liberal science (a finding that supports the conclusion that Locke would oppose restrictions on speech), Locke's *Two Treatises*

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<sup>55</sup> Rauch, *supra* note 1, at 60.

on *Government* provides an alternative explanation for his likely opposition to hate speech regulations: personal autonomy. Writing in the shadow of Thomas Hobbes' *Leviathan*<sup>56</sup> and Thomas Filmer's *Patriarcha*, Locke's chief political concern was the breakdown of the rule of law, and the rise of rule by fiat and whim in England. Hobbes wrote during a time of political catastrophe in Europe and advocated for an unbreakable social contract between men their governments.<sup>57</sup> Hobbes' posits that because people value self-preservation above all other concerns, individuals, in forming the social contract that provides the basis of their government, naturally relinquish the vast majority of their rights in favor of security and stability.<sup>58</sup> Hobbes perceived of a world in which the threat of anarchy was so grave that no justification could be given for revolution, with final preference given to tyranny over lawlessness. In such a society, the sovereign would retain the power to do such things as impose religious uniformity over the people to prevent social discord and avoid the risk of chaos.<sup>59</sup> For Hobbes such a grant of total discretion to a sovereign—be it a king, aristocracy or parliament—was essential to ensure the security and tranquility of the state.<sup>60</sup>

Thomas Filmer's *Patriarchia*, which Locke attacked in the *First Treatise of Government*, made an early case for hereditary, absolutist, divine-right monarchy in England. Filmer rejected the idea that men were born equal, and instead assumed that all men were born unfree, with government formed not by the consent of the people, but rather by the will and ordination of

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<sup>56</sup> See Thomas Hobbes, *Leviathan* 84 (Oxford Univ. Press 1996) (1650) ("Whatsoever therefore is consequent to a time of war, where every man is enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them withal. In such condition, there is no place for industry because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious buildings; no instruments for moving, and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty brutish, and short.")

<sup>57</sup> GLEN NEWAY, *HOBBS AND LEVIATHAN* 5 (2008)

<sup>58</sup> *Id.* at 7.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

God.<sup>61</sup> Filmer grounded this belief in patriarchy, which he considered to be the natural order of civilization—because the original power of all monarchs descended from the rights of the Biblical Adam as father and husband, divine-right monarchs enjoyed virtually limitless power.<sup>62</sup> To this extent, the rights of Adam’s heirs (the royalty of Europe) were inviolable, beyond reproach, and superior to all other concerns.<sup>63</sup> Filmer argued that a king, like a father, must have absolute control over his subjects and that a king’s subjects must willingly submit to the plenary and absolute authority of their monarch.<sup>64</sup> Filmer concluded that in light of the king’s undeniable rights as monarch, the English parliament served merely at the will and pleasure of the crown and could be dissolved at the king’s leisure.

Locke directed much of his political writing towards challenging Hobbes’ belief in the unbreakable social contract and authoritarian government, and Filmer’s conclusion that absolutist monarchy was the only legitimate form of government. Locke began his assault on Filmer by declaring: “Slavery is so vile and miserable an estate of man, and so directly the opposite to the generous temper and courage of our nation.”<sup>65</sup> Likening divine-right absolutist monarchs to slave-masters, Locke concludes that the natural state of men cannot be thralldom because all men are born free, equal in their dignity, and equal in their right to exercise liberty.<sup>66</sup> In particular, Locke rails against the position that men, born unequal, are incapable of choosing “either governors or forms of government” and rejects the view that men are born subjects to a king, rendering their consent to rule unnecessary.<sup>67</sup> Locke challenges Filmer’s position that

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<sup>61</sup> Mark Goldie, *Introduction to JOHN LOCKE TWO TREATISES OF GOVERNMENT* xv, xviii-xix (Mark Goldie ed. The Everyman Library 1993) (1690).

<sup>62</sup> *Id.* at xix.

<sup>63</sup> *Id.*

<sup>64</sup> Paul E. Sigmund, *Sir Robert Filmer*, in *THE SELECTED POLITICAL WRITING OF JOHN LOCKE* 262, 262 (Paul E. Sigmund ed. 2005).

<sup>65</sup> *JOHN LOCKE TWO TREATISES OF GOVERNMENT* 5 (Mark Goldie ed. The Everyman Library 1993) (1690).

<sup>66</sup> *Id.* at 7

<sup>67</sup> *Id.*



patriarchy is the natural order of man by pointing out that the Biblical Adam was joined with a wife, Eve, whose authority over the family and the household was equivalent to her husband.<sup>68</sup> Furthermore, Locke challenges the view that Adam was granted absolute power as patriarch: because God gave Adam dominion only over the physical aspects of the world and lesser animals, and made no declaration as to Adam's authority over men, Locke concluded that even if monarchies descended from the Biblical patriarchs, their authority was by no means absolute with regards to human beings and was constrained by the limitations placed on Adam.<sup>69</sup> Having rejected the claim that divine-right monarchies are the natural state of government for men, Locke asserts that governments cannot exercise more power than it is granted legitimately. Locke's opposition to rule by whim and fiat is deeply driven by his distrust for absolutism, yet it was not until *The Second Treatise on Government* that Locke addressed the question of how governments rightly attain and legitimately exercise power.

Unlike the *First Treatise* which sought to assail absolutism through theological argument, Locke's *Second Treatise* was a more general assault on authoritarian government and a defense of individual liberty through philosophical arguments.<sup>70</sup> Locke begins the *Second Treatise* with a discussion of the state of nature—the pre-civil, primordial state of man when he is without government.<sup>71</sup> In the state of nature, man enjoys perfect liberty over his actions, the right to dispose of property, and the freedom to live unrestricted by anything but the law of nature.<sup>72</sup> In the state of nature, all men are equal in their rights, no man has authority over any other and there is no hierarchy or order structuring the interactions of human beings.<sup>73</sup> While man in the state of nature enjoys the liberty to dispose of his person and his property without restriction, he

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<sup>68</sup> Id. at 8.

<sup>69</sup> Id. at 14-5

<sup>70</sup> Sigmund, *supra* note 64, at 262.

<sup>71</sup> Locke, *supra* note 65, at 116.

<sup>72</sup> Id.

<sup>73</sup> Id. at 117.

is not free to destroy himself, nor is he free to harm the person or property any other because the law of nature dictates that men, being of equal rights and freedoms, ought not “harm another in his life, health, liberty, or possessions.”<sup>74</sup> However, Locke recognizes that while the law of nature forbids individuals from harming one another, invasions of rights by transgressors of the law are inevitable. Because of man’s duty not to harm himself or allow himself to be brought to harm, in addition to the right to life, liberty and property, Locke posits that in the state of nature a corollary right to self-defense exists.<sup>75</sup> This right to self-defense authorizes individuals to restrain transgressors, destroy them if necessary and to individually execute the law of nature.<sup>76</sup>

Although Locke paints an idyllic portrait of the state of nature, he states that severe inconveniences come from justice and punishment doled out by the victim of transgressions: bias and favoritism are common to human beings and as a result, disorder is likely to result where the executive power of the law of nature is held by individuals.<sup>77</sup> As a result, men form governments to avoid the dangers hazarded by the near perfect liberty of the state of nature.<sup>78</sup> In establishing government by mutual consent, the only power that individuals surrender is the right to enforce the natural law—the right to self-defense.<sup>79</sup> Because in the state of nature, the right to self-defense could only be exercised in the preservation of life, liberty or property, so is government limited to exercising this power only to create laws and punishments for “regulating and preserving” property and “defending the common wealth from common injury.”<sup>80</sup> All rights to life, liberty and property are thus retained by individuals and are free from interference by government to the extent government can only legitimately exercise its powers when it to

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<sup>74</sup> Id.

<sup>75</sup> Id. at 118.

<sup>76</sup> Id.

<sup>77</sup> Id. at 121.

<sup>78</sup> Id. at 125.

<sup>79</sup> O’Connor, *supra* note 41, at 205-06.

<sup>80</sup> Id. at 206.

punishes violations of the natural law.<sup>81</sup> At its core, the *Second Treatise* recognizes that the function of government in a free society must be limited to protecting individuals, their liberties and possessions from the transgressors of the law of nature; it is a rejection of absolutist government and the realization of a government of limited executory powers.<sup>82</sup>

The rights reserved to individuals living under a free government derive from Locke's conclusion that all men have a fundamental and inviolable right to their body, their labor and the derivatives thereof. Central to Locke's entire discussion of the role of government in a free society is Locke's recognition that "every man has property in his own person."<sup>83</sup> Locke concludes that in addition to his own body, man has an inalienable right to his labor and the fruits of his labor.<sup>84</sup> Locke contends that the world was given to man to be held in common, but that the act of mixing labor with what was given to man in common imbues in it a new quality, making it the property of the laborer.<sup>85</sup> Like an individual's body or his labor, property belongs solely to its possessor and cannot be taken from him without his consent.<sup>86</sup> The only limitation Locke observes on the ability of individuals to remove things from their commonly held state and add them to an individual store of property is the requirement that no man take more than he can use without it going to waste.<sup>87</sup> However, Locke also observed that if perishable property can be reduced to another, non-perishable form then property can be obtained without spoilage and without unduly depriving others of what was once held in common.<sup>88</sup>

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<sup>81</sup> Id.

<sup>82</sup> Id.

<sup>83</sup> Locke, *supra* note 65, at 128.

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id. at 129.

<sup>87</sup> Id. at 130.

<sup>88</sup> Id. Locke discusses the use of gold, silver and precious stones as currency. According to his theory, if perishable goods are harvested and sold, transforming them into money and non-perishable liquid assets, then the limitation against spoilage can be circumvented and property can be acquired without restriction.

Thus for Locke, the acquisition of property is by means of labor, and property acquired and placed in a non-spoiling state can be held without limitation by its owner and cannot be taken from him without his consent. The recognition of an individual's inalienable right to their bodies, labor and property places a heavy constraint on the powers of government in a Lockean world. Whatever laws governments pass and seek to enforce must not trample upon the fundamental rights of the individual and must in fact serve only to preserve those rights from transgressors.<sup>89</sup> As a result, Locke declares that absolute monarchy is inconsistent with a free society and cannot form the basis of legitimate government.<sup>90</sup> Rather, Locke embraces the idea of the social compact, in which individuals agree to relinquish their right to self-defense, place it in the hands of government, and submit willing to the rule of the majority.<sup>91</sup>

Yet for Locke, majority rule is a necessary condition to a free society, but not a sufficient one. Government's chief and only purpose in a Lockean world is to preserve property from the dangers hazarded in the state of nature.<sup>92</sup> In particular, Locke states that governments exist to provide commonly agreed upon laws reached by the consent of the governed, to provide unbiased adjudicators for the judgment of transgressions, and to allow the swift and unprejudiced punishment of transgressors of the law of nature.<sup>93</sup> The limited role government plays in the ordering of society ensures minimal interference in the individual rights of citizens, while protecting against the greatest dangers presented by the state of nature. Outside of these narrowly prescribed areas, the power of government is hugely limited to serving merely at the consent of the governed. Where government exercises its monopoly on the right to self-defense against the liberties of citizens or in a fashion that is disproportionate to government's duties, the

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<sup>89</sup> Id. at 157-59.

<sup>90</sup> Id. at 159-63.

<sup>91</sup> Id. at 164.

<sup>92</sup> Id. at 178.

<sup>93</sup> Id. at 178-9

right of self-defense reverts from government to the people and such government is dissolved in favor of liberty.<sup>94</sup>

Locke conceives of a government of extremely limited powers and narrowly circumscribed duties. In basing the authority of government on the consensual surrender of individual right to self-defense by the collective citizenry, yet reserving all other rights as inalienable to the individual, Locke signals that a society is most free when it is governed least. Yet government is not a vestigial organ for Locke. Government serves the vital functions of providing commonly agreed upon laws, and protecting individuals and their property from violence occasioned by threats internal (thieves, murders, etc) and threats external (war). Yet it is only in these narrow fields that government can exercise its monopoly on the use of force to punish or destroy. However, what is most vital to an understanding of Locke's political philosophy is the recognition that the center piece of his theory is the autonomous individual. Locke establishes that all men have inviolable property in their own person, their labor and the derivatives thereof. Such property can be disposed of by individuals in any fashion so long as they do not occasion harm to the life, liberty or estate of others. Where individuals do occasion such harm on others, government exists to judge the severity of the transgression against established laws, discern the appropriate punishment, and execute it in a cold, unprejudiced and unbiased manner. Absent such harm however, government is powerless to coerce individual behavior. To this extent individuals in a Lockean world enjoy incredible autonomy and are free to act in any fashion that does not violate the law of nature. As a result, government in a Lockean world would simply be powerless to regulate speech because even its greatest excesses do not threaten the sort of direct, tangible harm to life, property or liberty as contemplated by Locke. Yet in addition to the inability of a Lockean government to legitimately regulate speech,

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<sup>94</sup> Id. at 240.

Locke would also likely argue for the protection of absolute speech rights to the extent that speech, like property, is a product of human labor

As noted in Part III, the ascertainment of knowledge is an exercise of mental labor by individuals. In discerning knowledge, individuals engage their faculties of reason and reflection to come to truth. In light of Locke's understanding of property as the product of labor and the body, it could be said that knowledge is a form of property protected against violation by transgressors and interference from government. Read in the context of the *Second Treatise*, it can be said that government exists to preserve the property of knowledge and cannot regulate it without violating the fundamental rights of individuals. Additionally, because individuals are free to dispose of their property without restriction, it can be observed that part of the liberty guaranteed to individuals in a Lockean world is the right to dispose of knowledge as they see fit. Such a right would include the ability to express and communicate knowledge to others free of restriction. As a result, Locke's primacy of the autonomous individual in society greatly restricts the ability of government to act against private liberties, while maximizing the capacity of citizens to exercise the freedoms they otherwise would enjoy in the state of nature. Yet Locke understood that the limitless expression of knowledge and the diversity of opinions inherent to the human experience were bound to breed disagreement. Confronted with this reality, Locke espoused toleration at both the individual and governmental level as a solution to a pluralistic society.

#### PART V: LOCKE ON TOLERANCE—WHERE WALDRON WENT WRONG

Locke's *A Letter Concerning Toleration* serves as a high water mark in the development Enlightenment era liberalism and is the culmination of years of objection to undue governmental coercion. Although the *Letter* does not directly tackle the question of speech, it does address

Locke's concern with the regulation of individual beliefs and the expression of those beliefs. As a result, the *Letter* cuts to the core of Lockean free speech values to the extent that it discusses the power of government to regulate sentiment and the expression of that sentiment. In his reading of the *Letter*, Jeremy Waldron concludes that a Lockean world would readily accept regulations on the use of hate speech to the extent that Locke finds "intolerance" to be the mark of an uncivil society. Read in isolation the *Letter* could be construed to agree with Waldron, however, in light of Locke's epistemology and political philosophy, it is clear that Locke's chief concern in the *Letter* is the threat of the illegitimate use of force by any institution, be it by the government, by a religious body or by individual citizens. Locke rejects forceful religious conversion by both the state and by religious institutions, condemns efforts by mainstream religions and their advocates to visit harm on the life, liberty or property of supposed heretics, and concludes that all religions have a duty to tolerate the beliefs of others to the extent that religious institutions cannot actively seek to harm the life, liberty or property nonbelievers.

Locke argues that the government, as the civil authority, does not have the power to delineate the religious sentiments of the governed and, as a result, any attempt to exercise such power would be an unlawful use of government's monopoly on force.<sup>95</sup> It is important to note that Locke wrote the *A Letter Concerning Toleration* following Louis XIV's termination of the Edict of Nantes, a document granting religious toleration to French Huguenots.<sup>96</sup> Locke's central thesis is that no institution reserves the right to punish individuals for not adhering to a particular belief.<sup>97</sup> Furthermore, Locke rejects the ability of the State to regulate religious sentiment on the grounds that such concerns are outside of the scope of authority assigned to the

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<sup>95</sup> Paul E. Sigmund, *Religion and Politics*, in THE SELECTED POLITICAL WRITING OF JOHN LOCKE 262, 262 (Paul E. Sigmund ed. 2005).

<sup>96</sup> Id.

<sup>97</sup> O'Connor, *supra* note 41, at 212.

government through the social contract.<sup>98</sup> Yet Locke's most profound statement with regards to toleration reflects his long held belief in the uncertainty of human knowledge: because no one can be certain of the veracity of their beliefs, toleration is the only means to account for the potential that any religion, even those seen as beyond the pale, could have credible answers to major theological questions.<sup>99</sup>

Just as Locke concluded in *An Essay Concerning Human Understanding* that personal claims of intellectual authority are futile, in *A Letter Concerning Toleration* Locke states that no one person can have sufficient enough evidence to show that their religious beliefs are correct beyond doubt.<sup>100</sup> As a result, Locke argues in *A Letter Concerning Toleration* that tolerating a plurality of religious beliefs and punishing only those that directly threaten to transgress the law of nature (i.e. religions committed to human sacrifice) is the only way to fairly arrange a civil society.<sup>101</sup> Locke lays out a series of duties owed by religious institutions to adherents, by individuals to those with whom they share conflicting beliefs, and finally by the government to all believers. First, Locke states that religious institutions may not visit physical harm upon members whose beliefs are inapposite to the orthodoxy of the church, and instead are limited to the excommunication of unorthodox members.<sup>102</sup> Although Locke forbids the "rough usage of words" in the document bearing the excommunication, he clarifies that this means such documents cannot call for harm to be brought against the body and property of the expelled.<sup>103</sup>

It is this language that Jeremy Waldron seizes upon when he states that Locke would support hate speech regulation in light of his position against "the rough usage of words" by

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<sup>98</sup> Id.

<sup>99</sup> Id.

<sup>100</sup> Id.

<sup>101</sup> Id. at 212-13.

<sup>102</sup> John Locke, A LETTER CONCERNING TOLERATION 30 (James H. Tully eds. 1983) (1690).

<sup>103</sup> Id.



religious institutions seeking to excommunicate heretical members.<sup>104</sup> Read in isolation, this prescription against the use of rough words by churches appears to support Waldron's conclusion, but for Locke his opposition to the "rough usage of words" is truly a prohibition against the use of force by religious institutions and their members. This interpretation reflects his position that in a civil society only the government has a monopoly on the use of force.<sup>105</sup>

According to D.J. O'Connor:

[Locke's first argument] is an ethical argument to the effect that a church has no right to persecute anyone. For although a church resembles a commonwealth in being a voluntary organization, men do not renounce any of their natural rights when they join a certain church; and, in consequence, such organizations have no more power over their members than, for example, a cricket club has. The worst a church can do to an unorthodox member is to expel him from membership.<sup>106</sup>

As a result, just as the state cannot deprive an individual of their life, liberty or property without their consent or in response to a violation of the law of nature, neither can religious institutions bring destruction upon supposed heretics.<sup>107</sup>

Furthermore, Locke holds that private citizens are restrained from visiting physical harm upon those who hold conflicting religious beliefs. "All the Rights and Franchises that belong to him as a Man, or as a Denison, are inviolably to be preserved to him. These are not the Business of Religion."<sup>108</sup> This reflects both the need to tolerate differing opinions in a free society and the law of nature's prohibition against bringing harm to the life, liberty and property of a fellow human being. Lastly, Locke establishes a clear separation between the powers and jurisdiction of the church and the civil authority. Members of religious hierarchy cannot exercise the ecclesiastical authority (to lead and expel members) outside the confines of their pulpit, and the

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<sup>104</sup> Waldron, *supra* note 14, at 212.

<sup>105</sup> Locke, *supra* at note 102, at 31.

<sup>106</sup> O'Connor, *supra* note 41, at 213.

<sup>107</sup> Locke, *supra* note 102, at 31.

<sup>108</sup> *Id.*

state cannot dictate the affairs, doctrines or dogma of religious institutions.<sup>109</sup> Locke observes that those of the Christian faith are specifically bound, in keeping with the tenets of Christ, to preach a message of peace, good-will and tolerance to their faithful.<sup>110</sup> Locke restricts the ability of the civil authority to interfere in the religious teachings of individual churches on the grounds that the civil authority has no power (presumably under the social contract) to engage in such regulation.<sup>111</sup> Ultimately, Locke is much more concerned with the possibility that the State will exercise effective control over religious institutions than he is that religious institutions will act coercively against individuals and the State.<sup>112</sup> “But to speak the truth, we must acknowledge that the Church...is for the most part more apt to be influenced by the Court, than the court by the Church.”<sup>113</sup>

Locke’s greatest concern in the *Letter* is his fear that government will seek to create religious harmony through forced conversions.<sup>114</sup> In reference to the practice of forced religious conversions Locke concludes, “I may grow rich by an Art that I take not delight in; I may be cured of some Disease by Remedies that I have not Faith in; but I cannot be saved by a religion that I distrust, and by a worship that I abhor.”<sup>115</sup> Locke rather pragmatically recognizes that any effort by either a church or the government to bring about religious conversion will simply result in feigned conversion at best and at worst social upheaval. However, this pragmatic realization gives way to Locke’s understanding that individuals have a fundamental right to be “left to their own Consciences.”<sup>116</sup> For Locke, religious sentiment is as much a matter of personal autonomy as is the right to property, and a result such sentiment must be absolutely free from government

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<sup>109</sup> Id. at 33.

<sup>110</sup> Id. at 34.

<sup>111</sup> Id. at 36.

<sup>112</sup> Id. at 37.

<sup>113</sup> Id.

<sup>114</sup> Id. at 38.

<sup>115</sup> Id.

<sup>116</sup> Id.

regulation and wholly respected by both individuals and churches.<sup>117</sup> Nevertheless Locke does place some restrictions on the activities of religious institutions and their individual members. According to Locke, no religious institution can enjoy the benefits of toleration (i.e. the freedom to preach and practice without government interference) that does not grant the same tolerance to other religions.<sup>118</sup> Furthermore, Locke rejects toleration for religious institutions that would engage in forceful religious conversion were they in control of the commonwealth.<sup>119</sup> Lastly, Locke states that the government has the ability to regulate religious expressions that necessarily involve the destruction of property and human life or involve restraints on liberty.<sup>120</sup> This would include practices such as human sacrifice or self-mutilation.

Waldron's dependence on Locke as a philosophical forbearer is misplaced and stems from Waldron's narrow reading of Locke's works. In essence, Waldron reads the *Letter* as a meditation on the importance of tolerance in a free society and concludes that Locke's definition of tolerance would necessarily require individuals to refrain from vituperative or hateful language. As such, Waldron concludes that Locke would tolerate and indeed promote the regulation of speech to the extent that it is necessary to stifle hateful speech that would harm citizens in the commonwealth. Yet throughout the *Two Treatises on Government*, Locke repeatedly states that the authority of government is limited to protecting human life, property and liberty from direct, tangible harms. In his political writings, Locke rejects the contention that government has the absolute power to regulate beliefs and expressions, and repeats this claim in *A Letter Concerning Tolerance*. It is apparent from a thorough reading of Locke that

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<sup>117</sup> Id. at 42.

<sup>118</sup> Id. at 49.

<sup>119</sup> O'Connor, *supra* note 41, at 213-14.

<sup>120</sup> Id. at 213.

the “tolerance” Locke demanded from religious institutions related not to the use of hateful speech, but rather to the unlawful use of force.

In the *Two Treatises on Government*, Locke narrowly interprets the scope of government’s legitimate activities and heavily limits the government’s ability to use force to further its ends. Essentially, *A Letter Concerning Toleration* applies these lessons to religious institutions and recognizes that if the government is unable to engage in the unlawful use of force against the life, liberty and property of citizen so too are religious institutions limited. As a result, just as government must respect the right of individuals to their life, property and liberty, so too much religious institutions refrain from harming the body, liberty and estate of nonbelievers for the purpose of conversion. This reading of Locke’s *Letter* echoes his political philosophy and is a far more faithful reading of his teachings. While Waldron insists that Locke’s prohibition on “the rough usage of words” indicates Locke’s favor for hate speech regulations, in actuality it is clear that what Locke condemns is the usage of rough words only to the extent that they inspire immediate violence against the life and estate of alleged heretics and presume the power of religious institutions to engage in direct persecution of nonmembers. If Locke would not allow the government to engage in such activities for the purpose of conversion, it is apparent that in a Lockean world no other institution could wield such power.

Rather a Lockean society would be intolerant of restrictions on the right of individuals to express their beliefs. For Locke, the right to speech does not revolve solely around the prospect of discovering knowledge by means of the most socially effective and efficient system. Locke’s prohibition against the unlawful use of force by religious institutions reflects his position that no authority, not even the government, retains the absolute and unchecked right to use force. Locke’s demand for tolerance in a free society is much narrower than Jeremy Waldron what

claims. For Locke tolerance merely requires that individuals refrain from the use of force to convert people to their cause. Tolerance in a Lockean world demands only that individuals and institutions recognize that no one person has a special claim to authority with regard to the discovery of truth and that no belief can be held with such certainty that it is beyond scrutiny. Lockean tolerance, like Rauch stated, is such that it would allow the Nazi the speak, the Ku Klux Klan member to march in parades, and the most hated and despised members of society to express their view free from the threat of regulation and censorship.

## PART VI: CONCLUSION

For Locke, the right to free speech is not derived from pragmatic concerns, it does not depend on government for its recognition, nor does it suffer regulation lightly. Rather, Locke's stance on free speech is indicative of his belief that human beings have inalienable rights that do not lightly suffer interference. Neither Jonathan Rauch nor Jeremy Waldron fully articulates Locke's likely position on the regulation of speech in a free society. Like Rauch, Locke embraces the idea that in light of the frailties of human reason there can be no such thing as certain knowledge. Furthermore, Locke accepts that because all men are prone to error, none can claim that they have undeniable authority over knowledge. As a result, Locke's epistemology is very similar to Rauch's to the extent that Locke concludes that all knowledge must be subject to scrutiny and that no one person can claim special authority over truth.

While this would be sufficient to show that Locke, like Rauch, would reject regulations on speech, Locke's political philosophy provides an alternative explanation for his opposition to speech regulation. Locke was a firm believer in the inalienable rights of autonomous individuals. Locke posited that when men formed government, they empowered it to act only in their common defense. While men surrendered their inherent right to self-defense when they

formed government, they retained all other rights with the expectation that government would work to protect individuals from threats to their life, property and liberty. Locke rejected absolutist government and narrowly interpreted the scope of government's power because he believed it was the only way to protect the inalienable rights of individuals from unjust encroachments. For Locke individuals in a free society enjoyed the right to dispose of their life, labor and property without restriction save for the duty not to bring harm to others. As a result, Locke would reject speech regulations as an illegitimate infringement on the right of individuals to dispose of their lives free from government interference. Locke would not oppose speech regulation merely because of his underlying adherence to the principles of the liberal science, but rather because of his conviction that government has no right to infringe upon the inherent liberties of autonomous individuals.

Waldron fails to account for Locke's belief in the inalienable rights of man and the limits on government in a Lockean society when he concludes that Locke would tolerate speech regulation. Waldron read *A Letter Concerning Toleration* in isolation from Locke's other works and concluded that because Locke opposes the use of "vituperative" speech in the context of religious expression, he would generally support regulations aimed at silencing hate speech. However, read in the context of *An Essay Concerning Human Understanding* and *The Two Treatises on Government*, it is obvious that the true evil Locke opposed in *A Letter Concerning Toleration* was the specter of the unlawful use of force. Locke opposed the use of force by government outside of the narrowly circumscribed areas of policing immediate and direct threats against life, property and liberty, and as a result he rejected the power of government to engage in forced religious conversion. In admonishing religious institutions against the use threatening words and violence against heretics, Locke simply acknowledged his own belief that force could

only be used legitimately in the defense of life, property and liberty, and not for the purpose of forced religious conversion.

Ultimately, Waldron read Locke's demand for tolerance too broadly. While Waldron concludes that tolerance demands the regulation of hateful speech, Locke's definition of tolerance is extraordinarily narrow. Lockean tolerance merely asks that individuals in a free society refrain from acts of violence against the life, property and liberty of those with whom they disagree. Like Rauch, Locke asks that individuals recognize that no "truth," no matter how firmly held, is beyond scrutiny and that no person has special authority over the discovery of truth. Locke would not tolerate regulations on hate speech to the extent that they unduly interfere with the inherent rights of individuals to express their beliefs. For Locke, to silence a speaker merely because of the effect of his speech or its obnoxious qualities is not merely harmful to free public discourse and the discernment of knowledge, but is damning to the inherent right of autonomous individuals to dispose of their lives free from restriction.