Rethinking the Intolerant Locke

Alex Tuckness  Iowa State University

The prevailing view of Locke’s theory of toleration is that it is historically important, but that it is also too narrow to serve as a starting point for modern reflection on the subject. Locke’s intolerance towards Atheists and Catholics are only specific illustrations of his general view that the government may suppress any opinion or belief it thinks politically harmful. Locke’s understanding of the public good in his Third Letter suggests that his underlying theory is more tolerant than the above characterization would indicate. The public good is defined from God’s perspective as a reasonable legislator who takes into account the fallibility of human agents. There is evidence that Locke was implicitly using this approach in the first Letter. Locke’s theoretical approach is a plausible and provocative starting point for contemporary reflection on the subject of toleration and might persuade persons who reject more well known arguments for toleration.

Perhaps the most common criticism of Locke’s argument for toleration is that it is too limited. He is applauded for being more tolerant than most of his contemporaries but criticized for advocating a toleration that is, by modern standards, inadequate. Locke did not believe that the government had to extend toleration to Atheists or Catholics. Locke believed that the state could restrict their religious freedom because he thought their beliefs were politically harmful. There is no suggestion in Locke of an abstract right to express religious or political ideas that the governing authorities think are politically harmful. Modern defenses of religious freedom and free expression tend to begin with those beliefs and opinions the majority thinks harmful since it is precisely these that need protection. For that very reason, many reject Locke’s approach to toleration as a viable contemporary alternative. Any theory of “toleration” that allows for intolerance towards Atheists and Catholics is not a theory of toleration we should accept. The objection must be taken very seriously. At the heart of it is the suspicion that Locke’s regrettable conclusions are not mere quirks of his application of his theory but built into the very structure of

Alex Tuckness is Assistant Professor of Political Science, Iowa State University, 555 Ross Hall, Ames, IA 50011 (tuckness@iastate.edu).

When I was a graduate student, first at Cambridge and then at Princeton, I learned much about both Locke and toleration from my advisors. I would like to thank John Dunn, Amy Gutmann, Richard Tuck, and Jeremy Waldron for helping me pursue this line of research, each contributing different pieces to the puzzle. I make no claim that all of them will agree with the specific arguments presented here. I would like to thank Matthew Potoski and the reviewers and editorial staff at AJPS for their valuable comments on this article.

References to Locke’s primary works will be given parenthetically by short title. References to the Letter Concerning Tolerations are cited as Letter. References to the Third and Fourth Letter Concerning Tolerations are from Locke’s 1823 Works, volume 6 and cited as Works by volume and page number. References to the Two Treatises of Government are cited as Treatises by treatise and section number.

Some references:

1References to Locke’s primary works will be given parenthetically by short title. References to the Letter Concerning Tolerations are cited as Letter. References to the Third and Fourth Letter Concerning Tolerations are from Locke’s 1823 Works, volume 6 and cited as Works by volume and page number. References to the Two Treatises of Government are cited as Treatises by treatise and section number.

2Stated roughly, a theory of toleration will give reasons why we should not put a stop to some action or state of affairs that we think wrong and which we have the power to affect.

3Locke also believed that Islam, like Catholicism, could be suppressed because of its political implications (Letter, 50–51). Jeremy Waldron notes that Locke does not mention Catholics by name in the Letter in contexts dealing with groups that should not be tolerated but rather gives general characteristics which happen to apply to some forms of Catholicism (Waldron 2002). Although this does leave open the possibility that some forms of Catholicism (in particular post Vatican II Catholicism) would have a right to toleration under Locke’s original scheme, it does not dispose of the present problem which is the concern that Locke’s principles, rather than his application of them, are intolerant. Locke is still only willing to tolerate politically acceptable religions.


©2002 by the Midwest Political Science Association  ISSN 0092-5853

288
his justification for toleration. A prevalent interpretation of Locke is that he advocates toleration because intolerance is instrumentally irrational from the perspective of the persecutor and not because of respect for the autonomy of the potential victim. In this article I argue for an alternative interpretation of Locke’s theory that presents a more tolerant Locke based on an argument he explicitly articulated in his later writings on toleration and which he may have been employing implicitly in the earlier *Letter Concerning Tolerations*.

The common criticisms, I will argue, are half right. It is true that Locke believed that the public good was in some cases an adequate justification for suppressing beliefs, religious and otherwise. But it is also true that the way Locke modified his understanding of the public good in his later writings makes his position more tolerant and more sensible than it might at first appear. It is also true that Locke works from the perspective of the potential persecutor rather than the perspective of the potential victim. Unlike some modern approaches to toleration that assume that there are no right answers to questions such as “which is the true religion?” Locke’s theory is addressed to persons who are fully convinced that their views on religion and morality are correct and that others are wrong to disagree with them. Rather than rendering Locke’s thought a mere historical curiosity, this difference in approach actually makes Locke’s thought, for practical purposes, more helpful. It means that Locke’s argument might persuade people who do not think “diversity” is valuable when questions of right and wrong are at stake.

The theory and practice of toleration will play a crucial role in any liberal democracy precisely because all forms of diversity are not valuable. Every political community adopts a criminal code that specifies a set of wrong actions that will not be tolerated, and every political community refrains from codifying (or enforcing) laws against some actions that it thinks wrong. Every political community will have to answer both first-order questions about right and wrong and second-order questions about when to use political power to promote those conceptions of right and wrong. From the perspective of the tolerated person or group, toleration is a second best. One would rather be accepted and affirmed than merely tolerated. But not every plea for acceptance and affirmation is well founded. Nor is every plea for toleration. There are some actions, murder and rape spring to mind as obvious examples, that should not be tolerated. This side of heaven there will be persistent disagreement about which actions fall into which category. So long as we live in a world where many people think that other people are engaging in actions or holding beliefs that are “really wrong,” we will need a theory of toleration to decide which of those actions we may rightly put a stop to and which we may not. Locke’s theory of toleration can make a more important contribution to this debate than has been realized.

### The Intolerant Locke

The dominant view of Locke is that while he was more tolerant than most of his generation, the theory of toleration he adopted is simply too narrow to provide an adequate basis for a modern doctrine. To illustrate the dominant view I turn to the comments of two distinguished Locke scholars employing very different methodologies. John Dunn finds Locke’s thought dependent on too many assumptions that were widespread in his own time but rejected today (Dunn 1990, 18-20; 1991, 171-187). Jeremy Waldron claims that the problem is with the logic of Locke’s dominant argument (Waldron 1993, 88–114). Although I think there is much that is right in both of their accounts, both fail to account for the significance of Locke’s later writings on toleration.

Dunn altered the direction of Locke scholarship with his landmark book, *The Political Thought of John Locke* (1969). He claimed that Locke’s thought depends heavily on various Christian assumptions that were prevalent in Locke’s era. Once we see how imbedded Locke’s thought is in assumptions that are no longer widely shared, we see how difficult it is to apply his thought to contemporary problems. According to Dunn, the reason Locke abandoned his earlier opposition to religious toleration was fundamentally political. Locke came to believe that since people care more about their souls than about their lives, governments’ attempts to regulate *purely* religious worship and opinion were a prescription for disaster. Since Locke believed the care of one’s own soul was ultimately one’s own responsibility, he thought it unjust for the government to interfere (Dunn 1991, 177–178, 184). Locke came to believe that there were two distinct and irreducible foci of judgment: the magistrate should use force for the public good while the individual must pursue eternal happiness (Dunn 1991, 174). If the magistrate should command something that he believes promotes the public good and the subject believes it interferes with a purely religious duty, “there is no Judge upon earth between the Supreme Magistrate and the People” (*Letter*, 49).

This background explains, according to Dunn, why Locke’s toleration is so narrow. It is only toleration for religious worship and religious opinion narrowly defined. Because it is the intensity of human desire for eternal life
that makes civil interference so dangerous, there is no reason toleration must extend to nonreligious thought or expression. Moreover, this in no way implies that the magistrate must tolerate any opinion or behavior that is actually contrary to the public interest. Dunn writes:

It is both absurd and futile for a magistrate to attempt to regulate purely theoretical opinions. But any opinion which has definite practical implications outside the restricted purlieus of private worship is perfectly capable of encroaching upon the interests and rights of others; and the magistrate must judge which opinions do possess such practical implications and where they are likely to encroach upon the public good. (1991, 178–179)

The situation was made worse by the minor premises that Locke attached to this major premise. Locke thought that some beliefs, most notably Atheism, “are an inherent menace to every other human being.” This position, Dunn goes on to say, “is hardly an exclusion that any Western society today would regard as furnishing a very handsome allowance of freedom for thought—even if it might still evoke some applause in Tehran” (1991, 179). Dunn insists that we cannot save Locke by saying that his theory was right but that he had misguided views about particular groups, such as Atheists. Locke was, to be sure, fallible on this point, but the problem is that he places the power to suppress belief for the sake of the public good in the hands of magistrates who also necessarily fallible. The central problem, from Dunn’s perspective, is that Locke’s argument can only justify toleration of religious practice and belief, and then only if it has no practical implications affecting others. Locke “felt not the slightest hesitation in sanctioning the magistrate’s intervention in many areas of belief and expression that are of the keenest concern to modern defenders of individual freedom” (Dunn 1991, 186).

Waldron reaches a similar conclusion by a different route. He sets to the side whatever specifically religious reasons Locke might have had for toleration and asks whether Locke presents a secular philosophical argument that modern readers should find persuasive. He joins Locke’s contemporary antagonist, Jonas Proast, in pointing out that Locke’s argument seems to hinge on whether it is really true that “true belief cannot be forced.” Waldron points out that, even if Locke were right about this, it may be possible to affect belief indirectly through government intervention. Although a person will not change his inner beliefs because of coercion, coercion might lead the person to read a book or listen to a speech that would change the person’s mind. Moreover, there might be seductive books that are likely to lead an orthodox population astray. Whether censorship or coercion would be effective in any particular case is an open question that a good magistrate would need to weigh carefully. The point is that it is possible to believe that such a technique might work. Indeed it would be surprising that religious persecution endured as long as it did in the West if it was completely ineffective in reaching its goal. Many of the perpetrators were wicked, but it is unlikely that they were all foolish (Waldron 1993, 107–113). Moreover, Locke’s position only addresses one motive for religious persecution. A pragmatic magistrate might think outward conformity valuable for present political purposes even if mere outward conformity would not get a person to heaven (Waldron 1993, 104–105).

Despite the methodological differences in their approaches, there is a striking similarity in the two interpretations. They both recognize that one of the attractive features of Locke’s theory is precisely that he addresses the potential persecutor and tries to show him why it is irrational to persecute. As a practical political argument, this is exactly what one would want. The problem is that as long as the problem is posed as what it would be instrumentally rational for an individual magistrate to do we will not have an adequate ground for toleration. Dunn’s magistrate is simply deciding what will promote the public good and refrains from interfering in purely religious matters only because doing so is the best path to public peace and because true belief cannot be forced anyway. Waldron notes that since all governments claim to be acting for the common good, the real question is whether we can show an instrumentally rational magistrate that persecution is ineffective as a means, even if the goal is desirable. Such a person has no reason in principle not to persecute indirectly or for reasons of state.

Among those who have attempted to defend Locke the most common response has been to use Locke’s doctrine of consent (Mendus 1991; Vernon 1997; Wootton 1993). We have a duty to tolerate religious diversity because free and equal persons would not consent to allow the government to regulate matters of religion. I have argued elsewhere that this response is, by itself, insufficient. Even if true it is not enough to solve the current problem since it would still only justify religious toleration (since the argument generally makes use of facts specific to religion) and would not protect even that realm from government claims that suppressing some belief is in the interest of the public good. Locke does, after all, think we consent

4See Tuckness (2002, chapter 3).

5Wootton’s position is a good illustration. He thinks, contra Waldron, that Locke’s argument is successful in defending religious toleration in those cases where belief has no practical implications, but admits that this falls far short of an adequate theory of toleration (1993, 109–110).
to allow governments to seek the public good and tends to argue for toleration as a means to that good rather than as a side constraint on our pursuit of it.

**Defining the Public Good**

In this article I explore a different path for defending Locke that focuses not on consent, but on the relationship between natural law and the public good. Dunn is right that the magistrate is obligated to pursue the public good as he understands it, but he does not correctly specify the criteria that a Lockean magistrate is to use in defining the scope of the public good. Dunn and Waldron both ignore the claim that a magistrate may not define the public good simply as what appears to be good to him from his own individual perspective. Locke introduced a different understanding of the public good that leads to a different and broader principle of toleration. While Locke never repudiated his specific conclusions about Catholics and Atheists, the position he articulated in the *Third Letter* presents a powerful reason for tolerating them.

Locke's opponent, Jonas Proast, had claimed that by the law of nature magistrates had the right to promote the public good and that promoting the true religion contributed to the public good. In a terribly neglected passage in the *Third Letter*, Locke responded:

[Y]ou [Proast] have recourse to the general law of nature; and what is that? The law of reason, whereby every one is commissioned to do good. And the propagating the true religion for the salvation of men's souls being doing good, you say, the civil sovereigns are commissioned and required by that law to use their force for those ends. But since by this law all civil sovereigns are commissioned and obliged alike to use their coercive power for the propagating of the true religion, and the salvation of souls; and it is not possible for them to execute such a commission, or obey that law, but by using force to bring men to that religion which they judge the true; by which use of force much more harm than good would be done towards the propagating the true religion in the world, as I have showed elsewhere: therefore no such commission, whose execution would do more harm than good, more hinder than promote the end for which it is supposed to be given, can be a commission from God by the law of nature. (*Works* 6, 213)

The power of promoting the public good is closely associated with natural law. Like natural law, the specific principles on which a magistrate acts in promoting the public good should be thought of as a commission from God. In fact, the public good and the fundamental law of nature which commands that as much as possible mankind is to be preserved are, for Locke, more or less interchangeable. When God issues such a commission, he takes into account the fact that fallible persons will have to interpret and carry out the commission. God, as a rational legislator, will not define the public good broadly if a narrower conception that would be misapplied less often would better promote the good. The idea of fallibility in this context stands for the entire set of reasons that might cause a person to interpret and apply a principle incorrectly, ranging from mistakes made in good faith to those borne out of self-interest or other bias.

Consider the following example. Suppose that in Locke's time the King of England tries to forcibly suppress Catholicism. When Catholics protest and ask what principle justifies the King's action, the King invokes the principle "magistrates should coercively promote the true religion." The Catholic, of course, believes his religion is the true one. "True religion" is a contested phrase because true religion is precisely what is in dispute between the two parties. Locke claims that in such a situation we must move from the perspective of the two disputants to the perspective of a legislator putting forward a principle that will guide both disputants. The legislator will have to adopt the principle without assuming that the correct interpretation of the disputed term will prevail since he is prescribing a rule for all magistrates, and fallible magistrates differ about which religion is true. According to Locke, God realizes that the vast majority of magistrates do not believe the true religion and so issuing the command "coercively promote the true religion" would be self-defeating since most magistrates would see it as an invitation to promote the religion they falsely believe to be true.

Because the magistrate's authority is derived from natural law, because natural law applies to all magistrates, and because God is the legislator of natural law, we deter-

---

6 Locke wrote in the *Two Treatises* that the legislative power is "limited to the publick good" and "hath no other end but preservation." Since Locke then defines the fundamental law of nature as "the preservation of Mankind," the public good cannot extend farther than the positive formulation of natural law (Treatises 2.135). I discuss this point in more detail in *Locke and the Legislative Point of View*, Appendix 2. I discuss Locke's theory of natural law more generally in an earlier work (Tuckness 1999).

7 As we will see below, the argument gets much of its bite from the fact that we are not allowed to devise separate principles for those persons we think partial and those we think impartial. It is all too common for people to think they are applying a principle in good faith because they are unaware of their own biases. This is true of ourselves as well as others.
mine the content of natural law by asking what it would be reasonable for God to enact. God as a reasonable legislator takes into account the fallibility of the agents who will carry out His instructions. Thus when God through natural law directs magistrates as to how they should seek the public good, He does so through rules that He would want all fallible magistrates to interpret and apply. God determines which rules we may enforce from a "legislative point of view."

The above argument from Locke is more than a passing reference in a single text. Locke's belief that whatever principles we adopt we should want other fallible persons to act upon as well is a persistent theme in his writings. He makes an almost identical argument in a later passage of the Third Letter. In his uncompleted (and even more sarcastic) Fourth Letter, this argument is basically the only one that Locke makes. He repeats over and over again that magistrates will be moved to act based on their belief about which religion is true. Therefore, if Proast's principle were a law of nature, true religion would be harmed because so many magistrates would apply the principle improperly. He explicitly concludes that the logical inference is that God did not legislate in the way Proast claims He did. From this we can infer that Locke not only developed this position in the Third Letter but came to see it as absolutely crucial to his dispute with Proast in the Fourth Letter. I will suggest below that although Locke only made the implications of this argument for natural law explicit in his later writings on toleration, there is also evidence that he was implicitly using this framework in the first Letter.

If the above argument is correct, it suggests an important extension of the "rule-consequentialist" interpretation of Locke's natural law theory offered by Simmons to the sphere of toleration. Simmons interprets Locke's fundamental law of nature as playing a role analogous to "maximize the good" in rule-utilitarianism. He writes:

an act A is contrary to natural law if and only if A violates one of that set of rules (the specific precepts of natural law) general conformity to which would more effectively preserve mankind than conformity to any alternative set. The precepts of the law of nature are the "ideal rules" (the most rational means) for preserving mankind. (God being perfectly wise, His law must be "ideal" in this sense). (Simmons 1992, 51)

We adopt rules that have the consequence of promoting the specified end, in Locke's case the comfortable preservation of mankind. We may, for example, kill a criminal if the net effect of doing so is to save lives by deterring crime.

My interpretation is generally consistent with this view. When Locke says government should promote the public good, he means that it should act to promote the comfortable preservation of its residents; that is, it should follow the fundamental law of nature. The precepts of natural law are the "ideal rules" that God as the perfect legislator would enact in order to promote His desired end. As Simmons notes, the ideal rules for imperfect beings like ourselves may be quite different than the ideal rules for a perfect being (1992, 51). There are two different ways a person might fail to conform to natural law. One way is open defiance: I choose to act according to a different rule. But I might also fail to conform to a rule by misinterpreting or misapplying it. If the law of nature commands, for example, that a criminal's punishment be "proportionate to his transgression" (Treatises, 2.8), we might fail to observe that law by unintentionally punishing a particular criminal too severely or too leniently. Note that neither Simmons nor I claim that Locke is a rule-utilitarian. Locke's argument is similar in structure to rule-utilitarianism but different than it both

8 "... [A]ccording to you [Proast], the magistrate's commission to use force for the salvation of souls, is from the law of nature. ... Since the commission of the law of nature to magistrates, being only that general one, of doing good, according to the best of their judgments: if that extends to the use of force in matters of religion, it will abundantly more oppose than promote the true religion; if force in the case has any efficacy at all, and so do more harm than good: which, though it shows not what you here demand, that it cannot do any service towards the salvation of men's souls, for that cannot be shown of any thing; yet it shows the disservice it does is so much more than any service [that] can be expected from it, that it can never be proved that God has given power to magistrates to use it by the commission they have of doing good, from the law of nature" (Works, 6, 495).

9See Works (6, 555–574). The following two quotations from the Fourth Letter show the consistency of Locke's comments there with the position I noted in the Third Letter. "You say 'every magistrate is by the law of nature under an obligation to use force to bring men to the true religion.' To this I urge, that the magistrate hath nothing else to determine him in the use of force, for promotion of any religion one before another, but only his own belief or persuasion of the truth of it" (Works 6, 559). "And now I desire it may be considered, what advantage this supposition of force, which is supposed put into the magistrate's hands by the law of nature to be used in religion, brings to the true religion, when it arms five hundred magistrates against the true religion, who must unavoidably in the state of things in the world act against it, for one that uses force for it. ... it being demonstration, that the prejudice that will accrue to the true religion from such an use of force is five hundred times more than the advantage that can be expected from it; the natural and unavoidable inference from your own ground of benefit is, that God never gave any such power to the magistrate ..." (Works 6, 566).

10 Note again, in keeping with our earlier definition of fallibility, that the underlying cause of the errant punishment might well be self-interest. Many who punish too harshly think that they are punishing exactly as the crime deserves.
in its content and its ultimate grounds. Not only does Locke specify a more limited goal, he also makes it clear that the moral principle is binding because it reflects God’s will (Simmons 1992, 57–59).

On this reading, God, as legislator, is concerned about the way we fail to observe natural law in both senses. God therefore defines natural law and the public good in a way that takes into account the fallibility of human actors. This concern provides an important reason for giving greater protection to speech and conscience than Locke’s specific conclusions about Atheists and Catholics would indicate. I should also briefly note that the theological structure of the argument allows Locke to avoid a problem that bedevils traditional rule-utilitarianism. As I have argued in more detail elsewhere, the rule-utilitarian is at a loss to explain why we should abide by a rule in cases where deviating from the rule is expected to create even more utility than abiding by the rule if utility is really the ultimate criterion for all moral questions. Rule-utilitarianism asks us to put ourselves in the position of a legislator enacting rules that maximize utility even though we are often in circumstances where we are not legislators and where there is no realistic chance that other people will act on a given principle because we act on it. If I am not setting a precedent others will follow I have a reason to take my own fallibility into account but not a reason to take the fallibility of others into account (Tuckness 2000, 364–366). God actually is a legislator and so must take into account the fallibility of all magistrates. If we are forced to reason from His perspective, we take into account the fallibility of others as well. This is important because we are often more accurate judges of the fallibility of others than of ourselves.

Before I draw out the implications of this for the question of how tolerant Locke’s argument actually is, I should answer two objections. First, my argument assumes that Locke is sincere when he makes God as legislator central to his theory of natural law. Although some Straussians dispute the point, the preponderance of scholars agree with this assumption. In fact, even recent work that is sympathetic to the Straussian position has tended to concede Locke’s theism when questioning his Christianity. Forde, for example, claims that God as legislator is central to Locke’s theory of natural law (Forde 2001, 400) even as Locke subtly undermines Christian orthodoxy (406). For the purposes of the present argument I need only claim a theistic Locke, not an orthodox one.

A more difficult objection has to do with whether my interpretation of the content of natural law corresponds to the content Locke actually gave it. Forde, for example, claims that Locke reduces the requirements of natural law to very minimal negative prohibitions concerning life, liberty, and property. This was, on his reading, Locke’s way of finessing the problem of why beings necessarily motivated by self-interest would actually act to preserve others. Even these minimal requirements require additional incentives since they will still clash with self-interest which is why Locke needed to invoke the possibility of divine sanctions to explain why it is always in our interest to obey the moral law (Forde 2001, 400–401). There is a tension, one might argue, between a reading of Lockean moral motivation that is based on self-interest and a theory of natural law that asks people to abstract both from their self interest and even from the good of others as defined from their own situated perspective. Asking persons to act on the public good as it would be defined by a higher legislator asks quite a bit.

First, I think it is wrong to see Locke’s claims about the right to life, liberty, and property as the sum total of the requirements of natural law. Following Simmons, I think it is better to see these rights as a subset of the rights that may be inferred from the fundamental law of nature which commands that as much as possible mankind is to be preserved. Locke clearly thought these rights conducive to that goal. But there are many places where Locke clearly thinks that the government’s power to act on the public good goes beyond libertarian enforcement of these negative liberties. Locke’s claim in the First Treatise that the starving have a moral claim on the food of the rich is evidence that we have not fully discharged our duty to preserve others by not directly injuring them. (Treatises, I.42). Elsewhere Locke notes that governments may pursue, as positive goals, a strong economy and a large population since these things will assist it in defending the people from foreign attack. Locke’s notion of “injury” is sufficiently broad that it encompasses anything that stands in the way of the command: “preserve mankind.”

Second, the solution to the motivational problem is no different on my reading of Locke than on the alterna-


12Dworetz (1990) makes a similar use of the “theistic Locke” in a different context on page 30.


14"But the pravity of Mankind . . . obliges Men to enter into Society with one another: that by mutual Assistance, and joint Force, they may secure unto each other their Properties in the things that contribute to the Comfort and Happiness of this Life: . . . But as much as Men thus entering into Societies, . . . may nevertheless be deprived of them [goods], either by the Rapine and Fraud of their Fellow-Citizens, or by the hostile Violence of Forreigners; the Remedy of this Evil consists in Arms, Riches, and Multitude of Citizens; the Remedy of the other in Laws . . .” (Letter, 47–48).
tive. So long as Locke was committed to a hedonistic theory of human motivation, he was going to need to invoke divine sanctions whenever morality directed us to act in ways contrary to our earthly happiness. Just as fear of eternal punishment could motivate someone to refrain from murder, it could also motivate a magistrate to make judgments from a legislative point of view in order to follow God’s will as closely as possible. Someone who disagreed with Locke’s theory of human motivation but agreed with his theory of natural law might come to a different conclusion.

Notice that the Lockean argument I have developed is a general one for toleration that Locke happens to apply to the toleration of religion. The argument is applicable wherever there is disagreement about the truth. Unlike the arguments that Dunn emphasized that do not provide a reason to tolerate nonreligious beliefs, this argument can apply equally well to any attempts by the government to suppress the expression of a belief because it is harmful. When, in the final section, we turn to the contemporary relevance of Locke’s thought we will thus be able to generalize to belief and expression in general.

Reinterpreting Locke’s Letter

If the above account is correct, a magistrate trying to decide whether or not to suppress a religion he believes dangerous would have to ask not only whether suppressing the religion would promote the public good but also whether it would promote the public good for other magistrates to act on the same principle. The latter consideration would give the magistrate a reason to define his own powers more narrowly. The latter consideration, if given due weight, would lead to more tolerant conclusions than would follow if the magistrate was constrained by only the first consideration. There are two ways this argument from Locke’s Third Letter might be taken. One might think that Locke, late in life, adopted a line of argument in tension with his earlier writings and that he simply left the tension unresolved. Even on this weaker interpretation the finding is significant because it means that Locke’s later theory on toleration does not share the same weaknesses as his earlier theory.

But a second interpretation is also possible. If we look closely at Locke’s argument in the original Letter, there is some evidence that he was already implicitly employing this criterion. Locke’s first and most important statement about what magistrates need not tolerate is the following: “First, No Opinions contrary to human Society, or to those moral Rules which are necessary to the preservation of Civil Society, are to be tolerated by the Magistrate” (Letter, 49). Indeed it is possible to see his other two categories (adherence to a foreign prince and Atheism) as mere applications of this first principle. Locke clearly thought that adherence to a foreign prince and Atheism were positions that shook the very foundations of orderly political society.

Locke chose this principle because it was one he wanted all magistrates to follow, not just those who agreed with him about true religion. The following passage indicates Locke’s awareness of the way people will apply principles in ways that accord with their own beliefs. He wrote:

What Power can be given to the Magistrate for the suppression of an Idolatrous Church, which may not, in time and place, be made use of to the ruine of an Orthodox one? For it must be remembered that the Civil Power is the same every where and the Religion of every Prince is Orthodox to himself. (Letter, 42)

Locke is implicitly using the “legislative point of view,” claiming that we should consider whether we would want all magistrates to suppress what they believe to be idolatry. Although Locke does not make clear the implications of this argument for his understandings of the natural law and the public good until the later writings, there is evidence that the underlying idea is already present in the first Letter.

Given that Locke already had in mind the idea that we act on principles we would want others to act on as well, his choice of wording in the crucial passage is important. “First, No Opinions contrary to human Society, or to those moral Rules which are necessary to the preservation of Civil Society, are to be tolerated by the Magistrate” (Letter, 49; my italicization). Locke is stating a principle on which he would want all magistrates to act, not merely his own. It is not enough for the magistrate to believe suppressing a belief would be useful, or would serve some public good. Rather he must believe that it is necessary to preserve civil society. Locke’s subsequent discussion gives further evidence. He argues that the principles “Faith is not to be kept with Heretics,” “Kings excommunicated forfeit their Crowns and Kingdoms,” and “Dominion is founded on Grace” are all subversive of society precisely

15Since my concern is with Locke’s mature theory, I will not discuss his earlier writings on toleration such as the Two Tracts and An Essay on Toleration. Both are reprinted in Locke (1997).
16Note that Locke may be implicitly using the argument from the Third Letter even if he simply meant “would promote the public good.” In either case the standard is chosen because it is the one he would want all magistrates to follow.
because proponents of them allow only those who agree with them about orthodoxy to interpret and apply the relevant principle (Letter, 50). The principles would be rejected from a legislative point of view.

Thus, even in the first Letter there is evidence that Locke thought the public good was constrained both by considerations of what would produce good in the specific case and by considerations of what principles magistrates, in general, should follow. The latter consideration led him to permit restrictions of belief only where doing so was necessary for society to exist. He thought the government could suppress Catholicism and Atheism, not because doing so would be marginally helpful but because such beliefs if widely held would make political society impossible. If we take Locke to be using this more stringent principle, it would then be possible to disagree with Locke regarding his application of the theory to Catholics, Muslims, and Atheists by saying that, based on what we know now, it is not necessary to forcibly suppress such beliefs for society to endure. Moreover, if we had to decide between two descriptions of the magistrate’s commission, the first of which commanded magistrates to suppress an idea when it is “useful for the public good” and the second only when it is “necessary to preserve society,” we would choose the latter precisely because the latter would be less open to abuse.

Locke Today

The common view that “intolerance” is built into the very structure of Locke’s argument should thus be modified. Given Locke’s arguments in the Third Letter and Fourth Letter and choice of words in the original Letter, we need not interpret him as saying that a magistrate may suppress a belief or conscientious action if he thinks doing so would promote the public good in a specific instance. The public good is not whatever seems like a good idea to a particular magistrate. Even a magistrate who must define the public good for himself must ask the question “on what understanding of the public good should all magistrates act?” If we ask that same question it prevents us from acting as if we are exempt from the problem of fallibility. Based on this consideration we have a reason to tolerate some beliefs we think harmful to the public good because we believe such a power of suppression would be misused by others. It is possible to read Locke’s statement that beliefs incompatible with civil society may be suppressed as requiring a much higher burden of proof than “good for society” would.

To assess the significance of Locke’s theory for contemporary political theory, it is helpful to separate four different levels in Locke’s argument: foundations, a general requirement for political principles, a specific principle describing which types of beliefs should be tolerated, and the application of the specific principle to specific cases. At the foundational level (level one) there are Locke’s theological premises about God, human equality, and the ultimate grounding of natural law. At level two there is the general principle that Locke derives from level one: the requirement that our political principles be ones that we would want others who are fallible and partial like ourselves to interpret and apply. The specific principle (level three) that Locke thought best promoted the general principle was that the magistrate should not tolerate those beliefs that would be incompatible with the possibility of civil society if widely held. When Locke applied the specific principle (level three) to specific cases (level four), he argued that (at least one version of) Catholicism and Atheism should not be tolerated.

As I have stated before, my goal is not to defend Locke’s level-four argument about Atheists and Catholics. I also will not defend, in the present work, Locke’s level-one theological commitments. As I explain below, even persons who reject Locke’s theological arguments at level one could still accept his general requirement at level two if they accept certain other values. In my other work I have explored the implications of the level-two argument which I refer to as the requirement of a “legislative point of view.” Locke’s argument can serve either as a supplement to or as an alternative to other, better-known, justifications for toleration.17 In the present article I want to suggest that even if Locke’s argument was the only one a person accepted it would not lead to such intolerant conclusions about which beliefs may be suppressed that it should be rejected out of hand. I pursue this question by comparing Locke’s own level-three principle to other possible alternatives. Before proceeding to Locke’s level-three argument it will be helpful to explain

17I explore this topic more fully in Locke and the Legislative Point of View, chapter 4. It is important to emphasize that Locke’s level-two argument is compatible with a variety of other moral principles that would operate at the same level and further constrain our choice of specific principles at level three. Locke’s argument constrains, but does not uniquely determine, the goals the government may pursue. We must ask whether a principle would undermine its purpose if generally applied and interpreted, but the level-two principle does not specify what the purpose must or, more to the point, must not be. Before we move from level two to level three (where we adopt a specific principle to regulate freedom of expression), we will have to consider a host of values such as autonomy and truth, related to expression. In other words, Locke’s level-two argument is not necessarily in conflict with other alternative justifications for toleration, such as those based on autonomy. Locke’s theory is only in conflict with those ideas that oppose one of the underlying assumptions built into the Lockeian argument, such as the assumptions of human equality and moral agency.
briefly why the Lockean argument might persuade persons who reject other common arguments for toleration.

Locke's level-two argument is important because it gives us a more reliable way of taking human fallibility into account. As John Stuart Mill wrote, "Unfortunately for the good sense of mankind, the fact of their fallibility is far from carrying the weight in their practical judgment, which is always allowed to it in theory..." (1947, 17). Locke's level-two argument makes use of the fact that we are more accurate judges of fallibility and partiality in other people than in ourselves. Limiting ourselves to those principles that we would want persons in general to interpret and apply, rather than assuming the principle will be applied by persons who agree with us, gives us a powerful reason to adopt a more tolerant level-three principle (indicating when, if ever, ideas and beliefs may be suppressed) than we otherwise would.

Locke's level-two argument does require people to accept certain assumptions: that all persons (or at least normal adults) are moral agents who must interpret those moral principle that apply to them; that there is a moral equality between persons such that one person has no right to coerce another simply because she wants to do so, but must instead appeal to a moral principle; that the moral principle is general in that it applies to both parties in the dispute; and that the moral principle can be made public so that all those bound by it can interpret it and act on it. These assumptions are by no means trivial, but they are still acceptable to a wider range of persons than the assumptions underlying many alternate accounts of toleration. Someone could accept these premises while believing that there are absolute and universal moral principles that should guide conduct and that some actions are intrinsically wrong regardless of their consequences or contribution to utility or well being. One could even believe that those who are wrong would be happier if they were forced to be right since the argument allows for the possibility that persecution might produce good results in specific cases (so long as the power is not misused). In other words, Locke's level-two principle gives people a reason to tolerate without forcing them to abandon their particular judgment that a particular action or belief is truly wrong and harmful.

One might object, at this point, that this more limited basis for toleration has fallen out of favor for a reason. Claiming that we should respect the views of others because they are freely held by autonomous beings treats those with whom we disagree with a profound respect that is missing if we tolerate their views simply because we might be wrong. Indeed there seems to be something troubling about liberals who hold the former view making use of the latter argument, not because they believe it, but simply because it might persuade others. This objection, however, does not correctly understand the nature of the argument. The Lockean argument appeals to more than just fallibility. The reason we take the fallibility of others into account is a profound respect for them as moral agents. Unless someone believes that other human beings are moral agents capable of independent thought under a public and general set of moral principles that each is equally entitled to interpret and apply, one will have no reason to care how others, hypothetically, would interpret and apply a rule. Thus when persons who affirm the better-known autonomy defense of toleration make the Lockean argument, they are not making an argument they do not believe. Rather, if one accepts the claim that views should be tolerated simply because they are the views of autonomous moral agents then the grounds for toleration are over-determined. Such persons affirm not only that others are moral agents with an equal right to make moral judgments, but also that autonomy, as a value, is of such great weight that it must be respected (at least as far as speech and belief are concerned) even when its exercise harms the public good. I do not attempt here to either prove or disprove this more ambitious claim. Instead my point is to show that one can generate a genuinely tolerant position without it.

Indeed this last claim is the important one for present purposes. It is one thing to note that Locke's argument might be acceptable to a wider range of persons than other defenses of toleration. It is another to claim that this argument would make enough difference to move people in a genuinely tolerant direction if this argument were the only argument for toleration they accepted. Since Locke did not advance the more common arguments based on autonomy and diversity, his own development of the theory serves as a useful test case. I have argued above that the principle he derived was not "suppress beliefs you think harmful to the public good in the case at hand" but rather "suppress only those beliefs that would make civil society impossible if widely held." Level-two considerations favor the latter, and the latter is indeed more tolerant. But is it sufficiently tolerant to be a plausible modern position? I believe that it is. Although I will argue that it may not be the best of all possible tests, even by Locke's own standards, it is nonetheless a viable position.

I am grateful to an anonymous reviewer for raising this objection.

I explore this topic in more detail in Locke and the Legislative Point of View, chapters 2–4.

Put another way, the stronger position protects not only their right to act as moral agents but also gives subsequent protection in cases where society believes that they have misused their freedom.
To assess the plausibility of Locke’s principle we should compare it to others that might be put in its place. One alternative principle might be that the government should tolerate the expression of any idea or belief, no matter how harmful. That principle has rarely been endorsed. Libel and slander express ideas and beliefs, but they also cause significant harm to another person’s reputation on the basis of false claims. Even Mill thought that there was no liberty to incite an angry mob to riot. Because words and ideas have effects, those effects are sometimes bad, the harms sometimes real. Just as in the realm of conduct we discourage some actions because they are harmful to others, so in the realm of ideas we restrict some forms of expression because they do cause harm to others.

A second alternative would be with something like the “clear and present danger” test. Like Locke’s test, the clear and present danger test recognizes that beliefs and ideas in some cases pose a sufficiently significant harm that governments may suppress them. Unlike Locke’s test the danger must be “present,” or impending. Locke’s theory would allow the state to suppress the beliefs of a group which is so small in number that it poses, at the moment, no great threat to society. There were at most a handful of “out-of-the-closet” Atheists in Locke’s day (Berman 1988, 110), and so they did not pose a clear and present danger to society. Locke’s test entitles a magistrate to ask what would happen if a particular belief were widely held when deciding whether to take action against it. Suppose there is a militia group that advocates vigilante violence against unarmed civilians. Even if the group is too small presently to be a serious threat Locke would say that they do not have a right to toleration. The magistrate might decide to tolerate them for pragmatic reasons of state, but it would not be wrong in principle to suppress them. Since such a group refuses to allow the magistrate to act as umpire in disputes, it is effectively withdrawing from civil society, appealing to heaven, and putting itself in the state of nature.

We can say on behalf of Locke’s more permissive test that where the justification for suppressing expression is the avoidance of harm it is a bit of a mystery why temporal remoteness alone should make a moral difference after we have accounted for the possibility of our prediction being false. Mill, for example, writes: “An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be un molested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard” (1947, 55). But if the mob is excited precisely because of what it read in the paper that morning, if the opinions circulated beforehand played an indispensable role in bringing about the riot, why might not the former be limited? The essential difference between Locke’s position and Mill’s is that Locke did not believe we had to wait until moments before the riot to act, for if we wait that long it may be too late. Locke would claim that there are some beliefs that we can clearly foresee would have devastating effects if widely held and that if we wait until they are widely held before moving against them our actions may be futile. If the danger is really clear, we need not wait until it is present.

Locke is surely right that ideas can have terribly harmful effects apart from the comparatively easy cases of libel, slander, and incitement to riot. Racism is an idea, and it is the ambient racism in society, not explicit statements just before a riot, that causes the most damage. Given the tremendous harm that the expression of racist ideas can cause, why should such speech be protected? Here a Lockean account is more satisfactory than the one generally attributed to Mill. It is not, I think, because the world would be a dull and less interesting place without racist ideas. It is not because the doctrine of human equality would be a dead doctrine without bigots attacking it. It is rather that we worry in general about how a government with a mandate to suppress harmful ideas might overstep its bounds. We also have practical concerns about whether even the best government could effectively accomplish such a goal (given the practical problems of censorship) without causing even greater problems. In other words, Locke does not require the fiction that “words can never hurt me.” We tolerate racist ideas because the alternative would give too much power to fallible and partial human beings, not because racist ideas have intrinsic value.

The problem with Locke’s level-three principle is that there is disagreement about which beliefs, if generalized, would make civil society impossible. Majorities may tend to overestimate the dangers of minority beliefs. It is entirely possible that the “clear and present danger test” is an even better standard than is Locke’s, according to Locke’s own criteria. If our ability to predict what would happen if a belief were generally held is quite poor and

21I use the most common interpretation of Mill, that as a utilitarian he supports those rules for regulating speech the net effect of which is greater in terms of happiness than any other set. I do not consider here the many ingenious reinterpretations of Mill’s theory that make him more friendly to liberty and less of a utilitarian since the example is only illustrative.

22Waldron (2002) citing Essay 1.4.8 notes that Locke worried that there might actually be quite a number of “in-the-closet” Atheists who would be more prominent if not for state persecution.
the danger of abusing such a power great, we might prefer the more restrictive standard if we understand it as a standard to be employed both by those who agree and those who disagree with us. It is more likely that we would misuse the Lockean power to preempt than that we would suffer for acting too late. Although there are other arguments that could be made against Locke's position, this is probably the strongest. Nonetheless, the gap between Locke's position and the alternatives is not so great as to render his specific principle a mere historical curiosity.

Locke's underlying theory is more tolerant than his specific conclusions would indicate because he believed the scope of the public good is defined from a legislator's (God's) point of view. Actors operating under such constraints will not be able to say simply "I persecute you because I am right and you are wrong." They must account both for their own fallibility and the fallibility of others before acting on a principle. It is the fact of human fallibility combined with the tendency to ignore our own fallibility that is a principle cause of intolerance. Locke's theory gives persons a reason to be tolerant even in cases where they think a given belief is harmful for the holder and for society and that in the given instance force might make a positive contribution. Such persons need not believe in the value of the harmful belief, only worry about the way fallible and often partial human beings would use such a power.

Final manuscript received September 26, 2001.

References


