

The Secular Basis of the Separation of Church and State: Hobbes, Locke, Montesquieu, and Tocqueville

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Abstract: In this article, I argue that John Locke presents a novel understanding of “ecclesiastical liberty” that allows him to use it as the basis for separating religion from politics, church from state, in a manner favorable to secular interests and power. Montesquieu and Toqueville understood this approach and adapted and modified it to conditions in France and America.

Keywords: secularism, popular sovereignty, commercial republic, toleration

“**R**ender therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s.” This verse from Matthew 22 with its equivalents in Mark and Luke are commonly used to establish a distinction between religion and politics that allows for that separation of church and state which is a necessary foundation of limited or liberal democratic constitutionalism.¹ Jürgen Habermas gives a more general and sweeping statement of what he believes is the relationship between liberal politics and biblical religion, and the essential character of the later for the former: “Egalitarian universalism, from which sprang the ideas of freedom and social solidarity, of an autonomous conduct of life and emancipation, of the individual morality of conscience, human rights and democracy, is the direct heir of the Judaic ethic of justice and the Christian ethic of love.

This legacy, substantially unchanged, has been the object of continual critical appropriation and reinterpretation. *To this day, there is no alternative to it.* And in light of the current challenges of a post-national constellation, we continue to draw on the substance of this heritage. Everything else is just idle postmodern talk.”² Yet does not this sectarian origin make questionable the universal claims, or at least applicability, of the kind of democratic politics that rests upon it? Certainly today the Islamic world is often understood both from within and without as rejecting such a distinction between, and therefore separation of, religion and politics as would seem to follow from Christ’s injunction.³ In this article I argue that John Locke, historically the most influential theorist of separation, grounds that principle on a novel understanding or interpretation of “ecclesiastical liberty” that owes little or nothing to Christian religious doctrines. This rational or secular approach, built on Hobbes’ recasting of the religious problem, was then appropriated and adapted by Montesquieu and Tocqueville.

HOBBS: THE SUBJECTION OF RELIGION TO POLITICAL ENDS

It is worth recalling that the Christian distinction between spiritual and temporal powers, far from being considered an essential principle of good government, was once understood as a fundamental cause of political instability, religious intolerance, and persecution. There is much in the history of the Middle Ages to support Machiavelli’s conclusion that Christianity laid a foundation for perpetual discord by making the state too weak, or, rather, it made the priests and the Church

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too strong, thus allowing the two to come into frequent conflict.⁴ One of the most striking features of the struggle between emperors and popes (and nationalist and ultramontane clergy) was the inability for the two sides, even at those moments when moved by a genuine desire for comity, to find a stable resolution of their differences whether they based their positions on Scripture, theology, or historical precedent.⁵ Yet one could perhaps imagine that the problem with Christianity resided only in the institution of the papacy and Roman Curia rather than within the religion itself.⁶ Hobbes, however, especially in the *Behemoth*, offers a brief against the political tendencies of Christianity even when liberated from the papal yoke.

Hobbes, writing chiefly for a Protestant audience, does not shy away from blaming the papacy for much of the troubles found “in these western parts of the world.” But he proceeds to give a more direct diagnosis of the underlying cause of papal malignity: it is the Christian distinction between spiritual and temporal powers. “By spiritual power they [the doctors of the Roman faith] mean the power to determine points of faith, and to be judges in the inner court of conscience of moral duties, and power to punish those men that obey not their precepts by ecclesiastical censure, that is, by excommunication,” a power “claimed immediately from Christ.” Temporal power, whose basis Hobbes refrains from immediately stating, “consists in judging and punishing those actions that are done against the civil laws,” a power the doctors make no claim to exercise, at least not directly. The difficulty arises with the priestly claim to supervise or exercise temporal power “indirectly, that is to say, so far forth as such actions tend to the hindrance or advancement of religion and good manners.”⁷ In practice, the claim to be the final judge of what hinders and advances religion gives “the Pope[s] all authority whatsoever they should declare to be necessary *in ordine ad spiritualia*, that is to say, in order to religion” (*Behemoth*, 215). This leaves Christian kings with “none or very little” power (171).

In Hobbes’ account, the clergy’s natural ambition led them to invent new articles of faith that serve to increase the number of occasions on which they might claim to exercise their “indirect” power to rule. Not least of these was the doctrine of celibate priests, something that prevents a king desirous of legitimate heirs from ever becoming the head of the Church (*Behemoth*, 180). But belief in the miracle of transubstantiation, priestly absolution, the necessity of auricular confession for salvation (especially when combined with the teaching that “the very first motions of the human mind, that is to say, the delight men and women take in the sight of one another’s form,” constitute a violation of God’s commandments),⁸ and the institution of universities to train traveling friars to preach these doctrines—all these things combined to make the people “stand in awe of Pope and clergy, more than they would of the King” (181–2, 180, 183, 196, 213). The difficulty is that the claims or spheres of spiritual and temporal power overlap and thus make conflict inevitable. While Hobbes admits that the papacy would have been able to retain its authority in England had Pope Clement VII not crossed Henry in his second marriage, its authority would only have endured “till there had arisen some other quarrel” (*Behemoth*,

186–7). For Hobbes, the papacy is inherently an unstable and destabilizing institution, and the seeds of the Protestant Reformation were sown with the political doctrines contained in the Gospels.

Yet the Reformation was itself no cure. The establishment of a national church with the king at its head failed to put an end to problems that may have seemed to arise from the papacy, because the distinction between spiritual and temporal power remained alive. Indeed, a number of bishops went along with Henry VIII because they were at that time themselves embroiled in a controversy with the Roman Court as to whether they exercised their power immediately from God or only through the mediation of the Pope. But when they held “their power no more from the Pope, they never thought of holding it of the King” and so became a kind of multitude of popes (*Behemoth*, 188).⁹ Worse, the ensuing disputes among the Roman and various reformed churches “could not choose but make every man, to the best of his power, examine by the Scriptures, which one of them was in the right” (190). From this arose the need for English translations of the Bible, which, contrary to the bishops’ original intention, led “every man, nay every boy and wench, that could read English, [to think] they spoke with God Almighty, and understood what he said, when, by reading a certain number of chapters a day they had read the Scriptures once or twice over” (234–5, 190). The difficulties in Scripture gave rise to even greater “diversity of opinion” and a corresponding multiplication of sects whose only point of agreement was that they considered “politics subservient to religion” (363, 228–9).

At the same time, the educated gentry, who confused themselves with “democratical principles” imbibed from their study of the classics (192, 358), and the lawyers and jurists with their belief that the “the government of England was not an absolute but a mixed monarchy” (306), contributed to eroding respect for royal power. But, for Hobbes, it was the political pretensions of the Presbyterians and other sects that bore the greatest responsibility for undermining the legitimacy of King Charles in the eyes of the people: and “the power of the mighty hath no foundation but in the opinion and belief of the people” (184; cf. 343). On the Presbyterians’ heads are the 100,000 dead from the subsequent years of civil war (282, 166, 197, 267, 332–3, 343, 363, 372–3). So long as they maintain “their former principles” (417), Interlocutor B doubts that the restoration of Charles II can result in a lasting peace. “B: For aught I see, all the states of Christendom will be subject to these fits of rebellion, as long as the world lasteth.”¹⁰ Interlocutor A, however, retains some hope: “A: Like enough, and yet the fault, as I have said, may be easily mended by mending the Universities” (252). Hobbes presents his plan to mend the Universities, and with them the fractured states of Christendom, in the *Leviathan*.¹¹

The subtitle of Hobbes’ revolutionary work is infrequently cited. Yet “*The Matter, Forme, and Power of a Commonwealth Ecclesiastical and Civil*” provides a direct statement of his chief innovation. In what his contemporaries understood to be a novel doctrine, Hobbes unites ecclesiastical and civil powers into a single sovereign that derives its legitimacy from one and the same source: the consent of individuals who by nature possess the unlimited right to everything

(*Leviathan*, 91–2, 114, 120).¹² As in *Behemoth*, Hobbes is keen to refute the advocates of a mixed regime. But his larger goal, if measured only in terms of the sheer bulk of pages devoted to the aim, is to rout those who would oppose his political absolutism on religious grounds. Indeed, the chapter devoted to the sovereign's absolute rights opens with a denunciation of those who lay claim to higher duties based on a covenant with God: "this pretense of a covenant with God is so evidently a lie, even in the pretenders' own consciences, that it is not only an act of an unjust, but also of a vile and unmanly disposition" (122). The antitheological meaning and intention of his absolutism, already implicit in his description of man's natural condition,¹³ becomes manifest in Hobbes' response to the anticipated objection of those who think his sovereign too powerful. He simply transposes a traditional argument for the omnipotence of God into his own humanistic key. "And whosoever thinking Sovereign Power too great, will seek to make it less; must subject himself to the Power that can limit it; that is to say, to a greater" (145; cf. 128).

Sovereignty is above all indivisible. Certain rights of sovereignty, such as coining money, disposing of minors' estates, and regulating markets, can safely be transferred or delegated because doing so does not necessarily undermine the sovereign's ability to protect his subjects. But other rights are indivisible because to give them away would compromise this end. Thus, "if he tranferre the *Militia*, he retains the Judicature in vain, for want of execution of the Lawes: Or if he grant away the Power of raising money; the *Militia* is in vain." Most important, "if he gives away the Government of Doctrines, men will be frightened into rebellion with the fear of Spirits," for "in the well governing of Opinions, consisteth the well governing of mens Actions, in order to their Peace and Concord" (*Leviathan*, 127, 124). In practice, this means he can, among other things, determine which Books of Scripture are or are not canonical, and within that canon proclaim the authoritative interpretation of any passage. Moreover, he decrees who is and who is not to be recognized as a prophet (*Leviathan*, 267–9, 273, 298–300, 354, 356, 359–63). This seems to imply that Hobbes' sovereign, the artificial creation of the human will (9–11, 123), is for all practical purposes superior to God's will, at least insofar as that will is expressed by means of Scripture or prophetic revelation. In case of conflict, the human will and end reign supreme (227). Bishop Bramhall saw the implication of the argument when he wrote: "[Hobbes'] fifth conclusion may be the sharpest and most successfull sword, in any war whatsoever, [as it] doth give sovereign power and authority to him that hath it, to approve or reject all sorts of Theologicall doctrines, concerning the Kingdome of God, not according to their truth or falsehood, but according to that influence which they have upon political affaires."¹⁴

Hobbes, for his part, denies the possibility of conflict between true Doctrine and peace, and thus between Scripture and the sovereign, or at least between Scripture and his political system. His argument is bold in its simplicity. He first derives the rights of sovereign power "from the Principles of Nature onley" as determined by our senses, experience, and reason. Hobbes' Commonwealth is then the regime in accord with natural reason, or what he calls, in what is hard

not to take as an invidious distinction, "that which is the undoubted Word of God" (*Leviathan*, 255). But because God is the author of both man's reason and the Bible, there can be nothing in the one contrary to the other. Therefore, there can be no political teaching in the Bible contrary to that set down in the *Leviathan* (255–6). This postulate requires Hobbes to give some rather astonishing interpretations of Scripture, interpretations he knew likely to prove controversial.¹⁵ Without going into the arresting and often amusing details of his reading of the Bible,¹⁶ the central strand of his argument makes clear the general character of his exegesis.

Because nothing in the Bible is contrary to natural reason, it must also at its core be consistent with itself. This means that the Old and New Testaments must be in fundamental agreement with one another (*Leviathan*, 335, 338, 408–9). Hobbes makes it halfway to the achievement of this synthesis by reducing the political teaching of the Old Testament to obedience to the civil sovereign, period. But he does admit to his mostly Christian readers that "[s]o far forth as concerned the Right [of the Sovereign]; yet it appeareth by the same Holy History, that the [Jewish] people understood it not."¹⁷ The Israelites frequently considered the priests' authority supreme, something Hobbes attributes to their stubborn desire to keep always "in store a pretext, either of Justice or Religion, to discharge themselves of their obedience [to the King]" (229, 230). This is a charge he also levels against Christians. Indeed, as we have seen from the *Behemoth*, Hobbes knew that an argument for strict obedience to the sovereign and his civil laws would be widely understood by Christians as even less compatible with the New Testament than the Old.

From Hobbes' point of view, Matthew 10:28 is perhaps the most difficult and dangerous of Biblical passages to reconcile with his doctrine. It both elaborates a distinction between political and religious spheres and articulates a compelling reason for the superiority of the later. "Fear not them which kill the body and after that have power to do naught; but rather fear Him who after He had killed the body, has power to condemn to hell." In the *Behemoth*, Hobbes' Interlocutor A gives an *ad hominem* response to this verse by reformulating it in the following manner: "For my part, I should rather obey that master that had the right of making laws and inflicting punishments, than him that pretendeth only to a right of making canons, that is to say, rules, and no right of co-action, or otherwise punishing, but by excommunication." B completes this interpretation of the verse when he infers that A must not believe that canons are in fact laws or excommunication a real punishment, "else you would rather have chosen to obey that Pope, that would cast your body and soul into hell, than the King, that can only kill the body." A justifies his conclusion on the grounds that it would be "very uncharitable" for him to accept that "all Englishmen, except a few Papists," should be damned.

In the *Leviathan*, Hobbes gives a more general response. He quotes the verse from Matthew, if in a truncated form, as part of his effort to overcome the difficulty, "not yet sufficiently resolved," to which it gives rise: namely, whether to obey God or man "when their Commandments are one contrary to the other" (*Leviathan*, 402–3). He grants that it

would be “madness” to obey any command that would result in “being damned to Eternall Death” and maintains that the *Unum Necesarium* for salvation is belief or faith in the simple proposition that “Jesus is Christ” (403, 407). Yet even this minimalist interpretation of what Scripture demands would still seem to provide the opportunity for a principled disobedience to the sovereign that Hobbes is otherwise so intent to deny. This appears to be all the more so because Hobbes also admits that Christian “[f]aith is the gift of God; and he giveth it to whom he will” (406).¹⁸ Such grace appears to inject a transcendent and therefore destabilizing political claim. But what Hobbes gives with one hand he takes away with the other by further arguing that the gift of faith confers no special status.

All good things proceed from God; yet cannot all that have them, say they are Inspired; for that implies a gift supernaturall, and the immediate hand of God; which he that pretends to, pretends to be a Prophet, and is subject to the examination of the Church (407; cf. 298).

To complete the circle, one need only recall that the church itself is subject to the sovereign (376–7, 227), and, except for those who spoke directly with God the Father or our Savior, belief means belief in what other men have said, much as the “immediate cause” of faith is hearing what is taught, both activities likewise subject to the sovereign’s control (405, 406, 344–5, 124–5).

On the surface, Hobbes’ doctrine of obedience bears some resemblance to the religious teachings of Calvin or certain Non-resisters in the sense that they all teach what could seem to be extreme deference to political authority.¹⁹ But their basis and spirit could hardly be more opposed.²⁰ This comes to light in the exceptions to obedience that each allows. For example, while Calvin preaches submission even to tyrannical rulers as the providential instruments of God’s justice, there is a limit or qualification to this submission:

But in that obedience which we hold to be due to the commands of rulers, we must always make the exception, nay must be particularly careful that it is not incompatible with obedience to Him to whose will the wishes of all kings should be subject, to whose decrees their commands must yield, to whose majesty their scepters must bow. And, indeed, how absurd were it, in pleasing men, to incur the offence of Him for whose sake you obey men. . . . If they command anything against Him let us not pay the least regard to it, nor be moved by all the dignity which they possess as magistrates—a dignity to which no injury is done when it is subordinated to the special and truly supreme power of God.²¹

Similarly, even Non-resisters preemptively resisted when faced with the prospect that the “infidel” James II would impose the Roman Catholic faith on Protestant England.²² But Hobbes maintains that an infidel who as civil sovereign forbids the practice and teaching of Christianity in any form must be obeyed even in this. In Hobbes’ hands the Bible would teach that the Christian has a Christian duty to acquiesce even in measures taken for the apparent destruction of Christianity. He seems to take a certain delight in then pointing out that any who would complain that the widespread acceptance of such a teaching makes it easy for the sovereign to crush resistance are in fact objecting to the occasion for

certain martyrdom, and therefore acting in bad faith and with but little trust in God (*Leviathan*, 413–4, 399–400, 343–4).²³ Yet Hobbes, too, admits of an exception to the obedience due the sovereign, although not on the basis of any religious claim or scruple. Because the end of the institution of the commonwealth is self-preservation and protection from other men, when the sovereign either directly threatens or can no longer defend him, the subject is free to disobey. To do otherwise, Hobbes echoes here the form though not the content of the Calvinist argument, would be an absurd sacrifice of the end to the means (124, 121, 136, 150–4, 230).

The events leading up to the Revolution of 1688 show the optimism of Interlocutor A in the *Behemoth* to have been misplaced. The religious problem could not be disposed of merely by an act of Parliament recognizing the King’s right to control the militia. There is something perhaps even more utopian in Hobbes’ apparent hope that were the *Leviathan* to be adopted and promulgated by the universities, it would put an end to the multiplication of religious sects and unite them in obedience to a common authority.²⁴ The initial reaction of many university men and theologians was in fact to denounce its author as a political atheist. For a time it even looked as though Hobbes would be prosecuted for heresy.²⁵ On the basis of his own doctrine he could hardly have objected to any subsequent conviction as unjust. He would nevertheless have been hard pressed to consider such an outcome a success.²⁶ Martyrdom, in any cause, held no charm for him.

LOCKE: ECCLESIASTICAL LIBERTY AND SEPARATION

Locke is the most influential theorist of the separation of church and state. This makes it all the more striking that he fails to mention in the *Letter Concerning Toleration* any of the usual scriptural passages that would seem to support his position.²⁷ True, Locke does quote some scripture at the beginning of the *Letter* in an effort to show that toleration is “the chief characteristic mark of the true Church.”²⁸ Yet his citations fall well short of meeting the standard of an express command or even mention that he sets for others who wish to invoke the authority of the Bible (*LCT*, 23, 25). The function of the biblical quotations in the *Letter* is not to ground toleration in revelation but to impugn the motives of those who would use revelation as a pretext to claim “power and empire over one another” (13–5, 30–1, 32–4, 50). Indeed, some things mentioned and expressly commanded by Scripture are declared intolerable by Locke as implying opinions “contrary to human society” (61–2).

Yet perhaps Locke derives separation not from any explicit passage of Scripture but as an implication from the Christian concept of liberty of conscience. According to this line of interpretation, the separation of church and state is necessary because the instruments of political authority are apparently inadequate to reach man’s inward disposition (*LCT*, 19–21, 41). But whatever the enormous historical influence of this kind of argument, it cannot have been Locke’s final word. First, he knew that putting too much stress on conscience runs the risk of making all external acts and ceremonies religiously indifferent and therefore unobjectionably subject to the magistrate’s control.²⁹ Second, as an empirical question

it is by no means clear that political power cannot change men's hearts and minds. There is certainly much historical evidence to the contrary, to say nothing of Locke's own complaint elsewhere in the *Letter* of how easily "the clergy changed their decrees, their articles of faith, their form of worship, every thing," according to the inclination of certain kings and queens (40).³⁰ Indeed, numerous passages from the *Essay* show how little Locke thought human opinions were formed or influenced by "light and evidence" (*LCT*, 21).³¹ But, most conclusive, Locke himself admits in the *Letter* that even if "the rigors of the law and force of penalties were capable to convince and change men's minds," this would not alter the case he makes for the necessity of separating church and state (*LCT*, 21). Its basis must therefore rest elsewhere.

Locke does think a prudent magistrate can rule in a manner such that conflicts between his authority and the conscience of a subject "will seldom happen." But seldom is not never. And when they do happen, Locke is as adamant as Hobbes that conscience gives way to law. He also follows Hobbes in reducing conscience to the status of "private judgment."³²

I say, that such a private person is to abstain from the actions that he judges unlawful; and he is to undergo the punishment, which it is not unlawful for him to bear; for the private judgment of any person concerning a law enacted in political matters, for the public good, does not take away the obligation of that law, nor deserve a dispensation (59).

While this means no more in fact than that a religious objector is as free to follow his conscience as is any common thief to follow his profession, Hobbes would still no doubt chide Locke by pointing out that the passive obedience he seems to sanction here is neither passive nor obedient.³³ But Locke agrees with Hobbes on the more fundamental point: the secular ends of public peace and prosperity serve as the ultimate standard of what is tolerable or intolerable. Even Christianity must submit to it.³⁴ And in every case but one Locke subjects the conscience to political authority.

The genuine difference between Hobbes and Locke on whether we have a duty to renounce or change our religion derives from their differences over the issue of absolutism. Hobbes' absolutism required or allowed him to deny the possibility of a "mixed monarchy" and to conflate church and state. Locke's opposition to Hobbesian or any other absolutism is what led him to develop his doctrine of the separation of church and state. Yet Locke does this through recourse to the same principles that underlie Hobbes' state of nature teaching, while drawing from them different consequences.

Locke, unlike Hobbes, distinguishes between the State of Nature and a State of War, even if the right of each to execute the Laws of Nature that follows from man's "perfect freedom" and "equality," makes the State of Nature "apt to end" in a State of War as dangerous and violent as that described by Hobbes.³⁵ Locke grants that civil government is the proper remedy for the "defects" and "inconveniences of the State of Nature." But in establishing political society, he insists we do so reasonably, that is, we must follow the principle that guides all sound physicians: the cure must be no worse than the disease. According to Locke, living under the kind of government Hobbes proposes, in which the sovereign

"has his Liberty to Judge in his own case, and may do to his subjects whatever he pleases, without the least liberty of any one to question or controle those who execute his Pleasure," is worse than continuing in the State of Nature even when it has developed into a State of War (*Second Treatise*, §13, 90, 171–2, 225). It is the equivalent of fleeing the mischiefs done by polecats for the greater harms inflicted on us by lions (§93).

Reasonable or legitimate government therefore means limited government. For Locke, any claim to rule based on divine ordination or sanction risks transforming itself into an absolutism incompatible with and destructive of man's perfect freedom or natural liberty, and, ultimately, a threat to his preservation. We can then see why, in the *Letter Concerning Toleration*, he

esteem[s] it above all things necessary to distinguish exactly the business of civil government from that of religion. . . so that some may not color their spirit of persecution and un-Christian cruelty with a pretense of care of the public weal, and observation of the laws, and that others, under pretense of religion, may not seek impunity for their libertinism and licentiousness; in a word, that none may impose either upon himself or others, by the pretenses of loyalty and obedience to the prince, or of tenderness and sincerity in the worship of God (*LCT*, 17–8, emphasis added).

When Locke explicitly defines the ends of political society, he declares that "the business of the law is not to provide for the truth of opinions, but for the safety and security of every man's goods and person" (56). But in the *Letter*, and only in the *Letter*, Locke takes care to specify that the "perfect freedom" of man's natural condition has a corresponding religious dimension that he here calls "ecclesiastical liberty" (24).

Ecclesiastical liberty was traditionally taken to refer to the corporate rights and privileges of the church vis-à-vis the magistrate. Locke recasts the term to mean each individual's right to choose his own religion.³⁶ This "ecclesiastical liberty" differs from the "perfect freedom" he posits in the *Second Treatise* and whose exercise leads to those certain "inconveniences" that can be remedied by the institution of a government to which each gives up a portion of his natural liberty for the sake of a more secure enjoyment of what remains (*ST*, §127–31). In contrast to natural freedom, ecclesiastical liberty "will be preserved on all sides" when men are allowed to join whatever religious society (i.e., church) they think necessary for the salvation of their souls. This is tolerable because, unlike the right we have by nature to execute the Laws of Nature, our exercise of ecclesiastical liberty can in no way harm another: "If any man err from the right way [in religion], it is his own misfortune, no injury to thee" (*LCT*, 28, 60; cf. *ST*, §13, 21, 57). More important, we have no choice but to leave ecclesiastical liberty intact because it lies outside the power of human beings to devise a more secure enjoyment of the end for which it was apparently instituted, namely, salvation.

The various ends of civil society—life, liberty, and estate—can be attained by various means. There are, for example, "a thousand ways to wealth" (*LCT*, 75); and "it is easy to understand to what end legislative power ought to be

directed, and by what means regulated” (59). Thus, any number of different yet “well ordered commonwealths” can be legitimate (*ST*, 132, 145). But as regards the end of religious society—“the acquisition of eternal life”—“there [is] but one truth, one way to heaven.” Unfortunately, its precise form is far from clear, and opinions on the subject are sharply divided “about nice and intricate matters that exceed the capacity of ordinary understandings” (*LCT*, 25, 21, 15). So, despite the “implacable enmities,” the “factions, tumults, and civil wars” that these disagreements with their corresponding different sects give rise to, the magistrate cannot impose a uniform religion because he holds his office as a representative of the people, and it is never “in the power of the people to grant” this right or exercise such power. It is God who appoints what things are pleasing to him and what merit the reward of salvation: “no human power or authority can confer on them so much dignity and excellence as to enable them to do it” (44). It is because “ecclesiastical liberty” cannot be defined or circumscribed by any human power, and not out of respect for liberty of conscience, that there can be no duty for Locke’s subjects, even if ordered by the magistrate, “to embrace a strange religion, and join in the worship and ceremonies of another church” (59).

Where does this inalienable ecclesiastical liberty come from, what are its grounds? Locke finds its basis in neither Scripture, conscience, nor any other strictly Christian teaching. Instead, he derives it from the undeniable existence of conflicting religious sects: “Now their very dissension *unavoidably puts us upon a necessity of deliberating, and consequently allows a liberty of choosing* that, which upon consideration we prefer” (*LCT*, 24, emphasis added). As with Hobbes, necessity and liberty are consistent (*Leviathan*, 146–7). And Hobbes himself perceived something of the necessity Locke highlights when he noted that “the controversy between the Papists and the Reformed Churches, could not choose but make every man, to the best of his power, examine by the Scriptures, which of them was in the right.” As we saw above, for Hobbes, the need to judge this particular quarrel led to the translation of Scriptures into the vulgar tongues with the result that anyone who could read then considered herself to be the final arbiter of an orthodoxy that was also considered to be more important than any civil concern (*Behemoth*, 190, 379). Yet in lamenting the existence of religious, Hobbes seems to think that human choice in religion can somehow be avoided.³⁷ While Hobbes is far from thinking heterodox religious views by themselves produce anarchy (188), he shares something of King James II’s regret at England’s loss of religious unity.³⁸ Locke might seem to share in this regret when he notes at the beginning of the *Letter* that “the divisions that are amongst sects” are “ever so obstructive of the salvation of souls” (*LCT*, 15). Yet, by the end, he advances new definitions of heresy and schism designed to multiply and perhaps deepen such divisions (74–8). Nor does Locke hesitate to draw the radical theological conclusion that Hobbes thought so dangerous, yet which necessarily follows from the principle of ecclesiastical liberty, namely, that “everyone is orthodox to himself” (1, 13, 29, 33).

Locke seems to have recognized the potential to base toleration and the separation of church and state on this interpretation of religious diversity as early as the drafting of *The Fundamental Constitutions of Carolina* in 1669. Under these articles church membership was obligatory for those over the age of seventeen, and all churches had to conform to these rules:

- I. “That there is a God.”
- II. “That God is to be publicly worshiped.”
- III. “That it is lawful and the duty of every man, being thereunto called by those that govern, to bear witness to truth; and that every church or profession shall, in their terms of communion, set down the external way whereby they witness a truth in the presence of God, whether it be by laying hands on or kissing the bible, as in the Church of England, or by holding up the hand, or any other sensible way” (¶ 100).

Yet the churches need not be Christian and anyone could join whatever church he thought best. The reason for this policy is the frank admission that “the natives of that place, who will be concerned in our plantation, are utterly strangers to Christianity.” And others whom they hoped to attract “will unavoidably be of different opinions concerning matter of religion.” When “they expect to have [religious liberty] allowed them,” it will not be reasonable to withhold it if we also wish their help. Yet religious liberty is not simply here a concession made to meet the expectations or demands of those whose free cooperation is required. So inalienable is the right to choose one’s own church that even “negro slaves,” otherwise under “the absolute power and authority” of their masters, are free “as well as others, to enter themselves, and be of what church or profession any of them shall think best, and, therefore, be as fully members as any freeman.”³⁹

Locke takes what Hobbes considered to be the sow’s ear of religious diversity and fashions from it a doctrine of separation of church and state based on the premise of man’s inalienable “ecclesiastical liberty.” He was no doubt led to this expedient in part due to the intractable character of post-Reformation religious divisions. But he also did so because he saw how the theological implications of his secular understanding of ecclesiastical liberty could be stated in a manner to make it much more likely to be accepted, or at least acceptable, by various Protestant sects than was the minimalist (and overtly Erastian) theology of the *Leviathan*. Similar to various dissenting Protestant sects, Locke denies the possibility (or necessity) of a genuinely mediating church, and accepts the radical isolation of individuals in their direct relation with God. But he rests this premise on a non-sectarian conception of ecclesiastical liberty that likewise implies that “the care of every man’s soul belongs unto himself,” by which is meant “entirely to every man’s self” “because nobody else is concerned in it” (35, 60, 57).

The Protestant who arrives at this same conclusion based on Scripture is bid by that same authority also to believe that there is but one true way to salvation.⁴⁰ He then finds himself pushed toward doctrines of the elect, predestination, the inadequacy of human reason, and the unfathomable

mystery of divine justice and mercy. One might think that the anguished proto-capitalist so well described by Max Weber, tormented and isolated by an inexpugnable anxiety concerning the fate of his and his loved ones' souls, could seem to be as much the product of Locke's doctrine as of Calvin's. Yet Locke's premise of ecclesiastical liberty, based on the reasoned presuppositions of the State of Nature, in fact prepares the way for the relief of this particular anxiety because it has no necessary connection to the scriptural view that there is only one way to heaven. Locke certainly recognizes the political potential of the latitudinarian view:

But it may be said, there are a thousand ways to wealth but only one way to heaven. It is well said indeed, especially by those that plead for compelling men into this or the other way, for if there were several ways that lead thither, there would not be so much as a pretense left for compulsion (35–6).

Locke also criticizes the Erastian position of complete and explicit submission of ecclesiastical matters to the prince because it leads to the unacceptable conclusion that men owe “their eternal happiness and misery to the places of their nativity,” something that “very ill suits the notion of a Deity” (21). But would it not be equally unsuitable for God to have established “but one way to heaven” while leaving its precise content to depend on “nice and intricate matters that exceed the capacity of ordinary understandings”? Absent a church founded on the Grace of God, something that Locke's principles exclude, the acceptance of more latitudinarian standards would seem to be the only way to preserve a belief in God's goodness, justice, and mercy. Locke's contemporary, Jonas Proast, understood something of this general spirit of the *Letter* when he noted how unlikely it would be “to expect that true religion would be any way a gainer” by the policies it advocates, “how much soever it may tend to the Advancement of Trade and Commerce.”⁴¹

MONTESQUIEU AND TOCQUEVILLE: RELIGION AND COMMERCE

In his *Persian Letters*, Montesquieu diagnosed the pathologies of the absolutist and divine right monarchy left behind by Louis XIV and concluded that they would likely provoke a revolutionary backlash. Some twenty-six years later he provided an outline for political reforms that might avoid such a cataclysm in the *Spirit of the Laws*. There he held up the post-settlement British Constitution as a model for emulation if not strict imitation. The *Spirit of the Laws* is most famous for its doctrine of the separation of powers, an important modification of Locke's division into legislative, executive, and federative powers. Yet beneath the surface of this rather well-known civics lesson lies the somewhat hidden, or at least unstated, premise that political power is in fact something that can be divided up and placed where we think best, that it is something that can be literally manhandled. In other words, the constitutional principle of the separation of powers presupposes that the political world is a realm of human artifact, which means, at least at a minimum, that religion and politics belong to separate spheres. “What God hath joined together, let no man put asunder.” But what man makes, man

can sunder more or less as he pleases. While Montesquieu did not make this separation an explicit theme of the *Spirit of the Laws*, he certainly understood its significance, as indicated by a passage from his essay on the Roman Empire written just before the *Spirit of the Laws*: “The most vicious source of all the misfortunes of the Greeks [the Eastern Empire] is that they never knew the limits of ecclesiastical and secular power, and this made them fall, on both sides, into continual aberrations. This great distinction, which is the basis on which the tranquility of the people rests, is founded not only on religion but also on reason and nature, which ordain that really separate things . . . should never be confounded.”⁴²

Given the importance Montesquieu here ascribes to separating church and state, it is surprising to find the distinction unmentioned in the *Spirit of the Laws*. The cause is that the principle is ultimately incompatible with Christian doctrines, among them those regarding the sanctity of conscience and rule by the grace of God, and therefore with the Pope's claim to be God's vice-regent on earth. While Locke could more easily make the social contract basis of his doctrine of church and state appear to be in conformity with Protestant theology, or at least certain strands of it, this approach was untenable in Catholic France. When the Protestant émigré Pierre Jurieu used contract theory to argue against Louis XIV's revocation of the edict of Nantes, Bossuet, the Dauphin's preceptor and Bishop of Meaux, denounced him for the double crime of heresy and treason. Jansenists within the Church, who opposed the regime's absolutism on religious grounds, were frequently considered crypto-Calvinists or republicans; and the movement was officially suppressed with the enforcement of the papal bull, *Unigenitus*.⁴³ In this political and religious context, the Lockean approach was counterproductive. Thus, Montesquieu concluded that “a more certain way to attack religion is by favor, by the comforts of life, by the hope of fortune, not by what reminds one of it, but by what makes one forget it; not by what makes one indignant, but by what leads one to indifference when other passions act on our souls and when those that religion inspires are silent.”⁴⁴

Montesquieu did not always attempt to breed forgetfulness and indifference through outright neglect. Religion is a prominent theme in the *Spirit of the Laws*. Instead he treats the subject in a manner calculated to make readers forgetful of and indifferent to its most important and politically recalcitrant claim: its truth. Adhering to his directly expressed principle of indirection, Montesquieu does not deny the truth of the Christian religion directly. He states his procedure as follows: “As I am not a theologian but one who writes about politics, there may be things that would be wholly true only in a human way of thinking, but they have not been at all considered in relation to the more sublime truths” (*Spirit of the Laws*, 24.1). Christianity, being true, cannot be judged by the standard of “the good to be drawn from [it] in the civil state.” But, being false, “the various religions of the world” can properly be considered in light of the political interests they advance or hinder. Montesquieu then draws on the extensive travel literature of his times to find faraway parallels to Christian doctrines that he evaluates to show their destructive political consequences, leaving it to the reader to make his own reflections on institutions closer to home (e.g., 24.3,

5, 10, 11, 13, 14, 19, 20, 25, 26). This theological *roman à clef* can be as amusing and intricate as the *Persian Letters*. And it obscures the premise it insinuates, namely, that one who writes on politics need not be a theologian, and vice-versa, for religion and politics belong to independent and autonomous domains of human activity. When Montesquieu first adopted this neutral point of view, he did so with an antireligious intent.

“General rule: in the matter of changing religion, invitations are stronger than penalties” (*Spirit of the Laws*, 25.12). The most tempting invitation Montesquieu held out to induce a change in his contemporaries’ religious views was the promotion and increase in commerce. The Dutch, and before them the Venetians, had shown that some degree of religious liberty and latitudinarianism was good for business. Post-settlement England provided another example in this vein. Montesquieu hoped that not only would an increased emphasis on commerce follow from liberal religious reforms but that it could also serve to induce them. “Commerce cures destructive prejudices. . . . It polishes and softens barbarous mores, as we see every day” (20.1). Montesquieu makes clear one source of barbarous mores and how commerce could work to soften them in a subsequent chapter: “How Commerce Brought Light to Barbarism in Europe” (21.20).

The scholastic amalgam of Aristotle and the New Testament resulted in the condemnation of lending at interest, and, more generally, of engaging in commercial activities. This resulted in commerce “passing to a nation covered in infamy, and soon it was no longer distinguishable from the most horrible usuries. . . . The Jews, who were made wealthy by their extractions were pillaged with the same tyranny by the princes, a thing that consoled the people but did not relieve them.” Montesquieu relates that after having had seven teeth pulled out, one each day, a Jewish merchant in England gave King John ten thousand silver marks on the eighth. It finally came to pass that the goods of the Jews were seized if they converted and burned if they did not. In the face of this persecution, the Jews invented letters of exchange that allowed commerce to escape the rule of violence and maintain itself everywhere, for “the richest trader had only invisible goods, which could be sent everywhere and leave no trace anywhere.” From this Montesquieu concludes,

To the speculation of the schoolmen we owe all the misfortunes that accompanied the destruction of commerce; and to the avarice of princes we owe the establishment of a device that puts it, in a way, out of their power. Since that time, princes have had to govern themselves more wisely than they would have thought. . . .for experience proved that only goodness of government brings prosperity. One has begun to be cured of Machiavellianism, and one will continue to be cured of it. For, happily, men are now in a situation such that, though their passions inspire in them the thought of being wicked, they nevertheless have an interest in not being so (21.20).

The elegance of this example of an economic institution limiting political and religious absolutism is marred only by its historical inaccuracies. The schoolmen did not succeed in destroying European commerce. The Tuscans or Venetians, not the Jews, invented letters of exchange. And so

far were “theologians obliged to curb their principles,” that the inclusion of this chapter was largely responsible for the *Spirit of the Laws* being placed on the Index.⁴⁵ Indeed, over the course of the eighteenth century, the Church repeatedly undermined the French state by obliging it to enforce the unpopular decrees of *Unigenitus* against its will and sometimes better judgment. But if commerce failed in France to separate and then harmonize church and state in a manner to prepare the soil for constitutional government, as Montesquieu had hoped, it nevertheless could still perform these functions within an already established democratic order.

When Tocqueville arrived in America, he was initially struck by the apparent hold Christianity had over Americans. He later came to appreciate the hold that Americans had over Christianity. The principal means by which religion was controlled was the separation of church and state. Tocqueville describes its successful operation long before any court ordered wall had been established. Clergy, even Catholics, seemed to keep themselves from mixing in politics voluntarily. Tocqueville thought their motives were in part tactical or pragmatic. Religion exercises its hold over men largely by its constancy and permanence. Political power in America frequently changes hands and democratic societies engage in frequent political experimentation and innovation. According to Tocqueville, “American priests perceived this truth before all others, and they conform their behavior to it. They saw that they had to renounce religious influence if they wanted to acquire a political power, and they preferred to lose the support of that power rather than share in its vicissitudes.”⁴⁶ Yet Tocqueville also knew that at a deeper level politics and religion are inseparable. “Allow the human mind to follow its tendency and it will regulate political society and the divine city in a uniform manner; it will seek, I dare say, to *harmonize* the earth with Heaven” (*DA*, 275; see also 417). In this passage Tocqueville does not state whether politics conforms to religion or religion to politics. Nor is he so doctrinaire as to think one would trump the other in every time and place. But in democratic ages equality gives rise to a distinct and politically powerful passion for material well-being, which is among their most distinctive features. “One may believe that a religion that undertook to destroy this mother passion would in the end be destroyed by it” (422). In America he finds no church or sect willing to brave the contest. Thus, democratic societies control religion by engendering passions that no institution can oppose and long endure. If not in monarchic France, here in democratic America we can see how “theologians become obliged to moderate themselves” and religion changed through invitation. Hobbes would be impressed and Montesquieu relieved.

In Tocqueville’s analysis the Hobbesian moment of religion’s subjugation to political or social powers is accompanied by a Lockean moment in which religion also acts as a restraint or limitation on democratic absolutism. But how can religion serve to limit the power that subjugates it? For Tocqueville, democracy means the sovereignty of the people, a sovereignty in some respects more absolute and implacable than that of any monarch (*DA*, 55). Even the law, far from constituting a genuine restraint, “permits the American people to do everything” (280). But the experience of

“limitless independence,” in politics or religion, frightens men and makes them long for something firm and stable. Dogma, which Tocqueville takes to be the essence of religion, provides certain limits and fixed points necessary for democratic man to orient himself and act (422). Thus, “up to now, no one has been encountered in the United States who dared to advance the maxim that everything is permitted in the interests of society” because “religion prevents them from conceiving everything and forbids them to dare everything.” But it does so as a means “to facilitate” a higher end (280).

While this argument shows the political utility of religion within democratic societies, it leaves obscure the foundation on which religion rests its opposition to the doctrine of popular sovereignty. In his chapter on the informal workings of the English Constitution, Montesquieu described one way in which religion can serve to check political power:

It would not be impossible for there to be in this nation people who had no religion and who would not for all that want to be obliged to change the one they would have had if they had had one, for they would immediately feel that life and goods are no more theirs than their way of thinking and that he who can rob them of the one can more easily take way the other (*Spirit of the Laws*, 19.27, 330).

Tocqueville describes something similar in America but without the self-possessed and ironic detachment Montesquieu found among the English.

In ceasing to believe religion true, the unbeliever continues to judge it useful. Considering religious beliefs under a human aspect, he recognizes their empire over mores, their influence on laws. He understands how they can make men live in peace and prepare them gently for death. He therefore regrets his faith after he has lost it, and deprived of a good of which he knows the entire value, he fears to take it from those who still possess it (*Democracy in America*, 286).

At first glance, the American unbeliever would seem to possess an inward source of self-restraint that rests on his benevolent concern for others. But Tocqueville also points out another root. “With those who do not believe hiding their disbelief and those who believe showing their faith, a public opinion in favor of religion is produced” (287). To complete the circle, we recall that equality and the atomization of individuals to which it gives rise are what make popular opinion so powerful in America, even, or especially, on the conduct of unbelievers.⁴⁷ This is how utility rather than truth can come to form the foundation of belief.⁴⁸

CONCLUSION

“Render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s.” “My kingdom is not of this world.” “You cannot serve two masters.” These and other Christian distinctions between religion and politics do not of themselves establish the kind of separation of church and state necessary for limited democratic constitutionalism. For the Christian distinction rests upon and is meant to reinforce the superiority of religious to political concerns. But democracy rests at bottom on the sovereignty of the people; and limited government requires religion to give way to politics. Even liberal regimes that formally ac-

knowledge the greater dignity and importance of religion and the private sphere to politics and the public can do so only because their political principles indirectly reshape and mold everything after their own image. This denial of the supremacy or distinctive character of the political succeeds only on the basis of its ultimate superiority.

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NOTES

1. See, for example, from a wide variety of political and religious perspectives, J. Cardinal Gibbons, “The Church and the Republic,” *The North American Review* 189, no. 640 (March 1909): 332; Albert W. Beaven, “The Meaning for Religions of the Trend toward Nationalism,” *Annals of the American Academy of Political and Social Science* 174 (July 1934): 69; Milton R. Konvitz, “Religious Liberty: The Congruence of Thomas Jefferson and Moses Mendelssohn,” *Jewish Social Studies* 49, no. 2 (Spring 1987): 123; Michael W. McConnell, “The Origins and Historical Understanding of Free Exercise of Religion,” *Harvard Law Review* 103, no. 7 (May 1990): 1448; William Galston, “Jews, Muslims & the Prospects for Pluralism,” *Daedalus* 132, no. 3, *On Secularism & Religion* (Summer 2003): 74; Richard Reilly, “Conscience, Citizenship, and Global Responsibilities,” *Buddhist-Christian Studies* 23 (2003): 1181; Marcello Pera, *Why We Should Call Ourselves Christians: The Religious Roots of Free Societies* (Encounter Books, 2011), 6–7.

2. Jürgen Habermas, “A Conversation about God and the World,” in *Time of Transitions* (Polity Press, 2006), 150–1 (emphasis added).

3. Shahrough Akhavi, “Islam and the West in World History,” *Third World Quarterly*, 24, no. 3 (June 2003): 546; Sagi Polka, “The Centrist Stream in Egypt and Its Role in the Public Discourse Surrounding the Shaping of the Country’s Cultural Identity,” *Middle Eastern Studies*, 39, no. 3 (July 2003): 40. Bernard Lewis departs from this consensus in recommending that Islam adopt a Western or Lockean separation of church and state. But he does so based on the controversial view that the introduction of the office of Chief Mufti under the Ottomans and the more recent institution of the ayatollahs in Iran represent a “Christianizing” of contemporary Islam that has made it more intolerant and prone to persecution. Having caught “a Christian disease,” he therefore prescribes “a Christian remedy” (Bernard Lewis, *What Went Wrong: The Clash between Islam and Modernity in the Middle East* [Oxford University Press, 2002], 96, 103, 114, 116).

4. See, for example, Machiavelli, *Discourses*, 2.2, 3.1; *Prince*, chapters 11 and 12; *Florentine Histories*, 7.6.

5. Brian Tierney, *The Crisis of Church and State 1050–1300* (Englewood Cliffs: Prentice Hall, 1964).

6. Cf. Machiavelli, *Discourses*, 1.12, 1.14, 1.27, 3.1.

7. Hobbes, *Behemoth*, in *The English Works of Thomas Hobbes of Malmesbury*, vol. VI, ed. Molesworth (London: Bohn, 1840), 171.

8. Hobbes elsewhere denies this claim: “The desires and other passions of man are in themselves no sin” (Hobbes, *Leviathan*, ed. Tuck [Cambridge: Cambridge University Press, 1996], 89).

9. “For whereas before the pope allowed not the bishops to claim jurisdiction in their diocesses *jure divino*, that is of right immediately from God, but by the gift and authority of the pope, now that the pope was ousted, they made no doubt but that the divine right was in themselves” (*Behemoth*, 332). “For though they were content that the divine right, which the Pope pretended to in England, should be denied him, yet they [the bishops] thought it not so fit to be taken from the Church of England, whom they now supposed themselves to represent” (234).

10. “B: Presbyterians are everywhere the same; they would fain be absolute governors of all they converse with; and have nothing to plead for it, but that where they reign, it is God that reigns, and nowhere else” (*Behemoth*, 373).

11. For the potential to use the universities for political good, see esp. *Leviathan*, 491; cf. 477–8.

12. “All other men distinguish between the Church and the Commonwealth: Only *T.H.* maketh them to be one and the same thing” (Bishop John Bramhall, *The Catching of Leviathan, or the Great Whale*, 126, in *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*, ed. G. A. J. Rogers [Bristol: Thoemmes Press, 1995]).

13. “Nor can any thing be said more contrary to the Honor and Dignity of God Almighty, than that he should leave his master workmanship, Man, in a condition of War of every man against every man. . .” Clarendon, *A Survey of Mr. Hobbes His Leviathan*, in Rogers 1995, 195.

14. Bramhall, *Catching of Leviathan*, 133, in Rogers 1995.

15. Hobbes remarks in his Introduction, “That which perhaps may most offend, are certain Texts of Holy Scripture, alledged by me to other purpose than ordinarily they use to be by others” (*Leviathan*, 3). Clarendon’s is among the more moderate responses: “I am very unwilling to enter into the lists with Mr. Hobbes upon the interpretation of Scriptures, which he handles as imperiously as he doth a Text of Aristotle, putting such unnatural interpretation on the words, as hath not before fallen into the thoughts of any other man, and drawing very unnatural inferences from them; insomuch as no man can think he is really in earnest, when, to prove that the Kings word is sufficient to take any thing from any Subject when there is need, and that the King is Judge of that need, he alledges the example of our Saviour, who, he saies, as King of the Jews *commandeth his Disciples to take the Asses Colt to carry him to Jerusalem*, which he saies the owner permitted, and did not ask whether his necessity was a sufficient title, nor whether he was Judge of that necessity, but had acquiesce in the will of the Lord: which is a very bold and ungrave wresting of Scripture to purposes it could not intend” (Clarendon, *Survey*, in Rogers 1995, 224).

16. For Hobbes’ rhetorical strategy of using “mirth” to rouse “contempt,” and thus destroying “awful veneration,” see Clarendon, *Survey*, in Rogers 1995, 260–1, 282.

17. “And therefore so far forth as concerneth the Old Testament, we may conclude, that whosoever had the Sovereignty of the Common-wealth amongst the Jews, the same had also the Supreme Authority in matter of Gods worship” (*Leviathan*, 331).

18. “For faith is the gift of God; and he worketh it in each severall man, by such wayes, as it seemeth good unto himself” (*Leviathan*, 405).

19. “Something there is which [Hobbes] hath a confused glimmering of, as the blind man sees *men walking like trees*, which he is not able to apprehend and expresse clearly. We acknowledge, that though the laws and commands of a Sovereign prince be erroneous or unjust, or injurious, such as a subject cannot approve for good in themselves; yet he is bound to acquiesce, and may not oppose or resist, otherwise than by prayers and tears, and the most by flight” (Bramhall, *Catching of Leviathan*, in Rogers 1995, 136).

20. See Robert Filmer, *Observations on Mr. Hobbes’s Leviathan*, in Rogers 1995, 1.

21. Jean Calvin, *Institutes of the Christian Religion*, vol. II, trans. H. Beveridge (James Clarke: London, 1949), 675.

22. Thomas Babington Macaulay, *History of England from the Accession of James II* (New York: Harper, 1856), vol. III, 3, 14–5; cf. Vol. II, 233–4, Vol. III, 55–7.

23. “At other times when he [Hobbes] is in his right wits he talketh of suffering and expecting their reward in heaven. And going to Christ by martyrdom. And if he had the fortitude to suffer death he should do better. But I fear this was but said in jest” (Bramhall, *Catching of Leviathan*, in Rogers 1995, 135).

24. *Leviathan*, 490–1. “A man who can say, as he did, that ‘The skill of making, and maintaining Commonwealths, consisteth in certain rules, as doth Arithmatique and Geometry; not (as Tennis-play) on practice only,’ lacks what might be called a sense of policy. . . .The complete failure of Hobbes as a political, as distinct from a literary or philosophical, realist, is shown up by the fact that he seems to have thought the *Leviathan* would be adopted as a political programme” (Peter Laslett in John Locke, *Two Treatises of Government*, ed. Peter Laslett [Cambridge: Cambridge, 1988], 91).

25. “There was a report (and surely true) that in Parliament, not long after the King was settled, some of the Bishops made a Motion to have the good old Gentleman burn’t by a Heretique. Which, he hearing, feared that his papers might be search’t by their order, and he told me he had burnt part of them; among other things a Poeme, in Latin Hexameter and Pentameter, of the Encroachment of the Clergie (both Roman and Reformed) on the Civil Power” (John Aubrey, *Aubrey’s Brief Lives*, ed. Oliver Dick [London: Secker and Warburg, 1960], 156).

26. In the *Behemoth*, Hobbes compares his writing the *Leviathan* to Uzza’s putting “forth his hand to keep the ark from falling,” a comparison that would seem to call into question either the justice of the sovereign or himself (*Behemoth*, 172; cf. 212, I Chronicles 13:9–11, II Samuel 6:6).

27. I believe the *Reasonableness of Christianity* is the only place where Locke cites Jesus’ command to “Render unto Caesar.” But he takes this as

an example of political astuteness and caution, not support for separation (John Locke, *Reasonableness of Christianity*, ed. John C. Higgins-Biddle (Clarendon, 1999), 80–1).

28. John Locke, *Letter Concerning Toleration* (Buffalo: Prometheus Books, 1990), 3–4. Cf. 25, where Locke claims that “this is not the proper place to inquire into the marks of the true church.”

29. Locke, *Two Tracts on Government*, ed. Philip Abrams (Cambridge: Cambridge University Press, 1967), 238, 152, 154, 163, 173, 214–6. Cf. Locke, *An Essay Concerning Toleration*, in Viano 1961, 2. See also the arguments Samuel Parker opposes in *A Discourse of Ecclesiastical Politie: Wherein the Authority of the Civil Magistrate Over the Consciences of Subjects in Matters of Religion Is Asserted; The Mischiefs and Inconveniences of Toleration Are Represented, And All Pretenses Pleaded in Behalf of Liberty of Conscience Are Fully Answered*, chapter 5, “A Confutation of the Consequences that some men draw from Mr. Hobs’s Principles in behalf of Liberty of Conscience,” 135–70, with Hobbes, *Leviathan*, 223, 256, 167–70.

30. See Jonas Proast, *The Argument of the Letter Concerning Toleration; A Third Letter Concerning Toleration; A Second Letter to the Author of Three Letters for Toleration [1690–1704]* (New York: Garland Press, 1984 reprint).

31. For example, John Locke, *Essay Concerning Human Understanding*, ed. P. H. Nidditch (Oxford, 1975), 1.3.22–7, 1.4.1.

32. Hobbes, *Leviathan*, 223.

33. When someone “hath broken the laws, and according to the law is therefore executed, can any man understand that this suffering of his is in obedience to the law? Every law is a command to do, or to forbear; neither of these is fulfilled by suffering” (Hobbes, *Behemoth*, 226).

34. If Christians “are more inclinable to factions, tumults, and civil wars,” then “truly the Christian religion is the worst of all religions, and ought neither to be embraced by any particular person, nor tolerated by any commonwealth” (*LCT*, 71).

35. John Locke, *Two Treatises on Government*, §20–1, 16, 13, 7, 4, 32, 34.

36. For contemporaneous usage of the term in the traditional sense, see Richard Simon, *Critical History of the Religions and Customs of the Eastern Nations*, trans. A. Lovell (Heptinstall, Faithorne, and Kersey, 1685). For the change in meaning, see Henry Ferne, *Tracts of the Anglican Fathers: On Submission to the Church* (William Edward Painter, 1842). In 1776 Elisha Rich uses the term in a Lockean sense but derives it from Scripture (Elisha Rich, *A Sermon on Ecclesiastical Liberty. Preached after the Civil War between Great-Britain and the American-Colonies. In the year 1775. In which the free bought man’s liberty is vindicated* (Coverly, 1776).

For seventeenth-century continental usage, see Jaska Kainulainen, “*Libertas ecclesiae* in Post-Tridentine Debates,” in *Freedom and the Construction of Europe*, eds. Quentin Skinner and Martin Van Gelderan (Cambridge, 2012), 38–56.

37. Compare Machiavelli’s elegant statement of the problem: Charlemagne “judged that the Pope as Vicar of God could not be judged by men” (*Florentine Histories*, 1.11).

38. “We cannot but heartily wish, as it will easily be believed, that all the people of our dominions were members of the Catholic Church” (*English Historical Documents, 1660–1714*, ed. Andrew Browning [London: Eyre and Spottiswoode, 1953], 399–400).

39. *Carolina Constitutions*, ¶ 107.

40. For example, John 14:6.

41. Jonas Proast, *The Argument of the Letter Concerning Toleration Briefly Consider’d and Answer’d* (London, 1690), 2.

42. Montesquieu, *Considerations on the Causes of the Greatness of the Romans and Their Decline*, trans. David Lowenthal (Cornell: Cornell University Press, 1965), 210.

43. Dale Van Kley, *The Religious Origins of the French Revolution: From Calvin to the Civil Constitution, 1560–1791* (Yale, 1996).

44. Montesquieu, *Spirit of the Laws*, trans. Anne Cohler (Cambridge: Cambridge University Press, 1989), 24.12.

45. Leo Bernard, “L’Esprit des lois devant la congregation de l’Index,” *Revue des deux mondes* (1949), 608–33.

46. Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago, 2000), 286.

47. Pierre Manent, *Tocqueville and the Nature of Democracy* (Rowman and Littlefield, 1996), 86–8, 96.

48. Thomas Hobbes, *Leviathan* (Cambridge, 1991), 125.

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