

Locke and Rawls on Religious Toleration and Public Reason¹

Abstract

Locke's arguments for toleration are seen to be of little value today because of their explicitly Christian formulation. They appear to fail Rawls's test of public reason. This essay explores both the importance of reason within Locke's thought and the influence of Locke's Christian presuppositions even on Rawls's own position. It demonstrates how Locke's commitment to reason as the method for arriving at truth on religious questions shapes both his arguments for the reasonableness of Christianity and his defence of toleration. Building on his Christian belief that human beings are free and equal, Locke puts forward religious arguments as public reason. Against this context, Rawls's idea of public reason is shown to depend on an *a priori* commitment to the view that the existence of God can make no difference to our moral reasoning, to concede that the content of public reason is variable over time and space, and to depend itself on the very belief that human beings are free and equal which liberalism has inherited from Christianity.

Introduction

The idea of toleration is a problem within contemporary political philosophy. This is true both at a general level and, specifically, with regard to the question of religious toleration. Toleration of different religious beliefs is one of liberalism's core commitments but its theoretical basis remains disputed. It has even been suggested that the concept of freedom of religion is redundant because this freedom is sufficiently protected by rights to freedom of speech and freedom of association.² Even where the importance of freedom of religion is taken for granted, there is an acute cultural debate about the place of religious arguments in public life, with secularists being joined by liberals in arguing that religions may be seen but not heard in the public square.

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² HP Olsen, 'The right to freedom of religion: a critical review', (2007) 52 *Scandinavian Studies in Law* 227-254.

Contemporary embarrassment regarding the intellectual foundations of freedom of religion is particularly acute with regards to one of its most influential early advocates, John Locke.³ On many issues there is a straight line in liberal thought which runs from John Locke to John Rawls via Immanuel Kant. The question of freedom of religion appears to be an exception to this genealogy. On the face of it, Locke presents a plea, based on arguments of Christian theology, to persecutors, which seeks to persuade them of the irrationality of their actions. Contemporary philosophers have tended to regard his approach as (1) omitting to offer any defence of a *right* to freedom of religion, (2) parochial because of its focus on the specific circumstances of late seventeenth century England, and (3) unsuitable for general philosophical use because of its heavy reliance on Christian theology.⁴ Rawls, by contrast, defends toleration and specifically freedom of religion as an intrinsic part of his ideal of justice as fairness. In his later work, Rawls seeks to do so in terms which comply with the strictures of “public reason”. On this point, between Locke the theologian arguing that persecution is irrational and Rawls the philosopher arguing that freedom of religion is an intrinsic part of basic justice there would appear to be no links.

This essay argues that, hidden within both men’s thought are important links, links which show both that Locke is operating with a proto-Rawlsian idea of public reason and that Rawls’s thought incorporates within it presuppositions about the nature of human beings whose adoption within Western culture derives from the Christian elements in Locke’s thought. Once this two-way traffic has been uncovered, it becomes clear that Rawls’s idea of public reason is not only unfairly prejudiced against the use of religious arguments in the public square but also intrinsically undesirable. What counts as a good argument in favour of basic justice and what amounts to treating others with respect cannot be determined on *a priori* or wholly secular grounds.

³ Earlier arguments for freedom of religion had been made by the Baptists Thomas Helwys in 1612 and Leonard Busher in 1614 in *The Mystery of Iniquity* and *Religion’s Peace* respectively. Helwys stressed the importance of conscience whilst Busher’s main argument was that freedom of religion would promote peace within society.

⁴ ‘Introduction’ to J Horton and S Mendus (eds) *John Locke: A Letter Concerning Toleration in focus* (1991) 1-2, M Cranston, ‘John Locke and the Case for Toleration’ 78-97; and J Waldron, ‘Locke: Toleration and the Rationality of Persecution’ 98-124, in the same volume.

I. RE-CONSIDERING LOCKE ON TOLERATION

John Perry has recently argued that Locke's arguments for toleration do draw on a proto-Rawlsian idea of public reason. This essay seeks to show how such an idea is consonant with Locke's epistemology. It therefore follows that, although Locke's arguments for toleration which have received critical attention do indeed look from this distance to be explicitly Christian, they were intended to be reasonable and capable of assent by all of Locke's contemporaries. Moreover, it is argued that there is, within Locke's writings, one further argument for toleration, whose dependence on Christian premises is less immediate. This is the argument that toleration helps people to form their religious beliefs with regards only to the relevant considerations.

A. Locke's arguments for religious toleration which have received critical philosophical attention

In a footnote in *Political Liberalism*, John Rawls draws out seven statements from Locke's *A Letter Concerning Toleration*: 1) God has given no man authority over another; 2) no man can abandon the care of his own salvation to the care of another; (3) the understanding cannot be compelled by force to believe; (4) the care of men's souls is not given to the magistrate as that would determine faith by where we were born; (5) a church is a voluntary society, and no man is bound to any particular church and he may leave it as freely as he entered; (6) excommunication does not affect civil relationships; and (7) only faith and inward sincerity gain our salvation and acceptance with God.⁵ Almost all of those seven propositions appear to depend on a theological assumption which is potentially open to question.

Locke's arguments for toleration have not only been criticised for their dependence on particular conclusions within Christian theology but also on other grounds. Critics have suggested that Locke does not in fact offer a principled case for toleration but only a pragmatic rationalisation for it, that Locke presumes a division between church and state without establishing a case for such a distinction, and that Locke's denial that persecution is effective both misunderstands the motives of persecutors and the nature of human psychology.

⁵ J Rawls, *Political Liberalism* (expanded edn, 2005) 145 footnote 12.

(1) *Toleration as a prudential policy not a principled position*

Ward diagnoses tolerance as the remedy to the tendency of human beings to persecute others.⁶ He suggests that ‘The insistence of both Locke and Rousseau on separating the religious from the political, the church from the state ... [was] a prophylactic measure designed to keep the potential religious persecutors as far away as possible from the political instruments of power and violence. These are restricted to a state which concerns itself as little as possible with opinions about ultimate questions.’⁷ On this reading, Locke offers an intellectual justification for the pragmatic compromise wrought by the Treaty of Westphalia of 1648 in continental Europe and by the Act of Toleration of 1689 in England. If Ward is correct, then it would not be surprising to find that Locke’s rationalisation for toleration is not philosophically persuasive. The subtlety of Locke’s arguments suggests, however, that such an assessment is glib.

(2) *There is a division of jurisdiction between church and state*

Locke’s first argument in his *Letter Concerning Toleration* is that toleration is ‘the chief characteristic mark of the true church’. Locke argues this on the basis of a division of jurisdiction between the church and the state. Locke sets out to ‘settle the just bounds that lie between the one and the other’ and ‘to distinguish exactly the business of civil government from that of religion’.⁸ For Locke, the purpose of the state ‘is to preserve and advance the civil goods of its members, which Locke identifies as bodily life, health, and liberty, as well as the secure possession of external things needful for these, such as property, money, houses, furniture and so on’.⁹ The church, on the other hand, is concerned with saving souls which it does by means of ‘the inward persuasion of mind’.

This distinction in purpose correlates to a difference in jurisdiction. The jurisdiction of the state relates solely to humans’ civil interests; the province of religion relates to the salvation of souls. According to Locke,

⁶ BK Ward, *Redeeming the Enlightenment: Christianity and the liberal virtues* (2010) 118.

⁷ Ward, *Redeeming the Enlightenment* 128.

⁸ J Locke, *Political Writings* (1993) 393.

⁹ Ward, *Redeeming the Enlightenment* 123.

‘The commonwealth seems ... to be a society of men constituted only for the procuring, preserving, and advancing their own civil interests.

Civil interests I call life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like.

It is the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general and to every one of his subjects in particular the just possession of these things belonging to this life. ...

Now that the whole jurisdiction of the magistrate reaches only to these civil concerns, and that all civil power, right and dominion, is bounded and confined to the only care of promoting these things; and that it neither can nor ought in any manner to be extended to the salvation of souls, these following considerations seem unto me abundantly to demonstrate.’ (pp.393-94).

The three considerations Locke then develops are that: (1) the care of souls is not committed to the civil magistrate, any more than to other men (p.394); (2) the care of souls cannot belong to the civil magistrate, because his power consists only in outward force; but true and saving religion consists in the inward persuasion of mind, without which nothing can be acceptable to God (p.395); (3) the care of the salvation of men’s souls cannot belong to the magistrate because in that case the people of only one country would be in the right, and all the rest of the world would be put under an obligation of following their princes in the ways that lead to destruction (p.396).

Whilst those arguments might give a subject grounds for not wishing to give up their responsibility for their own salvation to the magistrate, they do not give a magistrate much of a reason not to claim jurisdiction over this aspect of their subjects’ wellbeing.¹⁰ They depend on the plausibility of Locke’s contention that the subject has a natural right, in the state of nature, to look out for their own salvation, and that the subject has not surrendered or transferred that natural right to the magistrate.

¹⁰ Tuckness suggests that in Locke’s later writings on toleration he develops an argument that magistrates are not commanded by natural law to use force to promote the true religion because God, as author of natural law, takes into account the fact that so many magistrates wrongly believe that their religion is the true one: see A Tuckness, ‘Locke’s Main Argument for Toleration’, (2008) 48 *Nomos* 114-138.

Schwartzman notes that Locke is aware that his claim that the natural right to look out for one's own salvation would not be transferred to the magistrate as part of the social contract is in need of justification. He identifies Locke as putting forward five mutually supportive claims as the necessary justification: In addition to the two already seen, (1) Christian doctrine permits only non-coercive forms of proselytizing; (2) every individual has authority over the pursuit of his or her own salvation, Locke adds, (3) there is no guarantee that the state will establish the true religion because the magistrate is equally as fallible as everyone else, (4) the highest obligation of a person is to seek the truth about what is necessary for salvation and to act accordingly, and (5) the coercive powers of the state cannot influence individual belief, except to expose those who are weak-minded to the sin of hypocrisy.¹¹

(3) *Forced faith is no faith at all*

Locke himself believed his strongest argument was the argument that forced faith is no faith at all.

“But, after all, the principal consideration, and which absolutely determines this controversy, is this: Although the magistrate's opinion in religion be sound, and the way that he appoints be truly Evangelical, yet, if I be not thoroughly persuaded thereof in my own mind, there will be no safety for me in following it. ... I cannot be saved by a religion that I distrust and by a worship that I abhor. ... Faith only and inward sincerity are the things that procure acceptance with God.” (p.410).

Like the early Baptist pleas for toleration, Locke argues that religious persecution is *ineffective*: religion is a matter of belief and belief cannot be coerced.¹² At most a government can force a person to perform certain external religious rituals. What the government cannot do is change people's hearts so that they come to believe genuinely in the practices which they are compelled to participate or in the theology which underlies them.

There are several obvious difficulties with Locke's position. Looking backwards into Christianity's past, Locke's assertion that religious persecution is ineffective is contradicted

¹¹ M Schwartzman, 'The Relevance of Locke's Religious Arguments for Toleration' (2005) 33 Political Theory 678-705 at 684-85.

¹² Ward, *Redeeming the Enlightenment* 124.

by that reluctant but influential apologist for persecution, Augustine. In the face of the guerrilla tactics and persistent violence of Donatism, Augustine had somewhat reluctantly produced a justification of persecution. However, in addition to supporting their persecution on the grounds that this was necessary to ensure civil peace, he also claimed that: ‘experience showed him that individuals who became Catholics through fear of the law often grew into a deep and genuine faith (Letter 185). Coercive laws, therefore, could be used for the proper purpose of bringing about true repentance, to the benefit of the former sectarian.’¹³ As Jeremy Waldron points out, what the persecutor is attempting to do is to exert sufficient pressure on the persecuted to cause her to change her beliefs. The persecution alters the balance of considerations weighing in the mind of the persecuted, rendering the privileged faith more attractive and the persecuted faith more costly to follow.¹⁴

Looking outside of Christianity, Locke’s argument assumes that *genuine belief* is what matters in questions of religion. That is, if not a peculiarly Christian understanding of the central requirement of religion, at least one to which Christianity has given special emphasis. It is unlikely to have any traction with an Islamist who believes that what Allah is most interested in is not questions of belief but in matters of behaviour. In those circumstances, the imposition of sharia law is warranted and it is irrelevant whether people are obeying sharia law because they are compelled to or because they have genuinely come to believe that the central tenets of Islam are true.

Was Locke unaware of those objections or are there reasons within his thought why he thought they should be disregarded? It will be argued in the next section that examination of Locke’s epistemology reveals that although Locke did assume that genuine belief was what mattered in questions of religion, he was convinced that those who adopted his epistemological method would be immune to the pressures of persecution.

B. Locke’s projects in Epistemology and Political Philosophy

Locke’s mature writings include his two treatises on government, his *Letter Concerning Toleration* and its two sequels, his *Essay Concerning Human Understanding* and his

¹³ EM Atkins and RJ Dodaro, *Augustine’s Political Writings* (2001) xxiii.

¹⁴ Waldron, ‘Locke: Toleration and the Rationality of Persecution’, in J Horton and S Mendus (eds) *John Locke: A Letter Concerning Toleration in focus* (1991) 98, 118-119; Schwartzman, ‘The Relevance of Locke’s Religious Arguments for Toleration’ 687-690.

anonymously published *The Reasonableness of Christianity*. Although it is tempting to see these as two or three wholly separate projects: one in political philosophy, one in epistemology and possibly a third in natural or Christian theology, I want to argue that certainly so far as Locke's arguments for toleration are concerned, his writings are mutually supporting.

Amongst scholars there is not only a debate about the extent to which Locke's political philosophy and epistemology are illuminated by one another but also about how to read the *Essay Concerning Human Understanding* itself. Most scholarly attention has focussed on books I and II, but Nicholas Wolterstorff has drawn attention to Locke's argument in book IV. In book IV of the *Essay* Locke offers an ethics of belief, that is to say, a methodology to be used when approaching matters of belief, and a claim about the *telos* of believing.¹⁵

Wolterstorff claims that Locke's famous *Essay Concerning Human Understanding* is an attempt to persuade his fellow citizens to examine their beliefs on questions of "maximal concernment" and to formulate them solely by reference to their truth, arrived at through the application of Locke's epistemology. As Locke puts it in Book IV, 17, 24:

"He that believes without having any reason for believing, may be in love with his own fancies; but neither seeks truth as he ought, nor pays the obedience due to his Maker, who would have him use those discerning faculties he has given him, to keep him out of mistake and error."

On Wolterstorff's reading, Locke proposes a methodology for determining truth on religious questions and whose first but not sole maxim is: "Let Reason be your guide".¹⁶ As Wolterstorff reconstructs Locke's thought, one's opinions on questions of "maximal concernment" are to be determined solely with regards 'to truth and falsehood and the probability thereof. ... [W]e are to practice what [Locke] calls "indifference" to all other merits and demerits in beliefs.'¹⁷

¹⁵ N Wolterstorff, *John Locke and the ethics of belief*, Cambridge Studies in Religion and Critical Thought, (1996) xiv-xv.

¹⁶ Wolterstorff explores how this maxim is qualified in *John Locke and the ethics of belief* at 90-92.

¹⁷ Wolterstorff, *John Locke and the ethics of belief*, 64, 84, 180; cf. the emphasis placed on the love 'of truth for truth's sake' in Locke, *An Essay Concerning Human Understanding*, book IV, chapter 19, para. 1.

On this approach, *An Essay Concerning Human Understanding* sets out Locke's account of how one should arrive at one's beliefs on matters of religion. On questions of maximal concernment, 'it is important that one be concerned solely with determining whether P is true or false, entirely "indifferent" to any other value that believing or disbelieving P might have for one.'¹⁸ *The Reasonableness of Christianity* then does two things. First, it shows what Locke or anyone applying the Lockean method¹⁹ should arrive at in terms of conclusions on religious questions. Second, it suggests that at least amongst those who have come to such reasonable conclusions, there should be mutual respect and toleration.

The *Letter Concerning Toleration* is not part of a separate project but assumes the validity of Locke's epistemology of how religious beliefs should be arrived at. Locke is convinced that only faith and inward sincerity gain our salvation and acceptance with God. Because of the imperative of sincerity in religious questions, Locke regards the enquiry into religious matters as a non-delegable duty.²⁰ It follows that the individual would be failing in his duty were he to content himself with accepting the religion imposed on him by the magistrate.

We are now ready to see how Locke might answer the young Waldron's question that Locke has not understood how persecution might be effective. Locke's response would be that persecution would be futile if used against someone who was putting Locke's method into practice. People applying Locke's method would be impervious to the effects of persecution because they have been tutored to ensure that only considerations of truth and falsehood are relevant to their enquiries into religious questions. Any blandishments, inducements, penalties or punishments attached to the adoption of particular standpoints would be disregarded by them.

C. Public Reason foreshadowed in Locke

Locke's *Letter Concerning Toleration* and his *Second Treatise of Government* are couched in explicitly Christian terms. Locke writes as a Christian to persuade other Christians (including

¹⁸ Wolterstorff, *John Locke and the ethics of belief* 84.

¹⁹ There is considerable debate about whether to read *The Reasonableness of Christianity* as Locke's account of his own religious views or rather as merely his account of the lowest common denominator of Christian belief which is theologically acceptable within a broad church or family of churches. There is room for that debate but it falls outside the scope of the present essay.

²⁰ Locke, *Political Writings* 394.

rulers who he assumes are Christians) in the context of a society which purports to be predominantly Christian. Locke does not just argue from Christian presuppositions, he makes Christian arguments.²¹ However, precisely because Locke believes that his Christian convictions can be arrived at on the basis of reason, Locke would see his Christian arguments as reasonable and accessible to all.

(1) *Locke's arguments against enthusiasm*

Locke's concern for reasonableness is also evident in his arguments in *An Essay Concerning Human Understanding* against enthusiasm. Locke was arguing on two fronts. In his *Letters Concerning Toleration*, he was arguing against those, such as Hobbes, who thought that someone's views on religious matters ought to be dictated by the Crown-in-Parliament. In his work on epistemology, he was arguing against, amongst others, those enthusiasts who claimed to have received a direct and unique revelation from God.

In Book IV of the *Essay Concerning Human Understanding*, Locke starts from the premise that although revelation from God is, in principle, the most reliable form of knowledge, in practice our certainty of its reliability can only be as good as (1) our degree of assurance that it really is a revelation from God and (2) our degree of assurance that we understand the revelation correctly (Book IV, chapter 16, para. 14; chapter 19, para. 10). A third party, faced with a claim by an enthusiast to have reached a direct revelation from God is, according to Locke, in a poor position to judge both whether the enthusiast has in fact received a revelation from God and, even if that was the case, whether the interpretation the enthusiast is giving to the revelation is correct. The third party does, however, possess one sufficient faculty which may be applied to the task. According to Locke, reason can judge whether or not something is a revelation from God (Book IV, chapter 18, paras. 7 and 10; chapter 19, para. 14). By the application of this criterion, Locke distinguishes between those matters which can be discerned according to reason, those matters of faith which are above reason, and those purported matters of faith which must be rejected because they are contrary to reason (Book IV, chapter 17, para. 23; chapter 18, para. 10). The metaphor Locke uses to describe these distinctions is that of "boundaries" (Book IV, chapter 18, para. 11) and he

²¹ Perry, *Pretenses of Loyalty: Locke, Liberal Theory, and American Political Theology* (2011) 109.

deploys the metaphor in order to criticise ‘those absurdities that fill almost all the religions which possess and divide mankind.’

Locke regards the enthusiasts’ pretence to have received immediate revelation and self-delusion that ‘they are under the peculiar guidance of heaven in their actions and opinions’ as an illegitimate shortcut to ‘the tedious and not always successful labour of strict reasoning’ (Book IV, chapter 19, para. 5). Locke warns ‘that he that takes away reason to make way for revelation, puts out the light of both’ (Book IV, chapter 19, para. 4).

Although Locke did not wish to forbid religious arguments on public questions, he was anxious to rule out certain kinds of religious arguments, those based on enthusiasm. Religious arguments made on public questions should conform to the requirements of reasonableness.²² The *Letters Concerning Toleration* are therefore to be read as having been presented by Locke on such a basis.

(2) *Toleration and Public Reason in Locke*

Although I have argued that Locke’s epistemology and his arguments for toleration are mutually supporting, it is not the case that because someone’s beliefs are unreasonable they should not be tolerated. In his *Essay Concerning Human Understanding* Locke offers an account of how reasoning should be conducted. On Locke’s account, atheists, Catholics and enthusiasts are all unreasonable because they do not arrive at their religious beliefs by the application of the Lockean method. Atheists are unreasonable in their denial of the existence of God, Catholics are unreasonable in their reliance on authority and enthusiasts irrational in their dependence on non-verifiable personal revelations.

Enthusiasts are to be tolerated politically even though their beliefs are not rationally founded. Atheists are not to be tolerated because the consequence of their denial of God’s existence is, in Locke’s view, that their word cannot be trusted. In the case of Catholics, the reason why they are not to be tolerated is because of their treasonous allegiance to a foreign sovereign.

²² M Eisenstein, *Religion and the Politics of Toleration: How Christianity builds Democracy* (2008) 17-18.

Were that to be renounced, their unreasonable reliance on authority for their beliefs would not be sufficient reason not to tolerate them.²³

Nonetheless, insofar as the beliefs of Catholics and enthusiasts are irrational, they are not fit for adoption as public policy. Such beliefs are to be tolerated in private but political community cannot be founded upon them.

Locke grounds his political liberalism not on a rejection on the possibility of religious truth but on the practical impossibility of providing satisfactory public verification of it other than through the process of reasoning.²⁴ However, Locke does not, as a result, abandon any reference to Christian ideas. A major concern of Locke's *The Reasonableness of Christianity*, was to argue that despite the differences between the Christian churches there was still an irreducible core of Christian belief, centred on its commitment to Jesus as the Messiah, which was held in common. Locke therefore argues for toleration on explicitly Christian premises which he believes to satisfy the requirement of reasonableness. In *The Reasonableness of Christianity*, Locke presents his lowest common denominator account of Christianity *as public reason*. At the level of abstraction and reduction which Locke proposes, Christianity can form the basis for a constitutional settlement and a foundation for basic justice in England to which any reasonable person, applying Locke's method, could assent.

(3) *Settling the boundaries between government and religion*

As John Perry²⁵ and Robert Erlewine²⁶ have recently pointed out, the governing metaphor which John Locke uses to adjudicate conflicts between religious and civic duty is the image of borders or boundaries. 'This is clear from the start in the *Letter Concerning Toleration*: 'I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the *just bounds* that lie between the one and the other.'²⁷ The problem is that, to Rousseau's chagrin and dismay, religion, despite its ostensible

²³ J Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (2002) 220-223.

²⁴ Ward, *Redeeming the Enlightenment* 129.

²⁵ J Perry, *Pretenses of Loyalty* 'Arguing Out of Bounds: Christian Eloquence and the End of Johannine Liberalism'.

²⁶ R Erlewine, *Monotheism and Tolerance: Recovering a Religion of Reason* (2010) 27.

²⁷ Locke, *Political Writings* 393.

prioritizing of a spiritual dimension or an after-life, stubbornly insists on affecting the real world, here and now. At least three solutions to this problem have been proposed.

One solution, proffered by the earliest Baptists in face of royal tendencies towards absolutism, would be for religions to retreat exclusively into the world of conscience, subject only to such manifestation in worship as is necessary to make liberty of conscience effective.

The second solution is Rousseau's. Rousseau's solution involves the re-definition, re-organisation, or re-education of religion so that that its concerns are wholly spiritual. Religions such as Christianity and Islam which insist on affecting the material parts of their adherents' lives must be Gnosticized or replaced with a religion which is Gnostic in its outlook. Further because Rousseau believed that 'It is impossible to live at peace with those whom we regard as damned ... we positively must either reclaim or torment them',²⁸ the transformation of religion also involves a rejection of the claims of religious exclusivism so that religions renounce the claim that they alone possess the keys to heaven.

The third solution is Locke's. Unlike Rousseau, Locke does not deny that religion may properly have an effect in the here and now.²⁹ Instead, Locke seeks to establish a public basis for limits on government, to delineate an area in which religion may affect people's lives, but one which is demarcated on public, not religious, grounds. With regards to their private lives, people should apply Locke's method for discerning their religious duties but are not to be persecuted solely on the grounds that they do not. However, before religious beliefs can contribute to the resolution of political questions, they must satisfy Locke's test of reason. The boundary between the private and the political is therefore in need of definition and of policing. For Locke, it is the idea of the social contract which performs this crucial role. Under the social contract, the magistrate acquires jurisdiction in respect of civil concerns but not in relation to the salvation of souls. That matter falls outside the limits of the magistrate's power.

²⁸ J-J Rousseau, *The Social Contract*, book 4, chapter 8 (1968) 121-22.

²⁹ J Perry has rightly drawn attention to currents within Locke's writings which suggest a tendency to re-define religion as Rousseau had done, see *Pretenses of Loyalty* (2011) 122.

(4) *The test of what is lawful in the ordinary course of life*

Locke's boundary between civil concerns and the salvation of souls does not entirely resolve the issue of the manifestation of religious belief. The test which Locke applies to determine questions of this nature is defined by the phrase, 'lawful in the ordinary course of life'.³⁰ This phrase appears repeatedly in the *Letter Concerning Toleration*.

"So, for example, he writes, 'Is it permitted to speak Latin in the market-place? Let those that have a mind to it be permitted to do it also in the Church. Is it lawful for any man in his own house to kneel, stand, sit, or use any other posture; and to clothe himself in white or black, in short or in long garments? Let it not be made unlawful to eat bread, drink wine, or wash with water in the church.'³¹

As Perry points out, what Locke does in this passage is to restate all of the key controversies of his day in the language of public reason, with reference to political values. If these are 'lawful in the ordinary course of life,' then they cannot be made unlawful due to objections arising from what Rawls would later call comprehensive doctrines. Locke not only argues for the toleration of these particular practices, he also sets the terms of the debate and predetermines what would count as a valid argument in favour or against the toleration of a particular contested religious practice.³²

D. Locke's further argument for toleration: Toleration helps people to form their religious beliefs with regards only to the relevant considerations

So far it has been argued that Locke's arguments for toleration draw heavily on a combination of theological and epistemological commitments. From (Protestant) Christian theology, Locke draws the fundamental principles that sincere belief is what counts with God, and that every human being must discern for themselves the truth about God. In terms of epistemology, Locke argues that reason should guide the quest for truth and that all other merits and demerits in beliefs should be disregarded. As has already been suggested, these commitments establish why persecution would be ineffective in a society whose members adopted the Lockean method of enquiry into religious truth.

³⁰ Locke, *Political Writings* 411-415.

³¹ Locke, *Political Writings* 430.

³² Perry, 'Arguing Out of Bounds'.

As we noted in the introduction, contemporary philosophers have judged Locke's arguments in favour of toleration as they have been enumerated by the criterion of Rawlsian public reason and found them to be wanting. If it is correct that Locke's epistemology and political philosophy are mutually supporting in the way I have suggested, is there within Locke's writings an argument in favour of religious toleration which might satisfy Locke's own standard of public reasonableness?

Locke clearly thought that the principles set out in the first paragraph of this section were reasonable. He argued that these principles show why government does not have jurisdiction over religious matters because it would not be reasonable for human beings in the state of nature to have transferred such jurisdiction to a magistrate. Within the *Letter*, when Locke discusses a human being's highest obligation to discern what God requires to obtain God's favour and attain eternal happiness, Locke then turns immediately to discuss questions relating to men's temporal lives on earth and the reasons why they might enter into a social contract.

'But, forasmuch as men thus entering into societies, grounded upon their mutual compacts of assistance for the defence of their temporal goods, may, nevertheless, be deprived of them, either by the rapine and fraud of their fellow citizens, or by the hostile violence of foreigners, the remedy of this evil consists in arms, riches, and multitude of citizens; the remedy of the other in laws; and the care of all things relating both to one and the other is committed by the society to the civil magistrate. This is the original, this is the use, and these are the bounds of the legislative (which is the supreme) power in every commonwealth. I mean that provision may be made for the security of each man's private possessions; for the peace, riches, and public commodities of the whole people; and, as much as possible, for the increase of their inward strength against foreign invasions.

These things being thus explained, it is easy to understand to what end the legislative power ought to be directed and by what measures regulated; and that is the temporal good and outward prosperity of the society; which is the sole reason of men's entering into society, and the only thing they seek and aim at in it. And it is also evident what liberty remains to men in reference to their eternal salvation, and that is that every one should do what he in his conscience is persuaded to be acceptable to the Almighty, on whose good

pleasure and acceptance depends their eternal happiness. For obedience is due, in the first place, to God and, afterwards to the laws.’ (p.422-3)

As he had already done once before in the *Letter*, Locke excludes religion from the scope of the social contract and the consequent jurisdiction of the magistrate. Human beings do not need the magistrate’s assistance to help them to consider religious questions or to guide them to heaven.

‘For the political society is instituted for no other end, but only to secure every man's possession of the things of this life. The care of each man's soul and of the things of heaven, which neither does belong to the commonwealth nor can be subjected to it, is left entirely to every man's self.’ (p.423).

This Lockean argument for freedom of religion runs as follows: In the state of nature, human beings enjoy both a right to their temporal goods and a right to determine religious questions for themselves. The right to determine religious questions for themselves is amply provided for in the state of nature but the right to their temporal goods is precarious. Human beings therefore have reasons to enter into a social contract in order to improve the protection of their temporal goods. They have no reason to include the right to determine religious questions amongst the matters which they hand over to the magistrate because doing so is not more likely to lead to either of the two things which matter in religious questions: sincerity or truth. It follows that the right to determine religious questions is reserved by human beings and outside the magistrate’s jurisdiction.

Within the *Letter* itself, the argument that giving the magistrate jurisdiction to determine religious questions is not more likely to lead to truth than individual enquiry is only partially set out. Locke does argue that the magistrate and the ordinary man are on the same epistemological level, but this is not his main point. Locke briefly considers the possibility that the prince may be at an epistemological advantage but says that even then the ordinary man ought to make his own enquiries because if the prince has erred, despite that head start, he cannot make up to his subject for the loss of heaven (p.408). This is, however, addressed by Locke purely for the sake of the argument. Locke’s main point is what follows:

‘The one only narrow way which leads to heaven is not better known to *the magistrate* than to private persons, and therefore I cannot safely take him for my guide, who may probably be as ignorant of the way as myself, and who *certainly is less concerned for my salvation than I myself am*. Amongst so many kings of the Jews, how many of them were there whom any Israelite, thus blindly following, had not fallen into idolatry and thereby into destruction? Yet, nevertheless, you bid me be of good courage and tell me that all is now safe and secure, because the magistrate does not now enjoin the observance of his own decrees in matters of religion, but only the decrees of the Church. Of what Church, I beseech you? Of that, certainly, which likes him best.’ (p.408, emphasis added)

Not only does the prince have no epistemological head-start over the ordinary man, and not only can the prince not compensate the ordinary man if the prince’s judgment on matters of religion is erroneous, the prince’s judgment on such matters is not to be trusted because it is vitiated by two factors: a lack of concern for the subject’s salvation and an irrelevant concern for the stability of the prince’s rule.

If truth and sincerity are the relevant criteria by which beliefs are to be judged, Locke objects on principle to interference by rulers with the beliefs of citizens because the rulers are not likely to be motivated solely by those criteria. That argument derives its force from Locke’s epistemology in the *Essay Concerning Human Understanding*. Religious questions are, for the individual, matters of maximal concernment; they are therefore matters on which the only relevant criterion is truth. The salvation of his subjects is not a matter of maximal concernment to the magistrate; it matters to them as individuals far more than it matters to him. What is of considerable concernment to the magistrate is, however, the stabilisation of his rule. This is, however, a very different criterion from the criterion of truth. The magistrate has every incentive to promote the interests of the church ‘which likes him best’ rather than identifying conscientiously that one seems to him, having applied Locke’s methodology, to be closest to the truth on religious questions.

It is not only that it is beyond the scope of human legislatures and courts to rule definitively as to which form of religion is the correct one;³³ it is that there are positive reasons why such

³³ An argument which has received judicial approval, see the Australian Family Court decision *In the Marriage of Paisio (No.2)* (1978) 5 Fam LR 281 at 283; R Ahdar and I Leigh *Religious Freedom in the Liberal State* (2005) 58.

a ruling is likely to be affected by concerns about preserving political power and the social order which are irrelevant to the question which requires determination: namely, is there a God and, if so, what does that God require of me?

If the argument for freedom of religion based on the criterion of truth is entailed by Locke's epistemology then one of the objections to Locke's construction of the social contract is overcome. Locke has an answer for his critics as to why religion is not one of the interests or rights which individuals transfer to government. Civil interests are transferred to the care of the government because that is the means by which they can be best secured for individuals. Religious questions are reserved to the individuals themselves because that is the means by which the truth is most likely to be discerned. Re-constructed in this way Locke's account is an argument in defence of a natural right to freedom of religion, which right cannot reasonably be surrendered to a magistrate under a social contract. It is both intelligible and powerful. But it is not free of any presuppositions derived from Christianity. Locke's argument still presumes that what matters most to God is sincerity, that the salvation of one's soul is a matter of ultimate individual concern, and that truth is the overriding issue on questions of religion. Locke does not regard the appeal to those presuppositions as a conversation-stopper. He thinks that the reasonableness of those presuppositions can be defended and he has done so at various places in his writings.

Locke therefore remains a complex, and perplexing, thinker, on the one hand, someone who wore his Christianity on his sleeve, and on the other hand, one who displayed no little skill in advancing arguments which he hoped would persuade everyone on the basis of their public reasonableness.

II. TOLERATION AND PUBLIC REASON IN RAWLS

Rawls was aware of the claim that religious toleration is simply a *modus vivendi* formalised by the Treaty of Westphalia. He wanted to give an account of political justice to which those of differing religious beliefs and none can all subscribe and which provided a basis for mutual toleration as something more solid than 'a compromise compelled by circumstances'.³⁴ Moreover, the Rawls of *Political Liberalism* wished to do so from solely

³⁴ The phrase comes from Rawls *Political Liberalism* 169.

within the resources available to him on the basis of his own self-imposed restrictions of public reason.

A. Toleration in Rawls

(1) *The Right to Toleration*

There is no doubt that, for Rawls, freedom of religion is important. However, Rawls does not so much argue for toleration as assume that freedom of religion will be chosen by the actors in the original position. Knowing that they will have comprehensive doctrines but ignorant as to what they will be, the actors in the original position will allow for the toleration of as wide a range of comprehensive doctrines, including religious ones, as possible.

Some of the earliest advocates for toleration, the seventeenth century Baptists such as Helwys and Busher believed that without persecution the truth, understood in the singular, would triumph.³⁵ For Rawls, by contrast, the natural result of a free market in religion is that people will hold a diversity of reasonable comprehensive doctrines, some religious in nature and others not. It is a key assumption of Rawls that ‘the diversity of reasonable comprehensive religious, philosophical and moral doctrines ... is a permanent feature of the public culture of democracy.’³⁶

Permitting the persecution or suppression of minority religions on the basis that the one’s religious or moral beliefs will probably be those of the majority is not something the actors in the original position could risk because to do so ‘would show that one did not take one’s religious or moral convictions seriously, or highly value the liberty to examine one’s beliefs.’³⁷ Similar considerations rule out trading religious freedom for other benefits. ‘An individual recognizing religious and moral obligations regards them as binding absolutely in the sense that he cannot qualify his fulfilment of them for the sake of greater means of promoting his other interests.’³⁸ Rawls shared with Locke the conviction that one’s religious beliefs are, if one is serious about them, incommensurable with any other interests which one has.

³⁵ R Jordan, *The Development of Religious Toleration in England 1603-1640* (1936) 294.

³⁶ Rawls, *Political Liberalism* 36.

³⁷ Rawls, *A Theory of Justice* (revd. edn, 1999) 181.

³⁸ Rawls, *A Theory of Justice* 182.

Rawls' case for toleration rests on inevitable pluralism. For Rawls, given the various factors which affect human reason, people will always disagree about religious questions and therefore it is futile to seek to impose uniformity. This does not mean that Rawls was sceptical about the possibility of truth on religious questions. Rawls denies that he is committed to dogmatic agnosticism, i.e. the impossibility of knowing or demonstrating which religious beliefs are true. He writes that 'a political conception of justice need be no more indifferent, say, to truth in philosophy and morals than the principle of toleration, suitably understood, need be indifferent to truth in religion.'³⁹ What Rawls rules out is not the possibility of religious truth but the impossibility of satisfactory public justification. It is the recognition of epistemological uncertainty which requires people to conform to the restrictions of public reason when determining what rules ought to govern their common law. According to Rawls: 'in recognizing others' comprehensive views as reasonable, citizens also recognize that, in the absence of a public basis of establishing the truth of their beliefs, to insist on their comprehensive view must be seen by others as their insisting on their own beliefs.'⁴⁰

Satisfactory public justification is required, for Rawls, because of the obligation to treat others with equal concern and respect. Freedom of religion is and remains, for Rawls, a corollary of the fact that human beings are free and equal. The idea that human beings are free and equal is one of the claims which Rawls has arrived at by the process of working towards a reflective equilibrium. Although he is reluctant to bring this to the forefront, in a footnote in *A Theory of Justice*, Rawls maintains that these 'claims depend solely on certain natural attributes the presence of which can be ascertained by natural reason pursuing common sense methods of enquiry'.⁴¹

As Dworkin pointed out, *A Theory of Justice* is an inherent natural rights theory. Rawls's account of 'justice as fairness rests on the assumption of a natural right of all men and women to equality of concern and respect, a right they possess not by virtue of birth or characteristic or merit or excellence but simply as human beings with the capacity to make plans and give

³⁹ Rawls, *Political Liberalism* 150.

⁴⁰ Rawls, *Political Liberalism* 247.

⁴¹ Rawls, *A Theory of Justice* 442 footnote 30.

justice.⁴² Human beings have the right to be treated with equal concern and respect because they are moral persons.⁴³ For the Rawls of *A Theory of Justice*, justice as fairness is what is owed to human beings because they are free and equal.

This is still the case for the Rawls of *Political Liberalism*. Rawls remains committed to the Kantian assumption that the parties in his original position, and that all members of the democratic society whose interests the parties in the original position represent, are free and equal.⁴⁴ The aim of the parties in the original position is, ‘to agree on principles of justice that enable the citizens they represent to become full persons, that is, adequately to develop and exercise fully their moral powers and to pursue the determinate conceptions of the good they come to form.’⁴⁵

Although the Rawls of *Political Liberalism* allows that not all the participants in the overlapping consensus will be Rawlsians, he maintains that those who hold to either a religious or non-religious comprehensive doctrine must understand and accept ‘that, except by endorsing a reasonable constitutional democracy, there is no other way fairly to ensure the liberty of its adherents *consistent with the equal liberties of other reasonable free and equal citizens*.’⁴⁶ Whether Rawlsian liberals or not, all participants in the overlapping consensus must accept, as one of their points of commonality, the affirmation of all other participants as reasonable free and equal citizens and their consequent right to equal liberties.

(2) *The Limits on Toleration*

For Rawls, reasonable comprehensive doctrines, including religious ones, ‘hold that it would be unreasonable to use political power to enforce our own comprehensive view’.⁴⁷ However, Rawls extends religious toleration beyond such reasonable comprehensive doctrines, even to those who are intolerant. ‘The limitation of liberty [of religion] is justified only when it is

⁴² ‘Justice and Rights,’ in R Dworkin, *Taking Rights Seriously* (1977) 182.

⁴³ Rawls, *A Theory of Justice* 447. Rawls goes on to deny that ‘basic rights and liberties should vary with capacity, ... provided the minimum for moral personality is satisfied, a person is owed all the guarantees of justice.’

⁴⁴ Rawls, *Political Liberalism* 167.

⁴⁵ Rawls, *Political Liberalism* 77.

⁴⁶ Rawls, ‘The Idea of Public Reason Revisited’, in *Political Liberalism*, expanded edn., 460.

⁴⁷ Rawls, *Political Liberalism* 138.

necessary for liberty itself, to prevent an invasion of freedom that would be still worse.⁴⁸ Thus, ‘the tolerant sects have the right not to tolerate the intolerant *in at least one circumstance*, namely, when they sincerely and with reason believe that intolerance is necessary for their own security.’⁴⁹ ‘Liberty of conscience is limited ... by the common interest in public order and security.’⁵⁰ What other circumstances there might be in which the intolerant are not to be tolerated, Rawls does not say.

B. Public Reason in Rawls

Despite the wide ambit of religious views which are to be tolerated, within Rawls’s work, toleration of different religions appears to come at a price: the price of silence on certain questions which are to be adjudicated solely in accordance with public reason.⁵¹ Rawls’s public reason takes the form of a modified Kantian categorical imperative: always reason publicly on fundamental political questions so that your reasons could be accepted by someone who disagreed with your comprehensive doctrine. Rawls *believes* that ordering fundamental political questions in accordance with public reason will enable us to live together in a just and fair way.⁵²

For Rawls, in *A Theory of Justice*, public reason has both the Enlightenment characteristics of being public and of being demonstrable to all. In *Political Liberalism*, Rawls no longer seeks to assert universal demonstrability but contends instead that public reason can be the result of an overlapping consensus.

In Rawls’s thought, the idea of public reason is another manifestation of the idea that human beings are to be treated with equal concern and respect. People are treated with equal concern and respect when constitutional essentials and questions of basic justice are resolved through the application of public reason because then all citizens are able to understand and agree with the reasons given for those fundamental rules. Rawls wants to foster in citizens a genuine belief that the legal obligations imposed on them are just, and not simply the

⁴⁸ Rawls, *A Theory of Justice* 188; DA Dombrowski, *Rawls and Religion: The Case for Political Liberalism* (2001) 102.

⁴⁹ Rawls, *A Theory of Justice* 191-192, emphasis added.

⁵⁰ Rawls, *A Theory of Justice* 186.

⁵¹ Rawls, *Political Liberalism* 44.

⁵² Dombrowski, *Rawls and Religion* 52.

consequence of overwhelming force.⁵³ In a state where constitutional essentials and questions of basic justice have been determined through the application of public reason, Rawls thinks that all its citizens will have reasons to believe that the legal obligations imposed on them are just.

Criticisms of the limitations of Rawls's idea of public reason are multiplying.⁵⁴ The main criticism is that Rawls's account of public reason places those who hold to religious or other comprehensive doctrines at a disadvantage in the public square because it obliges them to argue with at least one hand tied behind their backs. In this essay it will be argued that Rawls's account of public reason should be rejected because: (1) it depends on Rawls's commitment to the view that the existence of God can make no difference to our moral reasoning; (2) it is unsustainable in the light of Rawls's concession that the content of public reason, and the degree to which comprehensive doctrines may be appealed to within public reason, varies across different times and different places; and (3) Rawls's own starting points are ones whose original formulation, in the work of John Locke, and whose ultimate justification, may well depend on commitments to a theistic comprehensive doctrine.

(1) *Rawls's account of public reason depends on Rawls's commitment to the view that the existence of God can make no difference to our moral reasoning:*

When Rawls published his account of 'public reason' he was met with howls of protest by his religious and communitarian critics. Although he was allowing them onto the public square, he had tilted the ground underneath them so as to preclude them from bringing the full force of their convictions to bear on constitutional essentials and questions of basic justice. At least on fundamental political questions, religious arguments could never be weight-bearing. Rawls's response to those criticisms was twofold. On the one hand, he emphasised that the requirement to abide by the strictures of public reason applies only to fundamental political questions and not to the "background culture" of civil society.⁵⁵ On the other hand, he

⁵³ Rawls, *Political Liberalism* 109.

⁵⁴ N Wolterstorff, 'The Role of Religion in Decision and Discussion of Political Issues', in N Wolterstorff and R Audi (eds), *Religion in the Public Square; The Place of Religious Convictions in Political Debate* (1997); Lenn E. Goodman, *Love Thy Neighbor as Thyself* (2008) 175 footnote 87 says that Rawls's stance 'that all arguments that appeal to "comprehensive doctrines" – religious or metaphysically grounded claims about genuine right or wrong – are out of place in public policy discourse – [is] a markedly pickwickian notion of liberalism.'

⁵⁵ Rawls, *Political Liberalism* 14.

allowed for reliance on comprehensive doctrines even in relation to fundamental political questions, subject to what he called “the proviso”.

According to Rawls’s “proviso”, we may ‘introduce into political discussion at any time our comprehensive doctrine, religious or non-religious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support.’⁵⁶

Those responses have not satisfied Rawls’s critics though Rawls presumably intended that they would do so. From *Political Liberalism* onwards, Rawls was committed to giving an account of political liberalism which people holding to as wide as possible a range of comprehensive doctrines can endorse. It follows that Rawls would not want those who hold to a particular comprehensive doctrine and who wish its implications to be reflected in public life to be disadvantaged in articulating those implications in the public square. Rawls presumably believed that the introduction of “the proviso” removed any such disadvantage. Why did Rawls, although he was prepared to re-visit the idea of public reason, not abandon it altogether?

The answer is suggested in ‘On My Religion’, a short statement written by Rawls in the 1990s, and intended by him for the eyes of his family and friends alone. ‘On My Religion’ is not to be taken as anything other than private jottings but it nonetheless sheds important light on Rawls’s views. In ‘On My Religion’, Rawls says:

‘For my part, I don’t see how it is possible that the content and validity of reason should be affected by whether God exists or not, thinking of God as a being with will. ... [T]he content of the judgments of practical reason depends on social facts about how human beings are related in society and to one another. ... Given these facts as they undeniably are in our social world, the basic judgments of reasonableness must be the same, whether made by God’s reason or by ours. This invariant content of reasonableness – without which our thought collapses – doesn’t allow otherwise, however pious it might seem to attribute everything to the divine will.’⁵⁷

⁵⁶ Rawls, ‘The Idea of Public Reason Revisited’, in *Political Liberalism*, expanded edn., 453.

⁵⁷ Rawls, ‘On My Religion’, in T Nagel (ed) *A Brief Inquiry into the Meaning of Sin & Faith* (2009) 268.

If the content of reason is not affected by whether God exists or not, then it follows that there is no reasonable argument emanating from a comprehensive doctrine which cannot be satisfactorily reformulated so as comply with the proviso. (Any argument which could not be reformulated to comply with the proviso would rest on a proposition of revelation *contra rationem* and would be binding only, if at all, on those who accepted that revelation). It is the Rawlsian equivalent of Locke's complaint about enthusiasm. The follower of a comprehensive doctrine is not disadvantaged in the public square because, according to Rawls, there is no aspect of revealed truth which could form the basis of a public judgment which cannot be rendered in the terms of public reason.

It is because of that conviction, that Rawls is deaf to the way in which his account of public reason systematically disadvantages and excludes those who wish to make explicitly religiously-based arguments. The difficulties with Rawls's stance lie at two levels. At one level, the claim that the content of reason is not affected by whether God exists or not is a big claim and one which Rawls has not established in the few brief lines devoted to this issue in 'On My Religion'. It certainly does not follow self-evidently that unless God's reason and our reason are the same 'our thought collapses'. At a deeper level, however, if Rawls requires followers of comprehensive doctrines to admit that the content of reason is not affected by whether God exists or not, he has once again placed a barrier which prevents them from accepting political liberalism or from being treated as equals within its fold.

As we shall see in the next two sections, religiously-based arguments are not only relevant to the vexed questions of abortion, embryo stem-cell research, and same-sex marriage,⁵⁸ but also to issues such as slavery, civil rights, and even the proposition that all human beings are free and equal.

⁵⁸ See Sandel, *Justice* (2009) chapter 10 for a discussion of how the legal questions involved in such debates cannot be resolved without addressing the underlying religious and moral questions.

(2) *Rawls concedes that the content of public reason, and the degree to which comprehensive doctrines may be appealed to within public reason, varies across different times and different places:*

Had Rawls worked out the implications of his claim that the content of reason is not affected by the existence or non-existence of God, one would have expected him to demonstrate how the key religious arguments advanced in the public square could have been re-framed in terms of the proviso without loss to their content. However, in *Political Liberalism*, he adopts a different strategy. On the one hand, he asserts that the religious arguments of the abolitionists and the civil rights movement were justified because, although they explicitly relied on comprehensive doctrines, they did so ‘as the best way to bring about a well-ordered and just society in which the ideal of public reason could eventually be honoured’ (*Political Liberalism*, 250). On the other hand, Rawls concedes that ‘the appropriate limits of public reason vary depending on historical and social conditions’.⁵⁹

Although these concessions enable Rawls to co-opt the arguments of the abolitionists (*Political Liberalism*, 249), Martin Luther King Jr (*Political Liberalism*, 250) and Abraham Lincoln (*Political Liberalism*, 254), he does so on a basis which concedes that religious foundations were intrinsic to all those arguments. Moreover, Rawls does not attempt the challenge of demonstrating how none of the force, appeal or reasonableness of those arguments would have been lost had those arguments been couched in the terms of public reason alone. On the contrary, he appears to concede that those making those religiously grounded arguments were (or would have been) entitled to think ‘that the comprehensive reasons they appealed to were required to give sufficient strength to the political conception to be subsequently realized’ (*Political Liberalism*, 251). Rawlsian public reason appears to be a secularised *sensus plenior* within the arguments of the abolitionists and the civil rights movements!

It would seem to follow that Locke’s arguments for toleration, religiously-based and contentious though they now appear, would be permissible because they satisfied the requirement of public reason as it applied in Locke’s day or, if not, were nonetheless the best

⁵⁹ Rawls, *Political Liberalism* 251. C Flanders explores this point in ‘The Mutability of Public Reason’ (2012) 25 *Ratio Juris* 180-205.

way of bringing about a society in England which would one day honour the idea of public reason.

Once Rawls has made the concession that the appropriate limits of public reason vary depending on historical and social conditions, it becomes difficult to see how the idea of public reason does anything more than establish a standard for rhetorical efficacy and political courtesy. If the religious arguments of the abolitionists and of Martin Luther King Jr were examples of public reason because, despite their language, they could have been reformulated in accordance with the proviso according to the standards of public reason *in their day*, then the definition of public reason has become so variable and malleable as to be incapable of debarring any religiously-based political speech *ex ante*.

(3) *Rawls's own starting points are ones which may depend on commitments to a theistic comprehensive doctrine:*

In addition to the points already made, there is a further instability within Rawls's idea of public reason. There is a more than plausible argument that certain fundamental commitments of Rawlsian public reason depend, not on commitments arrived at by reflective equilibrium and irrespective of any positions referable to the existence of God, but on a view of humanity which is both historically derived from and most, if not only, consistently defensible within a theistic worldview.

In particular, this is true of Rawls's commitment to the idea that all human beings are free and equal. As Jeremy Waldron has noted, the proposition that all human beings are free and equal is one on which relatively little ink has been spent by philosophers over the last fifty years.⁶⁰ It is, however, a doctrine which has required explicit and extensive defence in the past. Locke is a key figure who offered such a defence, although, as Waldron has shown, he does so in explicitly Christian terms. Moreover, as Wolterstorff has argued at length in *Justice: Rights and Wrongs*, giving a satisfactory account of natural rights that establishes the basic equality of all members of the human species may depend on the existence of God.⁶¹

⁶⁰ Waldron, *God, Locke, and Equality* 2.

⁶¹ For Wolterstorff's comments about the inadequacies of Rawls's approach, see *Justice: Rights and Wrongs* (2008) 15-17.

Post-modernism has highlighted that there is no such thing as neutral reason or value-free description or assumption-free discourse. Rationalism is therefore also private truth. The neutral ground on which rationalism pretends to stand does not exist. Western rationalism's ground is, in significant part, borrowed ground: ground borrowed from Christianity.

The obvious objection to seeing Rawls as the inheritor of Locke's Christian convictions regarding the basic equality of all human beings is that whereas Locke was, throughout his life, a defender of at least a minimal version of Christian doctrine, Rawls's autobiography in 'On My Religion' shows that he briefly embraced neo-orthodox Christian ideas before rejecting them when confronted with his experiences during the Second World War.

'On My Religion' reveals Rawls's rejection of orthodox Christianity to be a certain type of rejection. Like the protest atheists, Rawls appears to have rejected what he regarded as some of the key doctrines of orthodox Christianity (the supremacy of the divine will, original sin, heaven and hell, salvation by true belief, and predestination) on moral grounds.⁶² Rawls's rejection was not, however, a wholesale abandonment of Christian values, such as Nietzsche attempted. Christian readers of Rawls detect in his 'original position' a device to mitigate the effects of original sin⁶³ or an analogy to the Mosaic covenant establishing a just society,⁶⁴ in the difference principle the imprint of Christian social teaching,⁶⁵ in his argument against utilitarianism 'a secret kinship with the commandment to love',⁶⁶ and in his commitment to human beings as free and equal a reflection of the truth which the Incarnation and the Crucifixion revealed. In many ways Rawls's *A Theory of Justice* can be read as a secular defence of a liberal polity based on Christian principles developed in the five hundred years since the Reformation but shorn of what Rawls came to regard as the unjust superstructure of a predestining God.

Waldron and Wolterstorff both raise as an urgent question whether it is possible to 'shape and defend an adequate conception of basic human equality apart from some religious

⁶² Rawls, 'On My Religion' 262-64; E Gregory, 'Before the Original Position: The Neo-Orthodoxy of the Young John Rawls', (2007) 35 *Journal of Religious Ethics* 179, 195-196.

⁶³ DH McIlroy, *A Biblical View of Law and Justice* (2004) 176.

⁶⁴ N Sagovsky, *Christian Tradition and the Practice of Justice* (2008) 127.

⁶⁵ Duncan Forrester suggests that the Difference Principle adopted by Rawls was "originally derived from the Judaeo-Christian tradition and [is] now so deeply embedded in western culture that it is regarded as more or less self-evident." (*Christian Justice and Public Policy* (1997) 129). See also McIlroy, *A Biblical View of Law and Justice* 36-37.

⁶⁶ P Ricoeur, *Figuring the Sacred: Religion, Narrative and Imagination* D. Pellauer (ed) (1995) 329.

foundation.’⁶⁷ If not, this is fatal to Rawls’s project. If Rawls’s foundational commitment to the idea that human beings are free and equal depends on the existence of God, then his proposition that it makes no difference to the content of reason whether or not God exists, is not only contestable but false. From that it would follow that Rawls’s proviso cannot always be met by religious arguments, even reasonable ones.

At this point the collapse in the idea of public reason is complete. Rawls’s concept of public reason is seen (1) to depend on the highly contestable assertion that it makes no difference to the content of reason whether or not God exists, (2) to be variable across different times and different places, and (3) itself to be derived from moral commitments formed by a particular theistic comprehensive doctrine.

III. CONCLUSION

Locke’s arguments for toleration established for English citizens a private sphere within which they were free to practise their religion, provided that what they were seeking to do would otherwise be ‘lawful in the ordinary course of life’. Rawls is similarly generous to religious believers with regards to their private lives. However, with regards to the public square, already in Locke there is a concern to police the boundary between the private and the political and an insistence that religious arguments suitable for forming the basis of public policy must be based on reason alone. In this regard Rawls also appears to be Locke’s heir.

Locke and Rawls share fundamental beliefs that human beings are free and equal and that religious questions are matters of ultimate concern which should not be influenced by material considerations. Rawls takes these beliefs to be more or less axiomatic; Locke, in a different historical location, felt the need to argue for them. What Locke offers is a natural rights argument for toleration based on the view that each person is best-placed to enquire into religious questions for themselves because they alone can focus solely on the relevant questions. Despite Locke’s explicit references to Christianity, this argument is intelligible and potentially persuasive to people who do not share Locke’s Protestant Christian position. It is a demonstration of how religiously-based arguments can enter the public square, be discussed reasonably, and help to develop a consensus regarding questions of constitutional

⁶⁷ Waldron, *God, Locke and Equality* 13.

essentials and basic justice. The extent to which there are not only convergences between Rawls's key commitments and Christian ideas but also obvious respects in which Rawls is dependent on Christian ideas shows that there is no impermeable boundary between the religious and the reasonable.

If it were fixed for all time, Rawls's criterion of public reason would have ruled out Locke's arguments. As has been seen, the idea of public reason is problematic at a number of different levels. In his attempts to reconcile his account of public reason with the obviously beneficial use of religious arguments in public by the abolitionists and the civil rights movement, Rawls is forced into a series of concessions which render the idea of public reason so malleable, vague or complex as to call for its abandonment.

Rousseau's hope that religion could be confined to a concern for the next world to the exclusion of the present world has proved to be forlorn. But, as the influence of Locke's own arguments, as well as those of the abolitionists and the civil rights movement, shows the use of religious arguments on questions of basic justice is not always malign. Not only is it futile and unfair to attempt to keep religion out of public life, public discourse is impoverished as a result. The widespread conviction that human beings are free and equal is something for which the West has Christianity, or at least certain thinkers and movements within Christianity, to thank. It is a powerful demonstration of how an idea which originated as a claim to revealed truth can become an axiom of reason.

This does not mean, however, that Locke's claim that there is a difference between the revelation one may follow in private and the basis upon which a political community should organise itself was entirely misguided. Locke was right to point out that neither asking the king nor acting in accordance with the vote of a Parliament is an apt method for arriving at truth on questions of "maximal concernment". What is convenient for stabilising a regime may not be true. The politically reasonable and the true are different questions, arrived at through different means, and with different ends in view. There are serious dangers in imposing too much of one comprehensive doctrine politically just as there are in imposing political restrictions on the quest for religious truth.

Nor was Rawls wrong to point out that when it comes to constitutional essentials and questions of basic justice, the aim ought to be to build as wide a consensus as possible. Such

a consensus is, however, at its strongest when the full range of arguments to support it are discussed publicly. Although, therefore, there should be no wall of separation between religious arguments and secular arguments, as a matter of respect, courtesy and rhetorical efficacy, arguments should be intelligible and reasonable to as wide a constituency as possible. It is perhaps in that regard that we have most to continue to learn from Locke today.