

# THE QUEST FOR LOCKE'S POLITICAL THEOLOGY

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## ABSTRACT

Theological and political concepts and practices are frequently deeply related in political thought. If this statement is true in general, it is particularly accurate for the case of John Locke, to the extent that we can apply the label “political theology”—following Carl Schmitt’s approach to the topic—for evaluating his project. Elisabeth A. Pritchard’s recent book *Religion in Public: Locke’s Political Theology* centers on that specific “label,” which has sometimes been used, albeit not frequently, by other scholars. Speaking of a Lockean political theology means that liberalism does not represent the official end of every kind of political theology. In Pritchard’s understanding, Locke’s political theology consists of the shared conviction or consensus that individuals are the sacred property of a transcendent and benevolent creator. As a result, in his view Locke condemns every kind of political theology that compromises with hierarchical and competitive structures, providing differential access to the sacred. In this article I will defend a competing argument: In John Locke’s writings we can find a political theology of sovereignty, even though he argued using liberal political presuppositions. In the end he consecrates political power just as the previous political tradition did, even if he uses a different argumentative path for achieving legitimation. He creates the fiction that political intervention, even in sacred matters, can be eliminated from the political arena.

## KEYWORD

Political theology, Locke, prerogative, religion, toleration.

## 1. THE REHABILITATION OF JOHN LOCKE'S THEOLOGICAL FOUNDATION

In recent decades there has been a considerable amount of bibliography that has tried to rehabilitate the “theological” Locke. This is the case of the work of John Dunn, Jeremy Waldron, William V. Spellman, Victor Nuovo, John Marshall and Joshua Mitchell.<sup>1</sup>

Other intellectuals insist in seeing Locke as the artificer of the great separation between the political arena and the churches by the means of the privatization of the various denominations as de-sacralized associations. As a consequence they think that Locke, with Hobbes and Spinoza, inaugurated the neutralization of politics, the secularization of public life. Mark Lilla, Thomas Pangle, Roxane Euben, Paul Kahn, John C. Sommerville, Michael Zuckert and many others have argued along these lines.<sup>2</sup> However, even if the first sentence is true, the second doesn't follow, for religion plays an important role in Locke's political construction.

What Locke calls “true religion” is a central element of his political philosophy; in fact, the expression is repeated everywhere in his writings.

<sup>1</sup> J. Dunn, *The political Thought of John Locke. An Historical Account of the Argument of the ‘Two Treatises of Government’* (London: Cambridge University Press, 1969); J. Waldron, *God, Locke and Equality. Christian Foundations in Locke's Political Thought* (New York: Cambridge University Press, 2002); W. M., Spellman, *John Locke and the Problem of Depravity*, (Oxford: Clarendon Press, 1988); J. Marshall, *John Locke: Resistance, Religion and Responsibility* (Cambridge: Cambridge University Press, 1994); J. Marshall, *J. Locke, Toleration and Early Enlightenment Culture. Religious Intolerance and Arguments for Religious Toleration in Early Modern and Early Enlightenment Europe* (New York: Cambridge University Press, 2006); V. Nuovo, *Christianity, Antiquity, and Enlightenment*, *International Archives of the History of Ideas* 203 (Springer Science Business Media B.V. 2011); J. Mitchell, *Not by Reason alone. Religion, History and Identity in Locke's Political Thought* (Chicago: Chicago University Press, 1993); Micah Schwartzman, “The Relevance of Locke's Religious Arguments for Toleration,” *Political Theory* 33. 5 (2005), 678-705; M. Herrero, *La política revolucionaria de John Locke* (Madrid: Tecnos, 2015).

<sup>2</sup> T. Pangle, *The Spirit of Modern Republicanism: The Moral Vision of the American Founders and the Philosophy of Locke* (Chicago: University of Chicago Press, 1988); R. Euben, *Enemy in the Mirror: Islamic Fundamentalism and the Limits of Modern Rationalism* (Princeton: Princeton University Press, 1999); P. Kahn, *Political Theology: Four New Chapters on the Concept of Sovereignty* (New York: Columbia University Press, 2011); J. C. Sommerville, *The Secularization of Early Modern England* (New York: Oxford University Press, 1992); M. Zuckert, *Launching Liberalism: On Lockean Political Philosophy* (Lawrence: University Press of Kansas, 2002).

However, in his view religion has to be in some sense “public” in order to constitute the political arena. Religion must be public, not in the sense of a juridical representation of confessions, as had been achieved in the particular-sacral constitution of the churches, but as a basis for securing the public arena. It is precisely through religion that he achieves the constitution of “the secular.” On this issue, I fully agree with Pritchard.<sup>3</sup>

The problem then is how to argue in favor of a “public religion” while avoiding the interference of the magistrate in sacred matters, and arguing against coercion in the different senses that Pritchard sets out: (1) no ruler may claim to be an embodiment of the divine<sup>4</sup>; (2) the circulation of the religious is a matter of speech, persuasion or fashion and not bodies.<sup>5</sup> (3) intolerance towards certain groups is not a signal of persecution but of “curtail[ing] the circulation of their particular ideas.”<sup>6</sup>

I will argue that Locke’s philosophical-theological account does not reach to avoid political interference in religious beliefs, even if coercion is thereby mitigated (at least in theory). Nevertheless, what makes of Locke an important milestone on this question is the fact that he achieves a new kind of legitimization of political interference in religious matters—through religious arguments—and as a result we can speak of a Lockean “political theology”, in the sense that Carl Schmitt has developed that phrase.<sup>7</sup> It is not just E. Pritchard who uses the label of “political theology” to refer to Locke’s project; before her, for example, Ellis Sandoz, Richard Sherlock

<sup>3</sup> E. Pritchard, *Religion in Public. Locke's Political Theology* (Stanford: Stanford University Press, 2014), 61 and 104.

<sup>4</sup> E. Pritchard, *Religion in Public*, 78.

<sup>5</sup> E. Pritchard, *Religion in Public*, 83.

<sup>6</sup> E. Pritchard, *Religion in Public*, 85.

<sup>7</sup> For an account of Schmitt’s shaping of the idea of political theology see: Carl Schmitt, *Political Theology. Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2005), and Carl Schmitt, *Political Theology II. The Myth of the Closure of Any Political Theology*, (Cambridge: Polity Press, 2008). A detailed analysis of Carl Schmitt’s *Political Theology* can be found in Montserrat Herrero, *The Political Discourse of Carl Schmitt. A Mystic of Order* (Lanham: Rowman & Littlefield, 2015). And also in Heinrich Meier, *The Lesson of Carl Schmitt. Four Chapters on the Distinction between Political Theology and Political Philosophy* (Chicago: The University of Chicago Press, 1998).

and Judd Owen also did so.<sup>8</sup> Nevertheless, this perspective is quite original. I hold here that political theology, in Locke, is the strategy by which he builds a “theological argument” that will avoid any entry of the churches into the public sphere. Locke makes an argument in favor of the magistrate’s power, while maintaining the appearance of not doing so.

In the following pages I will try to explain Locke’s “displaced”<sup>9</sup> argument for legitimating the magistrate’s prerogative in religious matters: he exchanges the dispute on jurisdictions for an argument about the true religion, through which he redefines the extent of the spheres of the civil and the sacred. If we ask with Schmitt: who decides *in concreto* what is civil and what is sacred, and who has or doesn’t have the right to decide what a spiritual claim is in the here and now?<sup>10</sup> Locke’s response is clear: the magistrate and not the churches.

<sup>8</sup> E. Sandoz, “The Civil Theology of Liberal Democracy: Locke and His Predecessors,” *The Journal of Politics* 34. 1 (1972), 2-36, 28. He already employs the phrase, even if for him the only implication of that political theology is to consider contract theory as being dogma and not just as a well-founded theory. Also Richard Sherlock, “The Theology of Toleration: A Reading of Locke’s *The Reasonableness of Christianity*,” *Jewish Political Studies Review*, 9 (1997), 19-49, 45. He sees the Reasonableness as a political handbook for solving the theological-political problem of liberal toleration. In his interpretation Locke’s political approach is grounded on a profound religious skepticism. J. Owen, “Locke’s Case for Religious Toleration: Its Neglected Foundation in the *Essay Concerning Human Understanding*,” *The Journal of Politics* 69. 1 (2007), 156-168. He also uses the phrase “political-theology,” but only to deny the possibility of finding it in Locke. He notes that Locke’s epistemology is antitheological, 167. But he also writes: “Thus our speaking of Locke’s political theology is misleading to the extent that he aims to enervate theological speculation, though he does so with a political aim,” 167. In my view, this is the reason that we can speak of a political theology. Also see my “Interpretation of Scriptures as Theological-Political Act in Baruch Spinoza and John Locke,” in Montserrat Herrero, Jaume Aurell and Angela Miceli eds., *The Theory and the Practice of Political Theology: Discourses, Rites, Representations* (Turnhout: Brepols, 2016).

<sup>9</sup> Following Foucault’s denomination: déplacement as “la trace de mouvements par lesquels je ne suis plus à la place où j’étais tout à l’heure. (...) perpétuel besoin de relever en quelque sorte les points de passage où chaque déplacement risque par conséquent de modifier, sinon l’ensemble de la courbe, du moins la manière dont on peut la lire et dont on peut la saisir dans ce qu’elle peut avoir d’intelligible.” M. Foucault, *Du gouvernement des vivants* (Paris : Gallimard, 2012), leçon du 30 Janvier 1980.

<sup>10</sup> C. Schmitt, *Political Theology II. The Myth of the Closure of any Political Theology* (Cambridge: Polity, 2015), 115: “Until the Day of Judgment, the Augustinian teaching on the two kingdoms will have to face the twofold open question: *Quis judicabit?* *Quis interpretabitur?* [Who will decide? Who will interpret?] Who answers in concreto, on behalf

His argument includes three movements: (a) a focus on the question of the indifference of cult and the definition of true religion. (b) a defense of natural law as the common ground for constructing the political arena (c) the prevalence of the public good in decisions by the magistrate. These three movements open the path to the prevalence of the magistrate's decision in judging sacred matters. I will follow this line of argumentation in order to show that Locke's political theology is closer to that of Schmitt related to sovereignty, as Pritchard and the liberal tradition have claimed.

## 2. THE FIRST DISPLACEMENT: THE QUESTION OF THE INDIFFERENCE OF THE CULT AND THE IDEA OF A "TRUE RELIGION"

Locke opens his *First Tract* with the following question: "Whether the Civil Magistrate may lawfully impose and determine the use of indifferent things in reference to religious worship."<sup>11</sup> This question was redefined in the *Second Tract* as: "Whether the civil magistrate may incorporate indifferent things into the ceremonies of divine worship and impose them to the people."<sup>12</sup> If he responds in the affirmative to these questions, as he does, Locke has to make the civil magistrate into a quasi-absolute monarch intervening in all questions that are "indifferent."

The question of "indifferent matters" or *adiaphora* was a commonplace at the time.<sup>13</sup> What does indifference mean? Indifference with respect to

of the concrete, autonomously acting human being, the question of what is spiritual, what is worldly and what is the case with the *res mixtae*, which, in the interval between the first and the second arrival of the Lord, constitute, as a matter of fact, the entire earthly existence of this spiritual-worldly, spiritual-temporal, double-creature called human being?"

<sup>11</sup> J. Locke, *Two Tracts on Government*, edited with an introduction and translation by Philip Abrams (Cambridge: Cambridge University Press, 1967), 124.

<sup>12</sup> J. Locke, *Two Tracts*, 210.

<sup>13</sup> As B. Verkamp, *The evolution of religion: a re-examination* (Scranton: University of Scranton Press, 1995) notes that prior to Melancthon, whose works discuss that topic, there were other authors that speak of *adiaphora* in England. Thomas Starkey is particularly interesting in this regard, especially his *Exhortation to the People Instructing Them to Unity and Obedience* (1536), whose thesis coincides much more with what Locke expressed years later. For Starkey, the indifference of cult and of much of Christian doctrine allows the

what? Indifference regarding salvation by God? The delimitation of indifferent matters is central for knowing when the magistrate can intervene in sacred matters without causing harm to the believers. When intervening in religion the magistrate has to be sure about which religious matters are not crucial for salvation, because otherwise he would be prone to commit sin. We would err if we were to suppose that this question is just secondary in Locke's worries. As a Christian he knew that the limit between the sacred and the merely worldly has to be settled by those on the religious side, even if a perfect non-conflictive settlement of that limit would also require the acknowledgment of the political side.

Since the churches at that time were "the enemy" of the kings, Locke needed to reinterpret the dogmatic aspects that make the institution of the churches necessary. Even if his later writings on toleration seem to be more tolerant with confessions, he has not in fact changed his views on this matter.

Then, two movements are necessary for establishing a non-conflictive limit: A reinterpretation of Christian faith that is labelled the "true religion;" and an interpretation of the sphere of political influence bearing the label of "public good." He combines these two argumentative lines throughout his work, intertwined with his views on the natural law. The writings on toleration represent an intersection of these views.<sup>14</sup> At this point I will consider the first of those views, and in the third and fourth part I will turn to the other two.

Locke needs religion in order to build the political community by consensus; however, this consensus does not follow on the dogmas of any of the existent confessions, but is a "civil religion."<sup>15</sup> This is clear in the *Two Treatises of Government*, where he devotes a section to theological

magistrate to act in an arbitrary way in religious matters. See also: D. Eppley, *Defending Royal Supremacy and Discerning God's Will in Tudor England* (Aldershot: Ashgate, 2008), 42-45.

<sup>14</sup> Because of this intersection we can say with Adam Wolfson that for Locke toleration does not mean proposing a hidden relativism, as has been proposed in recent defenses of toleration, such as that of John Rawls or Ronald Dworkin, who follow the path of John Stuart Mill. See A. Wolfson, "Toleration and Relativism: The Locke-Proast Exchange," *The Review of Politics* 59. 2 (1997), 213-231.

<sup>15</sup> Ellis Sandoz speaks of a "civil theology" instead of a "civil religion." See E. Sandoz, "The Civil Theology of Liberal Democracy: Locke and His Predecessors," 2-36.

justifications; he is more explicit in the *Two Tracts*, in *The Law of Nature* and in *The Reasonableness of Christianity*. Firstly, the deconstructive part of the definition of “true religion” employs irony: the cult is just a superstition, appropriate only for uneducated people. Then he moves to the constructive part, that is, the creation of what he calls “true religion.”

The first step in the redefinition of religion is already present in his *Two Tracts on Government*.<sup>16</sup> There follows a critique of the importance of cult for salvation. In his criticism he is not dealing with the cult as it is seen by the faithful person of the Christian church, i.e. as sacramental and central for the believer. Rather, he discusses it in a displaced manner: he is convincingly indifferent. He describes the cult and all the things around it almost as superstition.<sup>17</sup> Also the *Second Tract* concedes with trivial evidence:

“Therefore, God, indulging the weakness of mankind, left his worship undetermined, to be adorned with ceremonies as the judgement of men might determine in the light of custom; and he no more judges his worshipers by these things than a king judges his subjects and their loyalty and obedience by their physical condition or the style of their clothes.”<sup>18</sup>

This extract indicates that for Locke there is no difference between that space we call a “marketplace,” for example, and the sacred space of liturgy. There is nothing like a “sacred public space.” In fact, the exegetical

<sup>16</sup> Written in 1660 and 1662 respectively, they were posthumously published. Philip Abrams published them in 1967 by Cambridge University Press. He gave those manuscripts, originally lacking any title, the name of Tracts. There was a pre-existing Italian edition, published as *Scritti editi e inediti sulla tolleranza*.

<sup>17</sup> There is no difference between the sacred and the profane, as the following passage of the First Tract holds. J. Locke, *Two Tracts*, 229: “We must therefore start by establishing that general principle from which, once is proved, it still follow with perfect justice that indifferent things, even those regarding divine worship, must be subjected to governmental power (...) the only difference being in the way they are viewed, there being no greater distinction than there is between a gown worn in the market-place and the self-same gown worn in church (...).”

<sup>18</sup> And the text continues: “But neither as Christians nor as subjects are those to be considered more faithful who are carelessly or meanly arrayed. It seems, then, to be agreed by all that the magistrate is the judge of what constitutes order and of what is to be considered decent, and that he alone is able to determine what is appropriate and seemly.” J. Locke, *Two Tracts*, 218.

interpretation of Christianity he carries out focuses on making superfluous the cult, and everything that is related to the necessary institution of the church as an institution of divine right, particularly what he calls the “holy tribe.”<sup>19</sup> True religion then is merely spiritual, and has no need of being improved by any kind of ritual action.<sup>20</sup> “Show” and “ceremonies” distract from true religion.<sup>21</sup> This idea is invariable in Locke’s writings, from his first *Tracts* all the way to the *Reasonableness of Christianity*. This idea is also coherent with the epistemological and anthropological suppositions described in the *Essay Concerning Human Understanding* regarding the distinction between morality and liberty, that is, between the inner man and his actions.<sup>22</sup>

<sup>19</sup> J. Locke, *The Reasonableness of Christianity in Writings on Religion* ed. by Victor Nuovo (Oxford: Clarendon Press, 2002), 85-211. Following is a quote from 194-195 referring the “old religion”: “All men, indeed, under pain of displeasing the Gods, were to frequent the Temples: everyone went to their Sacrifices and Services: but the Priests made it not their business to teach them Virtue. If they were diligent in their Observations and Ceremonies; Punctual in their Feasts and Solemnities, and the tricks of Religion; the Holy Tribe assured them the Gods were pleased, and they looked no farther. Few went to the schools of the philosophers to be instructed in their Duties, and to know what was Good and Evil in their actions. The Priests sold the better Pennyworths, and therefore had all the custom. Lustrations and processions were much easier than a clean Conscience and a steady course of Virtue; and an expiatory Sacrifice that atoned for the want of it, was much more convenient than a strict and holy Life.”

<sup>20</sup> J. Locke, *Two Tracts*, 146: “The service of the inward man which God looks after and accepts may be a free will offering, a sincere and spiritual performance under what shape so ever of outward indifferent circumstances, the heart may be lift up to heaven, whilst the body bows. And I know not how any habit can lie heavier on the spirits of any man and hinder its free motion towards God, than the stocks did Paul and Silas (...) All that God looks for in his worship now under the Gospel is the sacrifice of a broken and a contrite heart (...), but he had left into the discretion of those who are entrusted with the care of the society to determine what shall be order and decency which depend wholly on the opinions and fancies of men, and it is as impossible to fix any certain rule to them us to hope to cast all men’s minds and manners into one mould.” Also: J. Locke, *Two Tracts*, 214: “more correctly understood as being the actions of the inner virtues of all which God is the object, as the love of God, reverence, fear, etc. this is that inner worship of the heart which God demands, in which the essence and soul of religion consists, and in the absence of which all the other observations of religious worship provoke God (...).”

<sup>21</sup> J. Locke, *Two Tracts*, 163.

<sup>22</sup> J. Locke, *An Essay concerning Human Understanding* (Oxford: Oxford University Press, 1975), II. 21 § 8; II. 21 § 14; II. 21 § 15. In fact, in Ashcraft’s opinion, the *Essay concerning Human Understanding* has to be read as confirmation of Locke’s faith, even if it



Secondly, if in the *Two Tracts* he emphasizes the insignificance of rites for a true religion, in the *Essay concerning Human Understanding* and in the *The Reasonableness of Christianity as Delivered in the Scriptures*<sup>23</sup> he states that since grace is not necessary for salvation, then sacraments and therefore churches are unnecessary as a source of grace. This conclusion follows from two different exegetical assumptions derived from his reading of the Sacred Scriptures: (a) Humans have not inherited Adam's sin. Therefore if it is to read in the Scriptures that death came on all men by Adam's sin, is possible to differ in interpreting the word death: for some will have it to be a state of guilt, wherein not only he, but all his posterity was so involved, that everyone descended of him deserved endless torment, in hell-fire; for the majority—Locke included—that will mean just that every man has to die.<sup>24</sup> (b) Then, baptism as such is not necessary, nor is sacramental confession. Locke distinguishes between two laws: the law of works and the law of faith.<sup>25</sup> The law of works is the law which requires

is difficult to concede that it represents reconciliation between empiricism and Christianity. R. Ashcraft, "Faith and Knowledge in Locke's Philosophy." in: J. W. Yolton, *John Locke: Problems and Perspectives* (New York: Cambridge University Press, 1969) 194-223. Marshall adds that since it can be read in the Epistle to the Reader, the aim of the project was to find an answer to the central questions of men's life such as immortality or the punishment of sin, given his agnosticism. J. Marshall, *John Locke, Resistance, Religion and Responsibility*, 453.

<sup>23</sup> J. Marshall notes that there were various editions of that work. *Reasonableness and A Paraphrase and Notes on the Epistles of St. Paul of 1707* were among the few works that Locke dedicated the last portion of his life to. Both were condemned by his contemporaries as heretical, a label that Locke learned to hate. As Marshall affirms in *John Locke, Resistance, Religion and Responsibility*, 453-454, that must have produced anxiety in Locke, knowing as he did that other antitrinitarian contemporaries such as Thomas Aikenhead were executed for that very reason. He also could not have been unaware that the Blasfemy Act against antitrinitarianism had been published in 1697. Marshall believes that in this last work Locke declared himself a Unitarian and a Deist. Between 1660 and 1690 he abandoned his prior trinitarianism. Nonetheless, Locke remained a member of the Church of England from its establishment in 1662 to the end of his life.

<sup>24</sup> Discussion of this point is developed in J. Waldron, *God, Locke and Equality. Christian Foundations in Locke's Political Thought* (New York: Cambridge University Press, 2002).

<sup>25</sup> J. Locke, *The Reasonableness*, 97: "Whoever is guilty of any sin should certainly die, and cease to be; the benefit of life, restored by Christ at the resurrection, would have been no great advantage, (for as much as, here again, death must have seized upon all mankind, because all have sinned; for the wages of sin is everywhere death, as well after as before the

perfect obedience, without any remission or abatement; so that, by that law, a man cannot be just, or justified, without an exact performance of every title. The old law was of that kind. The new law, however, is the law of faith. By the law of faith, faith is allowed to supplement the lack of full obedience, even if it can't substitute completely for the law of the works; in this way, the believers are admitted to life and immortality, as though they were righteous.<sup>26</sup> So, what the sole important question is for a Christian is to be sure about his or her faith in Jesus as Messiah; specifically faith in his resurrection. Our certainty in that faith is based on Jesus' words, in his announcement of God's kingdom and particularly in the miracles he performed.<sup>27</sup>

Finally, faith and a virtuous life are the only two things that are demanded of a Christian. Beyond that, religion is either a superstition or it is the expression of a political interest on the part of the different theological parties, purely in order to achieve power. The inference of this kind of exegesis is clear: churches are a mere associational reality.<sup>28</sup> This

resurrection,) if God had not found out a way to justify some, i.e. so many as obeyed another law, which God gave; which in the New Testament is called 'the law of faith,' Rom. iii. 27, and is opposed to 'the law of works.'"

<sup>26</sup> Locke thinks that when St. Paul says that the Gospel establishes the law, he means the moral part of the law of Moses; he could not, of course, mean the ceremonial or political part of Scripture: "The civil and ritual part of the law, delivered by Moses, does not oblige Christians, though, to the Jews, it were a part of the law of works; it being a part of the law of nature, that man ought to obey every positive law of God, whenever he shall please to make any such addition to the law of his nature. But the moral part of Moses's law, or the moral law, (which is every-where the same, the eternal rule of right), obliges Christians, and all men, everywhere, and is to all men the standing law of works. But Christian believers have the privilege to be under the law of faith too; which is that law, whereby God justifies a man for believing, though by his works he be not just or righteous, i.e. though he come short of perfect obedience to the law of works. God alone does or can justify, or make just, those who by their works are not so: which he doth, by counting their faith for righteousness, i.e. for a complete performance of the law." J. Locke, *The Reasonableness*, 100.

<sup>27</sup> J. Locke, *The Reasonableness*, 102: "that believing of the Son is the believing that Jesus was the Messiah; giving Credit to the Miracles he did, and the Profession he made of himself." See also J. Locke, *A Discourse on Miracles*, in *Religious Writings*, 44-51.

<sup>28</sup> J. Locke, *Ecclesia* in *Religious Writings*, 80. This short manuscript is a notebook entry dated 1682, between the *Essay* and the *First Letter*. It consists of an extract drawn from book I, chapter 15 of Richard Hooker's *Laws of Ecclesiastical Polity*. In it Locke reflects upon Hooker's distinction between the Church as a supernatural society and as a merely natural or social association. Locke's doctrine does not coincide with Hooker's. Locke's

conclusion is central for changing the meaning of the public nature of religions.

Locke then pretends that his reading of the Scriptures is “naked,” in the face of the reading adopted by the different “schools of divinity.” It claims not only to be the most authentic reading but also the most coherent with reason. If reason is the probability that we obtain through conformity with our own experience,<sup>29</sup> faith or belief is the probability we achieve by the testimony of others. Revelation is an example of that kind of testimony, while tradition also claims to provide such testimony. We know by faith, in the case that there exists a revelation, those things not accessible to our senses.<sup>30</sup> There has to be a good reason for our assent, of course. Reason has to judge in every case.<sup>31</sup> As a result, since the jurisdictions of reason and faith are completely different, they cannot disagree. But who adjudges the “good reason” that must necessarily be assented to?<sup>32</sup> We can once again recall the Schmittian “*quis judicabit*.” Reason establishes the limit between what is worthy of being believed and what is not. Reason has precedence. Indeed, for Locke reason is already a kind of natural revelation,<sup>33</sup> more reliable than any church, given that “tradition,” the source of certainty for churches, presents lots of problems. In Locke’s opinion, any testimony, the further away it is from the original truth, the less force and probative power it has.<sup>34</sup> Following this argument, the historical existence of Jesus as Messiah

interest is entirely focused on the limitation of ecclesiastical power; however, while based himself on Hooker’s description he infers a very different conclusion: that the church is a voluntary society. That means: (a.) that membership in a church cannot be enforced; (b) that ceremonial practices cannot be enforced by a church; (c) that the bond in a church is by consent; (c) the only motive for constituting a church would be the rational principle that God ought to be worshipped in public.

<sup>29</sup> J. Locke, *An Essay concerning Human Understanding*, IV. 17. § 2.

<sup>30</sup> J. Locke, *An Essay concerning Human Understanding*, IV. 18. § 7: “There being many things wherein we have very imperfect notions, or none at all; and other things, of whose past, present, or future existence, by the natural use of our faculties, we can have no knowledge at all; these, as being beyond the discovery of our natural faculties, and above reason, are, when revealed, the proper matter of faith.”

<sup>31</sup> J. Locke, *An Essay concerning Human Understanding*, IV. 18. § 8.

<sup>32</sup> J. Locke, *An Essay concerning Human Understanding*, IV. 18. § 4.

<sup>33</sup> J. Locke, *An Essay concerning Human Understanding*, IV. 19. § 4 and IV. 18. § 6.

<sup>34</sup> J. Locke, *An Essay concerning Human Understanding*, IV. 16. § 10.

should be seen as less and less truthful every year. So, reason is crucial for preserving a “healthy” religion. Only in those cases where reason can’t achieve clarity on something are we allowed to assent to revelation.<sup>35</sup> If religion were not to employ reason then it would end up teaching all kinds of fantasies.<sup>36</sup>

Following this chain of thinking, only reason can judge between differing exegeses of Scripture or between the pretenses of the different confessions. In *Reasonableness* Locke distinguishes between the nucleus of the faith and its historical manifestations. The different “systems of divinity” respond just to the historical manifestations, but not to the essence of religion. They compete for supplying a rational explanation of the faith. However, Locke thinks that no theological system can exhaust the truth of the faith. In consequence all are in a sense false. Individuals can choose what system is the most adequate to their own ideas. By the way, the Lockean idea of “true religion” displaces all the different systems of divinity as false. “True religion” consists in accepting that there is no one sole system of divinity that can presume to be the authentic interpretation or explanation of faith; and that because, as Mitchell asserts, Christ’s message was revealed only gradually in history.<sup>37</sup> Only a system of divinity with a pretension to be the sole true faith would be contrary to “true religion.” It is only a faith of that sort that should not be tolerated. The idea of toleration is interdependent on the definition of the true religion.

Thus toleration is meaningful only from the perspective of an achieved truth; in Locke’s case it is from the perspective of a “true religion.” Toleration then is not a consequence of religious neutrality, but of a particular religious exegesis. Nuovo calls this kind of exegesis a “liberal

<sup>35</sup> J. Locke, *An Essay concerning Human Understanding*, IV. 18. § 9.

<sup>36</sup> J. Locke, *An Essay concerning Human Understanding*, IV. 18. § 11: “For men having been principled with an opinion that they must not consult reason in the things of religion, however apparently contradictory to common sense and the very principles of all their knowledge, have let loose their fancies and natural superstition; and have been by them led into so strange opinions, and extravagant practices in religion, that a considerate man cannot but stand amazed at their follies, and judge them so far from being acceptable to the great and wise God, that he cannot avoid thinking them ridiculous and offensive to a sober good man.”

<sup>37</sup> See J. Mitchell, “John Locke and the Theological Foundation of Liberal Toleration: A Christian Dialectic of History,” *The Review of Politics* 52.1 (1990), 64-83.

theology.”<sup>38</sup> He notes that Locke is looking for a new form of Christianity beyond sectarianism. A new kind of religion is necessary to ground a new kind of politics and it must be the most charitable one with every Scriptural interpretation. Locke's political theology is achieved ultimately in the proper interpretation he offers of Sacred Scripture, which presuppose a reflection on the right way of interpreting Scripture in itself, as we have seen.<sup>39</sup>

If natural law is a kind of orientation for everyone, even for persons belonging to no faith, the New Testament's morality is the most perfect

<sup>38</sup> V. Nuovo, *Christianity, Antiquity, and Enlightenment*, 53-54: “It should be evident to anyone who has read John Locke's mature theological writings that his primary motive as an author was to articulate a form of Christianity acceptable to all Christians not predisposed by sectarian interests, one that would prove persuasive to all impartial readers, whether confidently Christian or not, a form of religion that to his mind was not his own invention, but which represented faithfully the idea of Christianity perspicuously presented in Scripture, especially in the New Testament. The title of *The Reasonableness of Christianity* as delivered in the Scriptures is an announcement of that intention. Accordingly, he employed a theological method that is biblical and expository rather than speculative and dogmatic, and in this endeavor he was confident not only of the divine authority of Scripture but also of Scripture's capability to disclose its paramount meaning.” Nuovo affirms that Locke belongs to the tradition of the “theological liberalism” that begins with Erasmus and includes Castellio, Grotius, Hooker and the entirety of the “Tew Circle.” In Nuovo's approach, Lelio Socino could be included in this tradition. As J. Marshall, *John Locke, Resistance, Religion and Responsibility*, 391-392, says, Locke was well aware of Socino's doctrine. In his library there is a collection of Socinian authors and books by Socino himself, around 1680.

<sup>39</sup> See J. Locke, *Infallibility in Religious Writings*, 69-73; and also *The Reasonableness*. As a paradigmatic text *The Reasonableness*, 91 states: “therefore, generally, and in necessary points, to be understood in the plain direct meaning of the words and phrases: such as they may be supposed to have had in the mouths of the Speakers, who used them according to the language of that time and country wherein they lived; without such learned, artificial, and forced senses of them, as are sought out, and put upon them, in most of the systems of divinity, according to the notions that each one has been bred up in.” Since I have insufficient space to comment on Locke's idea of interpretation of Scriptures, I refer to the already quoted articles by Richard Sherlock, “The Theology of Toleration: A Reading of Locke's *The Reasonableness of Christianity*”; Joshua Mitchell, “John Locke and the Theological Foundation of Liberal Toleration: A Christian Dialectic of History,” and Montserrat Herrero, “Interpretation of Scriptures as Theological-Political Act in Baruch Spinoza and John Locke.”

system of morality. In any case, rituality and churches are not an essential part of that “religious truth.”

### 3. SECOND DISPLACEMENT: INDIFFERENT QUESTIONS AND NATURAL LAW

There is another line of argumentation, beginning with Locke’s first writings and lasting through his final works: the defense of natural law. While he has not wavered in acknowledging the perfectionist side of the Gospel’s moral teaching, he thinks the natural law is its “rational side.” Indeed, both natural law and sacred law are almost interchangeable in his arguments. A religion must teach the content of natural law if it is to be recognizable as “true.”

If the question of the interpretation of Scriptures was Locke’s final strategy for achieving truth in religious matters, the search for a natural law was the first.<sup>40</sup> They are complementary in trying to displace the politically “relevant question:” the obeisance of the churches under the power of the magistrate.

The origin of Locke’s systematic thought on the natural law was the lectures he gave around 1664 as the censor of Christ Church College.<sup>41</sup> They are nearly contemporary to the *Tracts*. Given the problem with the

<sup>40</sup> Locke has not wavered on this point, as we can read in J. Locke, *An Essay concerning Human Understanding*, II. 28. § 5 y § 13. This is also the opinion of von Leyden, even if he asserts that he has not come back to the topic in the last years. Still, he maintained the natural law as a basis of his political building. Von Leyden, W., “John Locke and Natural Law,” *Philosophy*, Vol. 31, No. 116 (1956), 23-35, p. 26: “In my view, Locke tended in his later years to regard the notion of a law of nature as a mere premise of his thought, as something he believed in but barely investigated. The reason for this attitude, I think, is to be found in the difficulties he had in reconciling the notion of this law with some of his mature doctrines. For instance, the development of his hedonistic views and his philosophy of language in the Essay had made it difficult for him to attempt a full exposition of natural law or even to believe in it whole-heartedly.” Yolton justifies Locke’s interest in natural law in his last years by his interest in discussing innatism. J. W. Yolton in “Locke on the Law of Nature,” *The Philosophical Review*, Vol. 67, No. 4 (Oct., 1958), 477-498, 482: “The law of nature for Locke plays the same role in morality as the appeal to innateness did for his contemporaries: it furnishes a firm and unalterable foundation for moral goodness.”

<sup>41</sup> They were published years later by Wolfgang von Leyden in his *John Locke and Natural Law*. Von Leyden, W., “John Locke and Natural Law,” in: *Philosophy*, Vol. 31, No. 116 (1956), 23-35.

definition of the indifferent questions, he tries here to extract the rational content of the moral law: that is, he tried to define the sphere of non-indifference from the rational point of view and not from within the faith. Outside that sphere, there is an unlimited space where the magistrate's action would be allowed.

Natural law is described by Locke "as being the decree of the divine will discernible by the light of nature and indicating what is and what is not in conformity with rational nature, and for this very reason commanding or prohibiting."<sup>42</sup> Indeed, the order of the world depends on a divine decree. Human reason alone can't produce that decree; it can merely discover it. Reason cannot give us laws, insofar as it is a part of ourselves.

The orientation of reason given by the law of nature is accompanied by the idea of a God that grounds the obligation.<sup>43</sup> His arguments in favor are: human sociability; the fact that we make moral judgments; the datum that the whole natural world is subject to legislation<sup>44</sup>; and the fact that we can speak, as Aristotle did, of natural justice with validity in every country. All these elements speak of the existence of such a law, even if not everyone knows it. Certainly not everyone has the same rational capacity to grasp that law.<sup>45</sup> In any case it is reason and not a supposed innate character, consensus or tradition that causes that law to be present in our minds.<sup>46</sup>

<sup>42</sup> J. Locke, *Essays on the Law of Nature in Political Essays* (Cambridge: Cambridge University Press, 1997), 79-134, I (3), 82.

<sup>43</sup> Locke does not deduce moral precepts from facts, something which Hume will denounce years after. The moral argument does not derive from reason but from God's commandment. This was underlined by von Leyden, in "John Locke and Natural Law," 31: "The ethical statement concerning our duty to do certain actions can be derived only from another ethical statement such as that we ought to do what God commands."

<sup>44</sup> J. Locke, *Essays on the Law of Nature*, 85-87. Particularly 87: "it does not seem that man alone is independent of laws while everything else is bound."

<sup>45</sup> J. Locke, *Essays on the Law of Nature*, 85-86: "I say that natural law can be known by reason, but from this it does not necessarily follow that it is known to any and every one (...) Hence in this matter, not the majority of people should be consulted but those who are more rational and perceptive than the rest." The emphasis is mine.

<sup>46</sup> On the difference between an innate law and the law of nature, see: J. Locke, *An Essay Concerning Human Understanding*, I. 3. § 13 and I. 3. § 20. Even if in the *Essays on the Law of Nature* he speaks of a "universal law of nature." Years after *An Essay Concerning Human Understanding* II, 3, § 11 he asserts that the general and universal do not pertain to

Natural law is a guide for the magistrate's decision, because it provides the core of the non-indifferent things in which the magistrate's decision cannot interfere without committing sin. The problem begins when Locke tries to specifically define the core of these non-indifferent contents of morality that build a political community. Here Locke offers less than expected. After confronting Hobbes about the possibility of self-preservation being the only content of natural law,<sup>47</sup> he admits four kinds of objects<sup>48</sup>: (a) they are a first kind of things that are completely prohibited. We are always obligated by this kind of law, which includes such sins as stealing, homicide or depriving someone of his fortune by force or by fraud. (b) There is a second kind of obligation, like reverence and fear of God or the love of one's parents, which are compulsory; these laws communicate that feeling certain sentiments are mandatory. (c) There is a third kind of things toward we are obliged to act externally. This is the case with cult toward God and charity to our neighbour. In those cases we are not always obliged, but only sometimes: in a particular moment and in a particular

the real existence of things, but are inventions. Hence, the basis of the political structure is perceived as weaker than in his first writings.

<sup>47</sup> J. Locke, *Essays on the Law of Nature*, 112.

<sup>48</sup> J. Locke, *Essays on the Law of Nature*, 122-124. Certainly J. W. Yolton, consulting Locke's texts, sets out a more comprehensive list of precepts deducible from the law of nature (he quotes the von Leyden edition): "(1) Love and respect and worship God (*Essays*, p. 195). (2) Obey your superiors (*ibid.*, p. 129). (3) Tell the truth and keep your promises (*ibid.*). (4) Be mild and pure of character and be friendly (*ibid.*). (5) Do not offend or injure, without cause, any person's health, life, or possessions (*ibid.*, p. 163; T II, 6). (6) Be candid and friendly in talking about other people (*Essays*, p. 195). (7) Do not kill or steal (*ibid.*). (8) Love your neighbor and your parents (*ibid.*). (9) Console a distressed neighbor (*ibid.*). (10) Feed the hungry (*ibid.*). (11) "Whoso sheddeth man's blood, by man shall his blood be shed" (T II, i i). (12) That property is mine which I have acquired through my labor so long as I can use it before it spoils (T II, 29-30). (13) Parents are to preserve, nourish, and educate their children (T II, 56). It would seem a gross overreach to argue that all of these concrete rules are derivable from a law of nature which is apprehended by the function of reason and sense. In fact, it is clearly impossible to derive these precepts from any single principle, whether that principle be innate, deriving from the light of reason, or a standard agreed upon by men. What these rules do is disclose the moral framework in terms of which Locke spoke of society and civil government. Some of them are the same rules that his contemporaries claimed were innate. All of them perform the same function as supposedly innate principles did: they provide the moral foundation for his views on individual and social action." 487-488.



manner.<sup>49</sup> (d) There is a fourth kind of things regarding which we are not obliged absolutely, but only in those cases where we choose to obligate ourselves in a determinate circumstance.<sup>50</sup>

In the *Essays on the Law of Nature* Locke recognizes that the cult is not completely indifferent, insofar as it is a part of the law of nature, however, he leaves this indifference undetermined. It belongs in part to the sphere of non-indifference where the magistrate cannot act arbitrarily, but not always and not in every circumstance. Again, the question we can ask in this case is: then, who decides when and how something is indifferent? The churches or the magistrate? That is the crucial question of his political theology. We have to move beyond this text to obtain a response to our inquiry.

#### 4. THIRD DISPLACEMENT: THE ARGUMENT OF THE PUBLIC GOOD

We have to look to the writings on toleration to see a change from a focus on the issue of indifferent things, through a focus on the promotion of the “public good” by the magistrate. If in his writings—*Tracts* and *Law of Nature*—the magistrate’s discretionary decision was justified by the indifference of the matter of this decision. Years later—in the writings regarding toleration—Locke will justify the arguments in favor of the magistrate’s discretionary decision-making on religious matters by the idea of the promotion of the public good. The criterion has changed and also the attitude: I agree with the literature in acknowledging that Locke became more tolerant.

The idea of the public good certainly appears in Locke’s writings from his very first texts, for example, in this text from the *First Tract*:

“Whereas the magistrate commands the obedience of the outward man by an authority settled on him by God and the people, wherein he is not to expect immediate inspirations but is to follow the *dictates of his own*

<sup>49</sup> J. Locke, *Essays on the Law of Nature*, 123.

<sup>50</sup> J. Locke, *Essays on the Law of Nature*, 123.

*understanding*; and establish or alter all *indifferent things* as he shall judge them conducing to the *good of the public*.”<sup>51</sup>

Locke employs the expression “following the dictates of his own understanding” in referring to the magistrate’s judgment, something which will be central for my argument regarding the prevalence of the dictatorship of the magistrate related religious matters in Locke’s political theology.

If in the *Law of Nature* we have seen that the cult is not a completely indifferent issue, in the *Essay Concerning Toleration* the question of the indifference or not of religious cult is no longer relevant, and he now concedes that it is almost indifferent. The crucial question now is the “public good,” and the cult is relevant in the argument for toleration since it might, in some contexts, be an impediment to the public good. In fact, the *Essay* early on includes the following sentence:

“that the whole trust power & authority of the magistrate is vested in him for noe other purpose, but to be made use of for the good, preservation & peace of men in that society over which he is set, and therefor that this alone is & out to be the standard & measure according to which he ought to square & proportion his laws: model & frame his government.”<sup>52</sup>

It seems then that religious affairs are excluded from the magistrate’s competence. Indeed, Locke writes that questions concerning the cult and mere speculative opinions are not the kind of things upon which the magistrate can decide, because in themselves they do not concern society or government.<sup>53</sup> The magistrate is concerned only with those questions that have consequences on the acts of men, such as practical opinions or questions related to virtues and vices. In moral questions he is absolutely competent, but always for the sake of the public good, for political reasons and not for moral or religious ones.<sup>54</sup> To the extent that Locke says: “how

<sup>51</sup> J. Locke, *Two Tracts*, 120. Always appears in reference to the magistrate’s task of preserving the public good or the common good. See also *Two Tracts*, 212 and 119-220. The emphases are mine.

<sup>52</sup> J. Locke, *An Essay concerning Toleration and other Writings on Law and Politics*, Clarendon Press, Oxford, 2006, 269. I will maintain the quotes in the same early-modern English language used by Milton, as employed in the Milton edition quoted here.

<sup>53</sup> J. Locke, *An Essay concerning Toleration*, 270-271.

<sup>54</sup> J. Locke, *An Essay concerning Toleration*, 281: “the Lawmaker hath noe thing to doe with moral virtues & vices, nor ought to injoyne the duties of the 2d table any otherwise,

much the good of the common wealth is the standard of all human laws, when it seems to *limit & alter the obligation even of some of the laws of god & change the nature of vice and vertue.*"<sup>55</sup>

The reason for toleration or non-toleration of a behavior can't ever be an appeal to conscience.<sup>56</sup> No one following their own conscience can determine what the content of the public good is. It is only the magistrate's judgment that has the right to decide on the public good:

"whereof though *he be judg*, yet he ought still to have a great care, that noe such laws be made, noe such restraints establishd, for any other reason, but because the necessity of the state, & the welfare of the people cald for them."<sup>57</sup>

If the magistrate has to have a "great care" it is because there is a danger: the danger of overstep one's power. The particular and personal judgment of the magistrate, this exceptional position, appears as the "universal" criterion of judgment in the fight against churches.<sup>58</sup> Even if the law of

then barely as they are subservient to the good & preservation of mankind under government."

<sup>55</sup> J. Locke, *An Essay concerning Toleration*, 283. Emphasis is mine.

<sup>56</sup> J. Locke, *An Essay concerning Toleration*, 276: "But yet noe such opinion has any right to toleration, on this ground, that it is a matter of conscience & and some men are perswaded that it is either a sin or a duty. Because the conscience, or persuasion of the subject, cannot possibly be a measure by which the magistrate can, or out to frame his laws, which ought to be suited to the good for all his subjects, not the persuasions of a part."

<sup>57</sup> J. Locke, *An Essay concerning Toleration*, 278. Emphasis is mine.

<sup>58</sup> There is a discussion in the literature between different interpretations on this point. I am on the side of John Dunn and Jeremy Waldron. Alex Tuckness, on the contrary, insists on saying that if we follow Locke's arguments against Proast in the Third Letter, we can't interpret the magistrate's judgment as being private, because of its relationship with the "public good." He describes two ways for making a private judgment public: first, defining the public good as being identical with the natural law, that is, with the preservation of the community; second, the introduction of a kind of categorical imperative that he calls the "legislative point of view," i.e. a principle on which he would want all magistrates to act, not merely his own. So Tuckness ends by saying: "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 the legislator's (God) point of view." A. Tuckness, "Rethinking the Intolerant Locke," *American Journal of Political Science*, 46. 2 (2002), 288-298, 298. Also see A. Tuckness, *Locke and the Legislative Point of View. Toleration, Contested Principles, and the Law* (Princeton: Princeton University Press, 2002).

nature represents a limit to the arbitrariness of the magistrate's decisions, and government by consent provides a certain limitation, we can't forget that in Locke's schema of power, the legislature has to be dissolved once the laws are posited. The executive is the power that is always awake. His "political judgment" on what is healthy or harmful for the public good prevails over every kind of reason, whether moral (he says, he decides on *the nature of vice and virtue*) or religious. As a result the magistrate is the only person that can establish censorship: this is the limit of what can be tolerated.

After these theoretical presuppositions, Locke explains which opinions must not be tolerated. His proposal—which we have to identify with that of the prudent magistrate—already sounds like a political program; perhaps it is a warning regarding Charles II's condescendence with the Catholics? Papists and fanatics are not to be tolerated.<sup>59</sup> Both are harmful to the public good. In the case of Catholics it is not because their religion is false or superstitious, as argued in the *Tracts*, but (a) because they owe allegiance to a foreign prince, thus threatening our own country. (b) They need a community that is massive, and thus can threaten the political community. (c) They are not tolerant with other confessions.<sup>60</sup> They are therefore enemies of the country: political enemies. With the other dissidents, the fanatics, he doesn't provide such extensive reasoning. The political criteria prevail over the religious one. The following text indicates to what extent religion's cause is unprotected when confronted with the political interests of the magistrate:

"For the interest of the King of England as head of the Protestants will be much improv'd by the discountenancing of popery amongst us. The different partys will sooner unite in a common friendship with us, when they finde we really separate from & set our selves against the common enemy both to our church & and all protestant professions. This will be an hostage of our friendship to them, & a security that they shall not be deceiv'd in the confidence they have to us, & the sincerity of the accord we make with them."<sup>61</sup>

<sup>59</sup> J. Locke, *An Essay concerning Toleration*, 290.

<sup>60</sup> J. Locke, *An Essay concerning Toleration*, 290.

<sup>61</sup> J. Locke, *An Essay concerning Toleration*, 292.

We can't say that Locke is promoting something similar to religious liberty here. He is more or less in the same position, albeit on the other side, of those Catholics he criticizes: taking advantage of religious concerns to engage in politics. Who is going to be confident about the tolerance of the "tolerant" in the Lockean model if one is tolerated or not depending on political motives? The King follows Locke's advice, as we can see in *The Declaration of Indulgence* of 1672 by Charles II.<sup>62</sup> In fact, the Declaration of Charles II includes the command to reduce the standing of Catholics.<sup>63</sup>

<sup>62</sup> J. R. Milton and P. Milton, General Introduction to *An Essay concerning toleration and other writings on law and politics*, Clarendon Press, Oxford, 2006, 43. Cranston does not waver in affirming that Locke wrote the Essay, motivated by Ashley in 1667, for a political use. See M. Cranston, "John Locke and the Case for Toleration," in: J. Horton and S. Mendus eds. *John Locke: A Letter concerning toleration in Focus*, Routledge, London, 1991, 80. Laslett includes the Essay as the first of a series of writings for Ashley's use. See P. Laslett, Introduction to *Locke's Two Treatises of Government* (Cambridge: Cambridge University Press, 1960). J. Marshall suggests that the use of the second person in the Essay's manuscript could be interpreted as the possibility that the Essay could be read before the King. See J. Marshall, *John Locke: Resistance, Religion and Responsibility*, Cambridge University Press, Cambridge, 1994, 49. See also J. Marshall, *J. Locke, Toleration and Early Enlightenment Culture. Religious Intolerance and Arguments for Religious Toleration in Early Modern and Early Enlightenment Europe* (New York: Cambridge University Press, 2006), 31. Abrams affirms that between 1667 and 1669 Locke and Ashley were determined to persuade Charles II to establish tolerance by royal prerogative. Ashley's memorandum to the King of 1669 followed the line of argumentation of the Essay. See P. Abrams, Introduction in *J. Locke, Two Tracts*, 102-103.

<sup>63</sup> Charles II, *The Declaration of Indulgence*, 1672. In Andrew Browning (ed.), *English historical documents, 1660-1740* (London: Eyre & Spottiswoode, 1966), 387-388: "But to prevent such disorders and inconveniences as may happen by this our indulgence, if not duly regulated, and that they may be the better protected by the civil magistrate, our express will and pleasure is that none of our subjects do presume to meet in any place until such place be allowed, and the teacher of that congregation be approved by us. And lest any should apprehend that this restriction should make our said allowance and approbation difficult to be obtained, we do further declare that this our indulgence, as to the allowance of the public places of worship and approbation of the teachers, shall extend to all sorts of nonconformists and recusants, except the recusants of the Roman Catholic religion, to whom we shall in no way allow public places of worship, but only indulge them their share in the common exemption from the execution of the penal laws, and the exercise of their worship in their private houses only."

*A Letter concerning Toleration*<sup>64</sup> of 1685 comes in another historical moment remaining the *Essay* unpublished. It relates to the politics of King James II, which finally bore fruit in the *Declaration of Indulgence of King James II* of 1687.<sup>65</sup> But its most immediate circumstance was the official withdrawal of the toleration that the French kingdom had extended to the Protestant minority. The new theoretical step in this Letter was the great separation between church and state<sup>66</sup>: “we must above all distinguish between political and religious matters, and properly define the boundary between church and commonwealth.”<sup>67</sup>

In this case he argues from the point of view of the jurisdictions, but again, the problem arises: who defines the extent of every jurisdiction? Who decides what is worldly—to be managed by the State—and spiritual—to be managed by the church? From Locke’s point of view, we have to answer: the magistrate.<sup>68</sup> The state is what defines what a church is: a free association within a state and as such is just a temporal association, just like many others in society and nothing supernatural.<sup>69</sup> None of the churches have divine right or hierarchy.

After this idea of the great separation Locke comes back to the arguments of the *Essay* referring to cult and doctrines. It seems to be clear that church affairs are not part of the magistrate’s jurisdiction. Nevertheless

<sup>64</sup> J. Locke, *A Letter concerning Toleration* in R. Vernon ed. *Locke on Toleration* (Cambridge: Cambridge University Press, 2010), 3-47.

<sup>65</sup> The complete text can be found in *Historical Documents, 1660-1740*, 399-400. See Nenner, H., “The later Stuart Age.” in: J. G. A. Pocock, *The Varieties of British Political Thought, 1500-1800* (New York: The Cambridge University Press, 1996), 187.

<sup>66</sup> J. Locke, *A Letter Concerning Toleration*, 3: “True religion has a different object. It did not come into the world in order to establish outward pomp and ecclesiastical domination and violence, but to ground a life of goodness and piety.”

<sup>67</sup> J. Locke, *A Letter Concerning Toleration*, 6.

<sup>68</sup> On the incapacity of this “jurisdictional approach” for understanding the double loyalty of the citizen to the civil community and to the religious community, not only in theory but also in the consequences for contemporary liberalism, the book by J. Perry may be of interest: *The Pretenses of Loyalty. Locke, Liberal Theory and American Political Theology* (Oxford: Oxford University Press, 2011).

<sup>69</sup> J. Locke, *A Letter concerning Toleration*, 9. See footnote 28 in this article.

he adds that actions relating to the cult are limited by the civil law, just as every other external action of an individual in civil society is.<sup>70</sup>

He again repeats that Catholics are, in this case, in the company of the atheists,<sup>71</sup> who are political enemies. Tolerance in Locke's view is not a general attitude, but rather the other side of intolerance. Toleration provides a new—discursive—way to establish censorship. Government for the public good allows the magistrate—in his own judgment—to establish what must be tolerated and what has to be “dissuaded.” No one except God himself can judge the magistrate. We know about Locke's dispute from the letters on toleration exchanged with Jonas Proast, defending against Proast non-coercion or non-persecution.<sup>72</sup> Locke was clear about the argument that “be persecuted” is the best way for making a particular confession gain in strength. The best way “to persecute” in his view is to “curtail the circulation of their particular ideas,” using Pritchard's words, which I have already quoted in this article.

As Marshall points out, for Locke resistance is only a right when one is defending one's own preservation, but never to assure the non-persecution or toleration of one's own confession. In these cases Locke is implacable.<sup>73</sup> The magistrate's judgment prevails not only over the authority of the churches but also over the judgment of the conscience. There is no place for something like resistance because of a “religious conscience.”<sup>74</sup> This idea is

<sup>70</sup> J. Locke, *A Letter concerning Toleration*, 26: “But the ruler has to be particularly careful not to use the ground of public interest as a pretext for stifling any church's liberty. On the contrary, nothing that is lawful in everyday life and apart from God's worship may be forbidden by the civil law from being done in divine worship of in holy places.”

<sup>71</sup> J. Locke, *A Letter concerning Toleration*, 36-37.

<sup>72</sup> On the Locke-Proast exchange see A. Wolfson, “Toleration and Relativism: The Locke-Proast Exchange,” and the introduction of Richard Vernon in *Locke on Toleration*, viii-xxiii.

<sup>73</sup> J. Marshall, *John Locke: Resistance, Religion and Responsibility*, p. 291: “In its silence on toleration, and almost complete silence on resistance for religion, the *Two Treatises* were indirectly another work produced by Locke's anxious eclectic combination of elements of extremely Latitudinarian Anglicanism (now very close to Socinianism) and of independent thought.”

<sup>74</sup> J. Locke, *An Essay concerning Toleration*, 279-280: “That if the magistrate in these opinions or actions by laws & by impositions endeavor to restraint, or compell men, contrary to the sincere perswasions of their own consciences; they ought to doe what their

crucial for understanding one of Locke's central convictions: there are no exceptions in the magistrate's not using his prerogative over preservation and property, but there is over religious matters when the public good is threatened.

A good example of this conviction appears in the 1694-1697 discussion of the recommendation of the renewal of the Licensing Act of 1662. Clarke's circle, in which Locke was involved, was persuaded of the supremacy of the magistrate's judgment over heresy. As Hughes recognizes, Locke's commentators predominantly understand his Memorandum—probably written for the use of Edward Clarke—in the context of censorship, while what was at stake at the time was the monopoly held by the Stationers. For Locke the important issue here was the author's property rights and not religious liberty.<sup>75</sup> The context of the discussion was the question of the monopoly established by a central government's (royal) grant—granting letters patent over pre-existing areas of commerce—that interfered with otherwise existing rights to property and to commerce. The royal prerogative over property rights was powerfully called into question by Locke. He does not allow for any exceptions for exercising power prerogatives in property matters.

Locke holds a different attitude in “heresy matters.” Locke's amendments to the draft Bill for the Better Regulating of Printing has not been preserved in its integrity and as a result we only know a part of the content by the testimony of a letter from Freke and Clarke to Locke on 21 March 1695 in which we can read:

consciences require of them, as far as without violence they can; but withal are bound at the same time quietly to submit to the penaltys the law inflicts on such disobedience. For by these means they secure to them selves their grand concernment in an other world, & disturb not the peace of this (...) For liberty of conscience being the great privilegd of the subject, as the right to imposeing is the great privilegd prerogative of the magistrate, they ought the more narrowly to be watcht, that they doe not mislead either magistrate, or subject: because the faire pretenses they have.”

<sup>75</sup> J. Hughes, Locke's 1694 Memorandum (and more incomplete copyright historiographies), Working paper 167, Benjamin Cardozo School of Law 2006. The 1694-1697 discussion regarding the renewal of the Licensing Act of 1662 was driven by many different interests. For a reading that defends the idea that the abandonment of licensing was becoming a Church cause, a strategic cause in a divided institution see: G. Kemp, “The ‘End of Censorship’ and the Politics of Toleration from Locke to Sacheverell,” *The Parliamentary History Yearbook Trust* (2012), 47-68.



“The College is obliged to you for your compliment in that of the 18<sup>th</sup> and to ease your mind a little about the words heretical [§ 6] and “as is established by law” [§ 3] they crave leave to inform you that by a statute made in Queen Elisabeth’s time [I Eliz. I, c. I] ‘tis enacted that nothing shall be adjudged heresy but what is declared such by the Holy Scriptures or by the first four General Councils or by other General Councils by the express words of Scripture, so that we think that the word ‘heresy’ being thus determined as to its signification by a statute it can no hurt in the printing Bill, and as to the other words (you) yourself observe how the words ‘Christian religion’ influences them, but let us observe to you that as the words are penned ‘twill be incumbent on the prosecutor to show not only that what he prosecutes for, is contrary to the Christian religion as he understands that religion, but that what he so understands is established by law as he understands it. So that we think those words some of the best words in the Bill.”<sup>76</sup>

The definition of ‘heresy’ fits with what Locke describes in the *First Letter* as a legitimate way of speaking of heresy.<sup>77</sup> But what is more important for my argument is his conformity with the idea of deriving the definition of heresy from an enacted statute; i.e. conformity with the magistrate’s prerogative to decide on heresy.<sup>78</sup>

## 5. CONCLUSION: THE PREVALENCE OF MAGISTRATE’S JUDGMENT

We come back to the question asked at the beginning of this article: does Locke avoid interference by the government in sacred matters, as well as coercion in the different senses mentioned by Pritchard? With my argument now complete, I can answer by saying: yes to coercion, but not

<sup>76</sup> J. Locke, *Political Essays*, 339.

<sup>77</sup> J. Locke, *A Letter concerning Toleration*, 43-46.

<sup>78</sup> G. Kemp gives the same interpretation of this quote in “The ‘End of Censorship,’” 53. It is interesting for my argument that he brings in an opinion of Locke found in his Correspondence, in which “Locke complained that licensing made judgment of heresy subject to the ‘humours’ of current ecclesiastical interpretation.” 52. We can see here Locke’s unbalanced judgment regarding the different ‘humours’ attributed to church and state.

supremacy or interference. And supremacy turn into persecution in extreme cases—that is in cases in which the public good is threatened—, as occurred after the Glorious Revolution in Locke’s England.

Even if there are many attempts in the literature to avoid the decisionistic side of Locke’s political theology, it is difficult to avoid the fact that—changing Pritchard’s words<sup>79</sup>—for Locke religion does more than authorize force; it is a species of force: the force that is exerted in reinforcing the political autonomy of the magistrate’s decision, just as Schmitt has imagined it for modern politics.

The place reserved to the prerogative in his *Two Treatises* corroborates the space opened for the magistrate by the contention of the churches. Prerogative, as he attests in the *Second Treatise of Government*, is the “power to act according to discretion for the public good, without the prescription of the law and sometimes even against it.”<sup>80</sup> And again, the limit for exercising the prerogative is the public good, because of which people concede to the magistrate the power of acting discretionally, even against the law.<sup>81</sup> But, who can judge in the case of danger to the public good? Once more, only the magistrate’s understanding can judge. Beyond him there is only an “appeal to heaven.” There is no superior power on the earth.<sup>82</sup> The executive power is superior insofar as relates to the exception. The dangers of Locke’s concession to the prerogative were pointed out by

<sup>79</sup> E. Pritchard, *Religion in Public*, 104: “for Locke religion does more than authorize force; it is a species of force (...) the force that is exerted in constituting the secular.”

<sup>80</sup> J. Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1960), XIV 160.

<sup>81</sup> J. Dunn claims that in the constitutional theory held at that moment, the constitution described the legal framework for exercising prerogative. However, what was quite clear is that in those cases the private judgment of the magistrate prevailed upon legality insofar as he could contravene it.” J. Dunn, *The political Thought of John Locke*, p. 151.

<sup>82</sup> J. Locke, *Two Treatises of Government*, XIV 168: “The old question will be asked in this matter of prerogative, ‘But who shall be judge when this power is made a right use of?’ I answer: Between an executive power in being, with such a prerogative, and a legislative that depends upon his will for their convening, there can be no judge on earth. As there can be none between the legislative and the people, should either the executive or the legislative, when they have got the power in their hands, design, or go about to enslave or destroy them, the people have no other remedy in this, as in all other cases where they have no judge on earth, but to appeal to Heaven; for the rulers in such attempts, exercising a power the people never put into their hands, who can never be supposed to consent that anybody should rule over them for their harm, do that which they have not a right to do.”

Shaftesbury in his *Somers Tracts*.<sup>83</sup> Dunn emphasizes that while the prerogative was a classical topic in constitutionalism, the Lockean point of view, in which it was a power over every individual, was a new way of thinking about it.<sup>84</sup>

His political theology neutralizes churches and annihilates the public dimension of confessions; hence his theology of the “true religion” allows the concentration of all power, even power over spiritual matters, in the magistrate. Religion becomes a function of the public interest and is subordinated to political censorship, thus becoming “public,” but with a different way of being so.

<sup>83</sup> J. Dunn, *The political Thought of John Locke*, p. 57.

<sup>84</sup> J. Dunn, *The Political Thought of John Locke*, p. 151.