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Three Versions of the Politics of Conscience: Hobbes, Spinoza, Locke

Ronald Beiner

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Three Versions of the Politics of Conscience: Hobbes, Spinoza, Locke

RONALD BEINER*

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“[T]here ought to be no Power over the Consciences of men”

—Thomas Hobbes¹

“[E]veryone is by absolute natural right the master of his own thoughts”

—Baruch Spinoza²

* Professor of Political Science and Chair of the Department of Political Science, University of Toronto at Mississauga.

1. THOMAS HOBBS, *LEVIATHAN* 480 (Richard Tuck ed., Cambridge Univ. Press Rev. Student Edition 1996) (1651).

2. BARUCH SPINOZA, *THEOLOGICAL-POLITICAL TREATISE* 231 (Samuel Shirley trans., Hackett Publ'g Co. 1998) (1670).

“And such is the nature of the Understanding, that it cannot be compell’d to the belief of any thing by outward force.”

—John Locke³

“[L]ike you, I am indignant that the faith of everyone is not in the most perfect liberty, and that man dares control the interior of consciences where he is unable to penetrate; as if it depended on us to believe or not to believe in matters where demonstration has no place, and that reason could ever be subjected to authority.”

—Jean-Jacques Rousseau⁴

I. INTRODUCTION

The organizers of this symposium have posed the question: is the idea of conscience fundamentally rooted in religious commitments? This question inevitably draws us back to the seventeenth century, for that is when the discourse of conscience ultimately originated. And when we consult the most important sources from that epoch, we get, I believe, a clear answer to the question, although it may not be the answer that the organizers of the symposium anticipated when they conceived the theme of this gathering.⁵

3. JOHN LOCKE, A LETTER CONCERNING TOLERATION 27 (James H. Tully ed., Hackett Publ’g Co. 1983) (1689).

4. Letter from Rousseau to Voltaire (Aug. 18, 1756), in 3 THE COLLECTED WRITINGS OF ROUSSEAU 108, 119 (Roger D. Masters & Christopher Kelly eds., Judith R. Bush et al. trans., 1992).

5. In a statement of the theme of the “Freedom of Conscience: Stranger in a Secular Land?” symposium, e-mailed to me by Professors Larry A. Alexander and Steven D. Smith at the time I was invited to participate, they wrote:

Although “freedom of conscience” has been one of the long-standing and central commitments of liberal constitutionalism, the commitment arose in a world in which religious assumptions figured prominently in the framework or worldview within which political issues involving religion and conscience were understood and debated. “Conscience” was commonly conceived to be a religious faculty, and “freedom of conscience” was understood in religious terms. Today, by contrast, such matters are typically considered within a more secular framework.

E-mail from Larry A. Alexander, Professor of Law, Univ. of San Diego Sch. of Law, and Steven D. Smith, Professor of Law, Univ. of San Diego Sch. of Law, to Ronald Beiner, Chair, Dep’t of Political Sci., Univ. of Toronto at Mississauga (Mar. 12, 2009, 11:40 EST) (on file with author). The purpose of this paper is not to “refute” but, more modestly,

The theme of conscientious belief arises in three pivotal seventeenth century thinkers: Hobbes, Spinoza, and Locke. All three thinkers emphasize that there is no point in trying to discipline belief because one cannot help believing what one believes. But Hobbes and Spinoza open up this space for conscience mainly in order to promote *intellectual* freedom—a “freedom of philosophizing.”⁶ It is only with Locke that this theme turns towards privileging sectarian conscience. In other words, the core doctrine of conscience is given almost the same formulation by Hobbes, Spinoza, and Locke—and as one can see from the fourth epigraph of this paper, it was given an identical formulation by Rousseau as well. However, the role accorded to the notion of religious conscience is not equally central in these three theories. For all three, conscience pertains to what cannot be touched by coercion because the conviction of what is believed is inherently unshakeable. At the most fundamental level, conscience is a matter of *conscientious judgment*, and this need not be associated with any particular religious commitment; it can just as well be the case that one’s conscientious judgment is that all religions are a product of ignorance and credulity.⁷ This offers a way of disengaging the problem of conscience from the preoccupation with *religious* conscience. The historically prior issue is that of conscientious *intellectual* commitment.

II. THOMAS HOBBS

The purpose of this essay is to pursue three important iterations of the same theme. Let us start with the first iteration: Hobbes. One does not normally think of Hobbes as a theorist of conscience. Quite the contrary, he is a theorist of *sovereignty*—of the unbounded authority of

merely to raise questions about the historical claim contained in these sentences by Alexander and Smith.

6. See BARUCH SPINOZA, THEOLOGICAL-POLITICAL TREATISE xlix (Samuel Shirley trans., Hackett Publ’g Co. 2d ed. 2001) (1670). This theme is highlighted in Spinoza’s subtitle.

7. Jeremy Waldron argues persuasively that although Locke tries to exclude atheists from the argument for respecting conscience in *A Letter Concerning Toleration*, Locke’s argument, centered as it is on the notion of the impossibility of compelling belief, has precisely the same force for atheists as it does for religionists. See JEREMY WALDRON, GOD, LOCKE, AND EQUALITY 231–32 (2002); cf. *id.* at 235 (“[I]t does not make sense for Locke to [deny to] . . . the atheist . . . [the aspect of toleration proscribing forcible imposition of beliefs]—since there is little prospect of forcible conversion . . .”).

the Leviathan, not only with respect to the demands of political order, but also with respect to religion and the requirements of the civic cult. The image of Hobbes as a theorist very far removed from an interest in conscience or toleration is expressed quite powerfully in the discussion of public worship in *Leviathan*, chapter 31.⁸

[S]eeing a Common-wealth is but one Person, it ought . . . to exhibite to God but one Worship; which then it doth, when it commandeth it to be exhibited by Private men, Publiquely. And this is Publique Worship; the property whereof, is to be *Uniforme*: For those actions that are done differently, by different men, cannot be said to be a Publique Worship. And therefore, where many sorts of Worship be allowed, proceeding from the different Religions of Private men, it cannot be said there is any Publique Worship, nor that the Common-wealth is of any Religion at all.⁹

The emphasis on *uniformity* in this text easily suggests that Hobbes is hostile to religious pluralism and therefore—it would seem to follow—is hostile to the intrinsically pluralized claims of conscience.¹⁰ But this perhaps does not tell the full story. Putting the emphasis on *public* rather than on *uniform* in our reading of the above quotation highlights the implication that private conviction at variance with that public worship does no harm to the state and its interest in outward conformity—as Hobbes asserts very explicitly in other texts, as we will see below. This implication is in fact intimated in an earlier passage in chapter 31:

[T]here is a *Publique*, and a *Private* Worship. Publique, is the Worship that a Common-wealth performeth, as one Person. Private, is that which a Private person exhibiteth. Publique, in respect of the whole Common-wealth, is Free; but in respect of Particular men it is not so. Private, is in secret Free; but in the sight of the multitude, it is never without some Restraint, either from the Lawes, or from the Opinion of men; which is contrary to the nature of Liberty.¹¹

Hobbes thinks that unless there is a uniformly prescribed mode of public worship, the unitary body politic loses its personality, but public worship does not exclude forms of private worship, provided that these secret religions are careful to stay out of the public eye. Provided that the

8. Jeremy Waldron offers a reading of chapter 31 in Jeremy Waldron, *Hobbes on Public Worship*, in *TOLERATION AND ITS LIMITS* 31, 33–47 (Melissa S. Williams & Jeremy Waldron eds., 2008). In my view, Waldron’s interpretation puts too much emphasis on the idea of pleasing God and not enough emphasis on the strictly political imperative of unifying the commonwealth.

9. HOBBS, *supra* note 1, at 252–53.

10. Cf. Alan Ryan, *A More Tolerant Hobbes?*, in *JUSTIFYING TOLERATION* 37, 39 (Susan Mendus ed., 1988) (“Defenders of toleration—usually expressed as ‘liberty of conscience’—were friends of religion. Hobbes had no time for liberty of conscience Hobbes did not have an explicit doctrine of toleration, in the sense of ‘liberty of conscience’”).

11. HOBBS, *supra* note 1, at 249.

canons of public worship are satisfied, Hobbes has little interest in policing what believers think within the interiority of their minds or consciences—an interiority that is out of “the sight of the multitude”¹²—or even within the interiority of their own households. What counts is the imperative of shared participation in political authority—not what people actually believe—so a public display of loyalty to the civil cult suffices; deeper scrutiny of inner convictions is beside the point. Indeed, Carl Schmitt was of the view that Hobbes’s distinction between private belief and public worship was, whether wittingly or unwittingly, a decisive wedge that ultimately led to all the rot associated with the liberal tradition, thereby subverting genuine social and political order in Europe.¹³ Schmitt’s reading of Hobbes may be extreme, but it does highlight quite powerfully Hobbes’s subtle and often unperceived affinities with what came to be Lockean tolerationism.

If *sovereignty* were the fundamental principle of political life, one would expect a diminished appreciation for the claims of individual conscience or regard those claims as subversive of the exigencies of political order. And that is in fact what Hobbes seems to be suggesting when he polemicizes against conscience in *Leviathan*, chapter 7: appeals to conscience involve a pretense to a possession of the truth in excess of what human beings are actually equipped to obtain and therefore is tied to forms of human vanity.¹⁴ “[M]en, vehemently in love with their own new opinions, (though never so absurd,) and obstinately bent to maintain them, gave those their opinions also that revered name of Conscience, as if they would have it seem unlawfull, to change or speak against them”¹⁵ But this polemical challenge to the rhetoric of conscience does not tell the full story of Hobbes’s attitude towards claims of conscience. Immediately before the text just quoted, there is another passage that strikes a different note. Hobbes refers to the etymology of conscience, suggesting not a unique access to what one claims to know

12. *Id.*

13. See CARL SCHMITT, *THE LEVIATHAN IN THE STATE THEORY OF THOMAS HOBBS* 74 (George Schwab & Erna Hilfstein trans., 1996). For an interpretation of Hobbes that also highlights proto-liberal aspects of Hobbes’s political philosophy, see Alan Ryan, *Hobbes, Toleration, and the Inner Life*, in *THE NATURE OF POLITICAL THEORY* 197, 201–17 (David Miller & Larry Siedentop eds., 1983), and Ryan, *supra* note 10, at 50–51, 56–58.

14. See HOBBS, *supra* note 1, at 48.

15. *Id.*

but rather a joint knowing, or cknowledge so to speak, of facts about the world.¹⁶ With respect to this *collective* consciousness, Hobbes *affirms* the rights of conscience:

[B]ecause [human beings participating in conscience understood as cknowing] are fittest witnesses of the facts . . . it was, and ever will be reputed a very Evill act, for any man to speak against his *Conscience*; or to corrupt, or force another so to do: Insomuch that the plea of Conscience, has been always hearkened unto very diligently in all times.¹⁷

Evidently, there is a *double* aspect to the profession of conscience for Hobbes. It can be a rhetoric by which individuals with idiosyncratic and often unsound opinions pretend to have a knowledge they do not possess. But it can *also* stand for a *shared* knowledge that it would be illegitimate to force knowers to disavow. Conscience is both a mask for unfounded claims to knowledge *and* a way of upholding that shared possession of (scientific) knowledge that finds itself subject to illegitimate coercion. One may already suspect, right from this initial discussion of conscience, that appeals to conscience within the sphere of religion correspond to the (bogus) kind against which Hobbes polemicizes, whereas (what one can call) *cognitive conscience* corresponds to the authentic form of conscience that Hobbes wishes to uphold.

Hobbes's tendency to identify the problem of conscience with the problem of *intellectual* freedom is also supported by a discussion of conscience that occurs near the end of the book—in chapter 46. The context is an extensive catalogue of civil evils flowing from “[v]ain [p]hilosophy, and [f]abulous [t]raditions.”¹⁸ The text is worth quoting at length.

There is another Error in their¹⁹ Civill Philosophy . . . to extend the power of the Law, which is the Rule of Actions onely, to the very Thoughts, and Consciences of men, by Examination, and *Inquisition* of what they Hold, notwithstanding the Conformity of their Speech and Actions: By which, men are either punished for answering the truth of their thoughts, or constrained to answer an untruth for fear of punishment. It is true, that the Civill Magistrate, intending to employ a Minister in the charge of Teaching, may enquire of him, if hee bee content to Preach

16. *See id.*

17. *Id.*

18. *Id.* at 458 (italics omitted).

19. Hobbes does not really specify here who “they” are whose false civil philosophy must be repelled. Different possible interpretations are suggested by the polemical pages that precede this paragraph: (a) those who are bewitched by the false philosophy of Aristotle and his Scholastic followers; (b) adherents of the Catholic Church; (c) more broadly, those in the grip of what soon after Hobbes came to be called “priestcraft”; or, (d) according to the broadest interpretation, all human beings who have not yet embraced the true civil philosophy. *See id.* at 468–71.

such, and such Doctrines; and in case of refusall, may deny him the employment: But to force him to accuse himselfe of Opinions, when his Actions are not by Law forbidden, is against the Law of Nature; and especially in them, who teach, that a man shall bee damned to Eternall and extreame torments, if he die in a false opinion concerning an Article of the Christian Faith. For who is there, that knowing there is so great danger in an error, whom the naturall care of himself, compelleth not to hazard his Soule upon his own judgement, rather than that of any other man that is unconcerned in his damnation?²⁰

Political theorists who are accustomed to harboring a fairly simple picture of how Locke as a defender of the politics of conscience relates to Hobbes as the representative of a radically opposed political vision have good reason to be astonished at how much of the argument of *A Letter Concerning Toleration* is anticipated in the final sentences of this quotation.²¹ One can go further: if we did not already know that this was a quotation from *Leviathan*, we could easily assume that they were sentences composed by Locke!

But I want to redirect the focus of attention from the celebration of conscience in the familiar religious sense at the end of this paragraph to what I suggest is the more fundamental sense of conscience as intellectual conscience at the beginning of the paragraph. The appeal to conscience is very deliberately situated in the phrase “the very Thoughts, and Consciences of men,”²² and the importance of (intellectual) conscience as something sacred is driven home with greatest force by reflecting on the Spanish Inquisition as the most egregious violation of this sacredness—a mental inner sanctum, so to speak. The main reason why one must stand up for conscience is that clerical authorities are not content merely to exercise dominion over the souls of their own adherents; they also insist on *policing* inner conviction in the society as a whole.²³ Therefore,

20. *Id.* at 471–72; *cf. id.* at 480 (“[I]t is unreasonable in them, who teach there is such danger in every little Error, to require of a man endued with Reason of his own, to follow the Reason of any other man, or of the most voices of many other men; Which is little better, then to venture his Salvation at crosse and pile [heads or tails].”).

21. For a forceful account that places Hobbes and Locke in much closer proximity to each other than scholars usually do, see Richard Tuck, *Hobbes and Locke on Toleration*, in THOMAS HOBBS AND POLITICAL THEORY 153 (Mary G. Dietz ed., 1990). The same volume features a critical response to Tuck’s interpretation. See James Farr, *Atomes of Scripture: Hobbes and the Politics of Biblical Interpretation*, in THOMAS HOBBS AND POLITICAL THEORY, *supra*, at 172, 188–91.

22. HOBBS, *supra* note 1, at 471.

23. On the theme of what can and cannot be rightly policed by civil authorities, see *id.* at 52 (“The secret thoughts of a man run over all things, holy, prophane, clean, obscene, grave, and light, without shame, or blame; which verball discourse cannot do . . .”).

what is ultimately at stake for Hobbes in the politics of conscience is the issue of *intellectual* integrity and the possibility for scholars, philosophers, and scientists to think freely in penetrating the secrets of nature.

The next chapter of the book, chapter 47, again gives expression to the double-sided character of the Hobbesian view of conscience that we commented on above in the context of chapter 7.²⁴ It is from this memorable discussion in chapter 47 that we have drawn our epigraph from Hobbes at the head of this paper, and the context for that epigraph is worth reviewing.²⁵ In this famous passage, Hobbes speaks of three “knot[s] upon [Christian] Liberty” and how these three knots were in turn “dissolved” in England from Queen Elizabeth I to the English Civil War.²⁶ The first knot is the power of excommunication imposed as a quasi-political punishment for disobedience.²⁷ The second knot is Episcopal hierarchy.²⁸ The third knot is the papacy.²⁹ Elizabeth dissolved the third knot. The Presbyterian revolt in the early stages of the English Civil

There is a *natural* distinction here between what is secret and what is public, hence the project of an “Inquisition” into these secret thoughts constitutes for Hobbes a violation of “the Law of Nature.” *Id.* at 471. This account of secret thoughts also links up—fairly obviously—with the notion of secret and therefore free private worship discussed above. *See id.* at 249; *supra* notes 11–12 and accompanying text. Chapter 42 from *Leviathan* includes additional important language: “[I]nternall Faith is in its own nature invisible, and consequently exempted from all humane jurisdiction; whereas the words, and actions that proceed from it, as breaches of our Civill obedience, are injustice both before God and Man.” HOBBS, *supra* note 1, at 360. Farr also cites part of this particularly important language. *See* Farr, *supra* note 21, at 195 n.93.

24. *See supra* notes 14–17 and accompanying text.

25. *See* HOBBS, *supra* note 1, at 478–80.

26. *Id.* at 479. Hobbes’s presentation of himself here as a defender of “Christian Liberty” may seem highly paradoxical—although it is not the only place in his work where he presents himself in this way. For example, Stephen Holmes highlights the interesting puzzle raised by the text in the Epistle Dedicatory to *Leviathan*, in which “Hobbes claims to advocate a middle way between ‘too great Liberty’ and ‘too much Authority.’ How can there be too much authority for Hobbes?” Stephen Holmes, *Introduction* to THOMAS HOBBS, *BEHEMOTH OR THE LONG PARLIAMENT*, at xlii (Ferdinand Tönnies ed., Univ. of Chicago Press 1990) (1889); *see also* HOBBS, *supra* note 1, at 3. *Behemoth*’s account of the opposing religious tyrannies of Papism and Calvinism might suggest a different solution than the one Holmes proposes. Could Hobbes’s thought have been the following—that in comparison with Papal tyranny on the one side, *see* Holmes, *supra*, at 21, 172, and Presbyterian tyranny, or anarchy-*cum*-tyranny, on the other side, *see id.* at 169, even absolutist monarchy—with its more modest claims on the souls of its subjects—presents itself as a moderate compromise between liberty and authority? Hobbes’s presentation of himself as a defender of “Christian Liberty,” HOBBS, *supra* note 1, at 479, is one of many indications that Hobbes is playing a very complicated game and that one should be on guard against taking his seemingly simple doctrines at face value.

27. *Id.* at 479.

28. *Id.*

29. *Id.*

War dissolved the second knot. And the triumph of the Independents over the Presbyterians dissolved the first knot. This leaves the impression, which Hobbes more or less asserts explicitly, that the outcome as of 1651, with Independents in charge of the regime, is a vindication of Christian liberty—one that Hobbes himself pretty much endorses.³⁰ The question, then, is whether there is a fourth knot that has not yet been dissolved. Does Independency represent the final triumph of Christian liberty, or is it too part of the problem?³¹ My suggestion is that Hobbes, in this text, once again presents himself both as a defender of the politics of conscience and, at least implicitly, as a critic of it. To spell out my interpretation a bit less cryptically: writing his book during the regime of Cromwell, and soon to return to England as a citizen of the Puritan commonwealth, it was probably not politic for Hobbes to fulminate against the Independents in the way that he did against Catholics and Presbyterians. This yields Hobbes's strong pro-toleration line, with its surprising conclusion that the triumph of Independency "is perhaps the best."³² But it could hardly have been Hobbes's view that appeals to conscience on the part of radical Protestants were politically innocent amidst the turmoil of the 1640s. If this reading of Hobbes is correct, it implies a crucial distinction between, on the one hand, the bad forms of

30. Hence the famous passage: "And so we are reduced to the Independency of the Primitive Christians to follow Paul, or Cephas, or Apollos, every man as he liketh best: Which, if it be without contention, . . . is perhaps the best . . ." HOBBS, *supra* note 1, at 479–80. Hobbes removed the passage from the post-Restoration Latin version of *Leviathan*, which further bolsters the suspicion that his endorsement of the Independents was opportunistic rather than principled. See Farr, *supra* note 21, at 196 n.94.

31. My own view basically coincides with that expressed by Farr. See Farr, *supra* note 21, at 189–90. Independency, "if it be without contention . . . is perhaps the best." *Id.* at 189 (emphasis added) (quoting THOMAS HOBBS, *LEVIATHAN* 711 (C.B. Macpherson ed., Penguin Books 1968) (1651)); see also HOBBS, *supra* note 1, at 479–80. But is the qualification satisfied? Was there any lack of contention among the sectaries of the 1640s? Cf. J.G.A. POCOCK, *POLITICS, LANGUAGE, AND TIME* 181 (1971) (referring to the "Erastian realization that the struggle against sectaries was a second front of the war against papists"); see generally *id.* at 187, 192–93, 197. One could say that the fourth knot consists in religionists thinking that their opinions are not subject to the larger imperatives of political order and civil authority. One cannot enjoy Christian liberty if society is in a state of civil contention, and one cannot avoid civil contention if the rights of conscience are being abused by radical sects. Consider also the brilliant summary of the core teaching of *Leviathan* quoted by Pierre Bayle. See PIERRE BAYLE, *POLITICAL WRITINGS* 87–88 (Sally L. Jenkinson ed., 2000). It would certainly be hard to square a doctrine of religious liberty with Hobbes's teaching as thus encapsulated.

32. HOBBS, *supra* note 1, at 479–80.

conscience that had brought about the *summum malum* in England in the decade before *Leviathan* was published and, on the other hand, the good forms of conscience that had to be liberated from the Inquisitors who ruled Christian Europe. In the same paragraph in which Hobbes affirms that “there ought to be no Power over the Consciences of men,” he very pointedly warns against the folly of thinking that any good purpose would be served “by suppression of the Naturall Sciences, and of the Morality of Naturall Reason.”³³ Hobbes surely thinks that the rights of conscience were abused by the holy anarchists who helped provoke the English Civil War, but this does not mean that conscience per se is not a legitimate source of human claims.³⁴ In short, Hobbes is far more sympathetic to the idea of conscience when he associates it with communities of natural scientists than when he associates it with the radical sects that first subverted and then appropriated sovereignty in the tumultuous decade between 1641 and 1651.

III. BARUCH SPINOZA

Next we turn to Spinoza. Publication of the *Theological-Political Treatise* in 1670 is exactly equidistant in time between the publication of *Leviathan* in 1651 and *A Letter Concerning Toleration* in 1689. The subtitle of the book already announces that “freedom of philosophizing” is a defining concern of Spinoza’s political philosophy.³⁵ Chapter 20 of the *Theological-Political Treatise* is virtually a manifesto on behalf of toleration and conscience, but Spinoza makes clearer than either Hobbes or Locke that the respect for religious conscience in its pluralism hangs on a logically prior concern for mental or intellectual freedom.³⁶ In that sense, Spinoza forms a bridge between Hobbes’s concern with intellectual liberty and Locke’s concern for religious toleration.

Like Locke, Spinoza places tremendous emphasis on the idea of the *futility* of trying to coerce the inner judgments of the mind. One thinks what one thinks, and the judgment formed cannot be penetrated by external

33. *Id.* at 480. It is natural to read this as a reference back to the denunciation of the Inquisition. *See id.* at 471. For an excellent account of the general project of Enlightenment in Hobbes, see generally DAVID JOHNSTON, *THE RHETORIC OF LEVIATHAN* (1986).

34. Vindicating the first half of this double thesis would require a detailed interpretation of *Behemoth*. I try to develop such an interpretation in chapter 6 of my book. *See* RONALD BEINER, *CIVIL RELIGION: A DIALOGUE IN THE HISTORY OF POLITICAL PHILOSOPHY* ch. 6 (2011).

35. *See* SPINOZA, *supra* note 6.

36. *Id.* at 230–38.

force. Spinoza tends to identify power and right, so that if the tyrant lacks the *power* to coerce people's ideas, he thereby also lacks the *right* to do so.³⁷ This is actually a pretty weak argument. We know today from our experience of totalitarian states as well as totalitarian political movements that powers of altering or manipulating people's thinking *are* available.³⁸ There is no guarantee that in every instance individuals will fall victim to this external manipulation, but equally there is no guarantee that they will not. Brainwashing is not merely an invented possibility; sometimes people are brainwashed by tyrannical states or other agencies of social-political power. So Spinoza offers a rather shaky empirical foundation for what is nonetheless a view of the inviolability of mental life that is normatively very compelling. Whether tyrants can or cannot mold our thinking, it *ought not to be* normatively acceptable for them to do it.

Let us look at some of the texts. Here is the first paragraph of chapter 20 of the *Theological-Political Treatise*:

If minds could be as easily controlled as tongues, every government would be secure in its rule, and need not resort to force; for every man would conduct himself as his rulers wished, and his views as to what is true or false, good or bad, fair or unfair, would be governed by their decision alone. But . . . it is impossible for the mind to be completely under another's control; for no one is able to transfer to another his natural right or faculty to reason freely and to form his own judgment on any matters whatsoever, nor can he be compelled to do so. Consequently, a government that attempts to control men's minds is regarded as tyrannical, and a sovereign is thought to wrong his subjects and infringe their right when he seeks to prescribe for every man what he should accept as true and reject as false, and what are the beliefs that will inspire him with devotion to God. All these are matters belonging to individual right, which no man can surrender even if he should wish.³⁹

At the start of the next paragraph, Spinoza does concede that judgment is subject to being *influenced* by others and that therefore the issue of

37. *Id.* at 230. Spinoza's illiberal-sounding formula is "the right of sovereigns is determined by their power." *Id.* at 231. The power to shape the inner judgments of the mind is lacking and therefore so is the right to do so. Spinoza seems—paradoxically—to be trying to found his liberalism on the antiliberal idea that political right extends as far as political power. That is, the power of tyrants has much more stringent limits than they would wish, and therefore it is simply a counsel of political prudence for them to acknowledge the relevant implications with respect to the rights of conscience.

38. Compare the argument directed against Locke in Brian Leiter, *Foundations of Religious Liberty: Toleration or Respect?*, 47 SAN DIEGO L. REV. 935, 941–42 (2010).

39. SPINOZA, *supra* note 2, at 230; *cf.* LOCKE, *supra* note 3, at 51 ("Liberty of Conscience is every mans natural Right . . .").

whether our rights of judgment are *empirically* inviolable is not quite as black and white as the opening paragraph had suggested.⁴⁰ Still, Spinoza insists that the almost unlimited pluralism of human opinions—what one may even regard as a kind of seventeenth century anticipation of John Rawls’s notion of the “burdens of judgment”—tends to teach us that the assertion of our own judgment belongs within the sphere of natural right in Spinoza’s rather idiosyncratic employment of the idea of natural right.⁴¹ Let me quote another good statement of the core idea of Spinoza’s liberalism:

It is not . . . the purpose of the state to transform men from rational beings into beasts or puppets, but rather to enable them to develop their mental and physical faculties in safety, to use their reason without restraint and to refrain from the strife and the vicious mutual abuse that are prompted by hatred, anger or deceit. Thus the purpose of the state is, in reality, freedom.⁴²

Now I guess the question that is of interest to us in the context of this symposium is whether this constitutes an account of *conscience*. I want to defend the idea that it is. Spinoza’s reference to “beliefs that will inspire [the individual] with devotion to God”⁴³ in our first quotation clearly situates this discussion in the sphere of what we normally associate with the topic of conscience, namely conscientious religious belief. But Spinoza’s way of framing the issue crucially presents these kinds of assertions of religious conscience as a *subset*—a significant subset, to be sure, but still merely a subset—of a larger range of conscientious judgments that it would be impossible and therefore illegitimate for the state to dictate. The natural right that Spinoza is fundamentally interested in affirming is the right of exercising our “faculty to reason freely and to form [one’s] own judgment.”⁴⁴ That suggests to me that the idea of religious conscience, for Spinoza, piggybacks as if it were on an idea of the inviolability of individual human reason—a conception that, as will be clear from the preceding discussion, strikes me as bearing strong links

40. SPINOZA, *supra* note 2, at 230 (“I admit that judgment can be influenced in numerous ways . . .”).

41. If something is *natural*, it is simultaneously and for that very reason normative, and because it is *natural* for human beings to develop opinions that reflect their own unique judgment, this spontaneous capacity for judgment formation and opinion formation thereby vindicates itself normatively. Cf. SPINOZA, *supra* note 2, at 237 (“[T]he real disturbers of peace are those who, in a free commonwealth, vainly seek to abolish freedom of judgment . . .”). The project of determining what people think is a self-defeating one, and because it is *unnatural* to attempt the impossible, the naturalness of free judgment is thereby vindicated.

42. *Id.* at 232.

43. *Id.* at 230.

44. *Id.*

to persistent themes in Hobbes. It is wrong for the state to force the conscientious Catholic or Jew to profess Dutch Calvinism for the same reason that it is wrong for the Catholic Church to force Galileo to profess cognitive beliefs that he conscientiously rejected. On this account, the core meaning of conscience is the right of beings possessing natural reason to exercise their reason according to their own lights and the *inviolability* of freely arrived at judgments in the face of agencies of power—whether states or churches, or states and churches working in tandem—that are tempted—whether they can succeed at it or not—to try to negate this natural right.

My fourth epigraph, the one from Rousseau, expresses exactly the same conception. Rousseau also refers to religious conscience when he protests against the situation in European societies in which “the faith of everyone is not in the most perfect liberty.”⁴⁵ But do these limitations on the liberty of religious faith exhaust the problem of conscience? The rest of the text suggests otherwise. Like Spinoza, Rousseau identifies the idea of an “interior of consciences”⁴⁶ that is impenetrable by power holders with the steadfast rejection of the notion that “reason could ever be subjected to authority.”⁴⁷ And to cite once again the text from *Leviathan*, chapter 46, which was discussed above, when Hobbes inveighs against the error of “extend[ing] the power of the Law, which is the Rule of Actions onely, to the very Thoughts, and Consciences of men,”⁴⁸ the phrase “very Thoughts, and Consciences of men” seems to carry the implication—on my interpretation, at least—that the wrongness of violating the consciences of men hangs on the wrongness of violating their thoughts.⁴⁹ What we see here is a consensus on the part of Hobbes, Spinoza, and Rousseau that conscience and reason, or conscience and thought, belong together.

Let us consider one additional Spinoza text. Towards the end of chapter 20—in the closing pages of the *Theological-Political Treatise* as a whole—Spinoza turns to a discussion of the problem of religious controversy and how it affects political order in a given society. He celebrates the regime of (relative) religious toleration in the city of Amsterdam and highlights the benefits that have flowed to Amsterdam

45. Letter from Rousseau to Voltaire, *supra* note 4, at 119.

46. *Id.*

47. *Id.*

48. HOBBS, *supra* note 1, at 471.

49. *See id.*

from such a regime of toleration.⁵⁰ Here is the passage in which he spells out the lesson that he wishes his readers to draw from the contrast between times of religious conflict and times of religious peace in the Dutch experience:

[D]ivisions in the church do not arise from zeal for truth (which breeds only courtesy and tolerance) but from lust for supremacy. From this it is clearer than the sun at noon that the real schismatics [that is, the real disturbers of political order] are those who condemn the writings of others and seditiously incite the quarrelsome mob against the writers, rather than the writers themselves, who usually write only for scholars and appeal to reason alone; and that, finally, the real disturbers of peace are those who, in a free commonwealth, vainly seek to abolish freedom of judgment, which cannot be suppressed.⁵¹

Although Spinoza does not use the vocabulary of conscience per se, it seems perfectly reasonable to consider this an account of the politics of conscience, for what is at issue is whether it will promote or undermine political order in a society to leave the plurality of religious communities free to come to their own conscientious conclusions without external coercion. But this is not the only issue for Spinoza. The larger issue is whether one can have a free commonwealth without *freedom of judgment*, and—perhaps especially—what will be the status of independent thinkers and writers within this regime of free judgment. Without question, Spinoza thinks that a society that embodies religious toleration will secure a more stable and more prosperous political order than one that submits theological opinions to political and ecclesiastical scrutiny. But it is clear from this account that there is far more at stake for Spinoza in the politics of conscience than the prospect of civil peace between the various sects. The larger issue is whether Spinoza’s own freedom of philosophizing can be recognized as a natural right, rather than being subject to endless peril—the peril of being at the mercy of the mob that is so easily incited to persecute philosophers.

IV. JOHN LOCKE

Last but not least, let us turn to Locke. The argument supporting Locke’s philosophy of conscience is no doubt the most familiar of the three accounts surveyed in this essay, so we can probably give it briefer treatment. The core purpose of *A Letter Concerning Toleration* is to supply a principled basis upon which to distinguish the purposes of

50. See SPINOZA, *supra* note 2, at 236 (“Take the city of Amsterdam, which enjoys the fruits of this freedom . . .”).

51. *Id.* at 237.

government—“Life, Liberty, Health, and Indolency of Body; and the Possession of outward things, such as Money, Lands, Houses, Furniture, and the like”⁵²—from the purposes of religion—salvation, or “the care of Souls”⁵³—such that one can legitimately enforce a *categorical* separation between what magistrates do and what churches do.⁵⁴ The decisive alternative posed by Locke’s political philosophy is the liberal *separation* of religion and politics versus the theocratic *union* of religion and politics.⁵⁵

There is no question that the appeal to *conscience* is much more direct and much more central in Locke’s *A Letter Concerning Toleration* than it is in either Hobbes or Spinoza. Consider the following famous text:

Although the Magistrates Opinion in Religion be sound, and the way that he appoints be truly Evangelical, yet if I be not thoroughly perswaded

52. LOCKE, *supra* note 3, at 26.

53. *Id.* at 26–27.

54. *Id.* at 33 (“[T]he Church it self is a thing absolutely separate and distinct from the Commonwealth. The Boundaries on both sides are fixed and immovable. He jumbles Heaven and Earth together, the things most remote and opposite, who mixes these two Societies; which are in their Original, End, Business, and in every thing, perfectly distinct, and infinitely different from each other.”).

55. Locke asserts that there is a single exception to his categorical separation between the sphere of politics and the sphere of religion, namely “the Commonwealth of the *Jews*, [which] different in that from all others, was an absolute Theocracy.” *Id.* at 44. The claim is that “[t]he Laws established there concerning the Worship of One Invisible Deity, were the Civil Laws of that People, and a part of their Political Government; in which God himself was the Legislator,” hence in this unique case there was not, nor could there be, “any difference between that Commonwealth and the Church.” *Id.* For this reason, the magistrates of that particular theocratic state had no choice but to punish “Idolaters” who committed apostasy against “the *Mosaical Rites*.” *Id.* Locke goes on:

Now if any one can shew me where there is a Commonwealth, at this time, constituted upon that Foundation, I will acknowledge that the Ecclesiastical Laws do there unavoidably become a part of the Civil; and that the Subjects of that Government both may, and ought to be kept in strict conformity with that Church, by the Civil Power.

Id. But Locke himself, a mere two pages previously, had in fact specified a contemporary parallel case, namely the Calvinist theocracy in Geneva, and there is certainly no suggestion by Locke in his discussion of Geneva that a modern state claiming a theocratic constitution for itself can be rightly exempted from the liberal principles articulated in *A Letter Concerning Toleration*. See *id.* at 42–43. This principled rejection of theocracy puts Locke in theoretical opposition to both Hobbes and Spinoza. Hobbes was a fully committed theorist of civil religion, and civil religion, like theocracy, asserts a union of state and church—although it does so in order to subordinate the church to unbounded state authority rather than the reverse. Spinoza, one might say, had a more schizophrenic view: his political philosophy, paradoxically, straddles—or, more precisely, alternates between—Hobbesian civil religion and Lockean tolerationism. I develop relevant interpretations of Hobbes, Spinoza, and Locke in, respectively, chapters 5, 11, and 12 of *Civil Religion*. BEINER, *supra* note 34.

thereof in my own mind, there will be no safety for me in following it. No way whatsoever that I shall walk in, against the Dictates of my Conscience, will ever bring me to the Mansions of the Blessed. I may grow rich by an Art that I take not delight in; I may be cured of some Disease by Remedies that I have not Faith in; but I cannot be saved by a Religion that I distrust, and by a Worship that I abhor. It is in vain for an Unbeliever to take up the outward shew of another mans Profession. Faith only, and inward Sincerity, are the things that procure acceptance with God. The most likely and most approved Remedy can have no effect upon the Patient, if his Stomach reject it as soon taken. And you will in vain cram a Medicine down a sick mans Throat, which his particular Constitution will be sure to turn into Poison. In a word. Whatsoever may be doubtful in Religion, yet this at least is certain, that no Religion, which I believe not to be true, can be either true, or profitable unto me. In vain therefore do Princes compel their Subjects to come into their Church-communion, under pretence of saving their Souls. If they believe, they will come of their own accord; if they believe not, their coming will nothing avail them. How great soever, in fine, may be the pretence of Good-will, and Charity, and concern for the Salvation of mens Souls, men cannot be forced to be saved whether they will or no. And therefore, when all is done, they must be left to their own Consciences.⁵⁶

Locke calls this “the *principal Consideration*,” and it is indeed clear that it is central to his case for toleration.⁵⁷

56. LOCKE, *supra* note 3, at 38. Cf. *id.* at 26–27 (“[N]o Man can, if he would, conform his Faith to the Dictates of another. All the Life and Power of true Religion consists in the inward and full perswasion of the mind; and Faith is not Faith without believing. What Profession we make, to whatever outward Worship we conform, if we are not fully satisfied in our own mind that the one is true, and the other well pleasing unto God, such Profession and such Practice, far from being any furtherance, are indeed great Obstacles to our Salvation. For in this manner, instead of expiating other Sins by the exercise of Religion, I say in offering thus unto God Almighty such a Worship as we esteem to be displeasing unto him, we add unto the number of our other sins, those also of Hypocrisie, and Contempt of his Divine Majesty.”). Locke’s reference in this quotation to the “perswasion of the mind,” as well as his appeal to “the nature of the Understanding” in the Locke epigraph at the head of this essay, suggests the notion that for Locke the distinction between genuine faith and bogus faith hangs on the exercise of free *mental* judgment. See *id.* (emphasis added). This in itself situates Locke’s argument in the vicinity of Hobbes and Spinoza as we have presented them in this essay.

57. *Id.* at 38. For a well-known critique of Locke’s argument, see JEREMY WALDRON, LIBERAL RIGHTS: COLLECTED PAPERS 1981–1991, at 88–114 (1993). Waldron’s basic thesis is that Locke’s what-I-think-is-what-I-think-and-no-one-can-force-me-to-think-differently premise is the sole foundation of his entire case for the self-defeating character of theocratic politics. Waldron argues that Jonas Proast, Locke’s chief interlocutor in the polemical debate concerning religious toleration, was right to suggest that there are ways of shaping and influencing people’s conscientious beliefs, short of applying sheer force. See *id.* at 112. As we saw above, Spinoza conceded this point in his version of the argument, and apparently there are places in Locke’s debate with Proast where Locke makes similar concessions. See *supra* note 40 and accompanying text. For an effective book-length reply to Waldron’s critique of Locke, see RICHARD VERNON, THE CAREER OF TOLERATION: JOHN LOCKE, JONAS PROAST, AND AFTER (1997). The thrust of Vernon’s defense of Locke rests on the argument that the range of normative considerations mobilized by Locke is much broader than the “principal Consideration” fixed on by Waldron. See *id.* at 21, 29–31.

One way of expressing the thesis developed in this paper is to say that Locke, in *A Letter Concerning Toleration*, narrowed the scope of the politics of conscience, relative to what it was in Hobbes and Spinoza—although it is not to be expected that Locke was less concerned than they were with the freedom of philosophizing, for he too was subject to suspicions of unorthodoxy and to threatened persecution. The focus now is squarely on problems of *religious* conscience. Yet Locke’s argument certainly had implications—whether he intended them or not—for thinkers whose most conscientiously held convictions were not necessarily religious ones. Locke may have been perfectly sincere in arguing that his regime of toleration did not encompass those who failed to embrace some version of theism, but it seems clear enough that the logic of his argument extends further. If toleration flows from acknowledgment of the uselessness of coercing conscientious judgment, then this applies not only to conscientious religious believers but also, with no less force, to conscientious religious skeptics.⁵⁸

Consider also David Wootton’s formulation of one aspect of Locke’s theory of toleration: “[According to Locke’s line of thinking,] I ought to regard *my right to think for myself* as inalienable. In no rational original contract will I cede control over belief to the magistrate.”⁵⁹ Wootton’s formulation suggests that for Locke as well the notion of religious conscience is simply a particular application of a broader conception of conscientious believing what one believes. Richard Vernon makes the similar point that Locke’s insistence that “the care . . . of every man’s soul belongs unto himself, and is to be left unto himself,”⁶⁰ although it is motivated by a certain conception of what it is to hold *religious* beliefs runs parallel to what he thinks the state may or may not do by way of regulating the *nonreligious* sphere of life.⁶¹ Once again, the idea of religious conscience seems parasitical, so to speak, on the more fundamental idea of *intellectual* conscience: the “right to think for myself.” However, Wootton goes on to argue that Locke is much less adequate as

58. Cf. WALDRON, *supra* note 7, at ch. 8.

59. David Wootton, *Introduction* to JOHN LOCKE: POLITICAL WRITINGS 7, 99 (David Wootton ed., Hackett Publ’g Co. 2003) (1993) (emphasis added).

60. VERNON, *supra* note 57, at 149 (internal quotation marks omitted).

61. *Id.*

a theorist of intellectual freedom than he is as a theorist of religious freedom.⁶²

V. CONCLUSION

Let us recapitulate our main theme. If we want to trace the origins of the discourse of conscience, we need above all to go back to the seventeenth century. It was in that century that key thinkers decided to mount an intellectual resistance to the fundamental power structures governing European societies, especially with respect to clerical hegemony within those societies. All of this came to fruition in the eighteenth century Enlightenment, but the intellectual seeds were planted in the cohort of thinkers spanning Hobbes, Spinoza, Locke, and Pierre Bayle. But when one looks more closely at how the theme of conscience functions in their key texts, we see that they were fundamentally concerned more with the problem of how to *think freely* than with that of how to *believe freely*. Issues of religious conscience were certainly not absent, but they were secondary to issues of intellectual conscience. What was ultimately at stake in the seventeenth century birth of the politics of conscience was not just the liberation of *sects* from theocratic politics but the liberation of *minds* from ecclesiastical domination.

62. Wootton, *supra* note 59, at 104–10. Cf. JONATHAN I. ISRAEL, RADICAL ENLIGHTENMENT 265–70 (2001) (offering a sharp statement of the contrast between Spinoza and Locke on issues of toleration and conscience).