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Toleration and Calumny: Bayle, Locke, Montesquie and Voltaire on Religious Hate Speech

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Amnesty International Lecture
Oxford, May 12, 2010

Toleration and Calumny Jeremy Waldron

“I hate calumny so much that I do not want even to impute foolishness to the Turks, although I detest them as tyrants over women and enemies of the arts”
— VOLTAIRE, *DICTIONARY*, entry on “Mahometans”

I

In 1732, somebody called Osborne (spelt with an “e” or without an “e”—“Osborn”—depending upon which law report you read)¹ published and distributed a broadsheet in London. Its title was

A true and surprizing Relation of a Murder and Cruelty that was committed by the Jews lately arrived from *Portugal*; shewing how they burnt a Woman and a new born Infant the latter End of *February*, because the Infant was begotten by a Christian.

In the body of the paper, Osborne “set[] forth . . . a particular Account of the whole Transaction,” and maintained “that the like Cruelty had often been committed by the Jews.” The pamphlet inflamed anti-Semitic sentiment in London. We are told that “Jews were attacked by multitudes in several parts of the city, barbarously treated and threatened with death, in case they were found abroad any more.”² One of those who was attacked was a man called Fazakerly, and Mr. Fazakerly laid an information for libel against Osborne, the author of the broadsheet, supported by affidavits to the effect that “this Paper had so much incensed the Mob against the Jews, that they had assaulted and beat in a most outrageous Manner the Prosecutor, who was a Jew.”³

The court’s initial response was to strike out the action on the ground that the allegation contained in the paper “was so general that no particular

¹ *R. v. Osborne*: W. Kel. 230, 25 Eng. Rep. 584 (1732) or *R. v Osborn* 2 Barnardiston 138 & 166 (94 Eng. Repo. 406 & 425).

² This description is taken from an observation upon *Osborne’s case* in another case concerning Jews, *In re Bedford Charity*, 2 Swans. 471, at 532; 36 Eng. Rep. 696 (1819), at 717.

³ *Ibid.* Fazakerly appears to have been a most prolific attorney. He is mentioned in the English Reports hundreds of times.

Persons could pretend to be injured by it.”⁴ The Chief Justice, Lord Raymond said that he believed that the Court could do nothing in the case because no particular Jews were able to show to the Court that they were pointed at in the paper more than any others.⁵ But eventually the Court was persuaded to entertain the action, if not as a criminal libel, then on public order grounds. According to one report the Court was moved precisely by the generality of the charge. The story in Osborne’s paper was that this is something “which the Jews have frequently done; and therefore the whole community of the Jews are struck at.”⁶ Another report says that the Court emphasized the public order aspect:

This is not by way of Information for a Libel that is the Foundation of this Complaint, but for a Breach of the Peace, in inciting a Mob to the Distruction of a whole Set of People; and tho' it is too general to make it fall within the Description of a Libel, yet it will be pernicious to suffer such scandalous Reflections to go unpunished.⁷

A third report has the Court taking a similar line, but even more forcefully:

Admitting an information for a libel may be improper, yet the publication of this paper is deservedly punishable in an information for a misdemeanour, and that of the highest kind; such sort of advertisements necessarily tending to raise tumults and disorders among the people, and inflame them with an universal spirit of barbarity against a whole body of men, as if guilty of crimes scarce practicable, and totally incredible.⁸

It is a remarkable case, because England was not known for its acceptance of Jews as a proper subject of public solicitude in the early eighteenth century. One of the reports we have of *Osborne’s case* is an indirect report from an 1819 decision in which the Lord Chancellor had held that Jewish children were not entitled to seek places in a free school established in Bedford.⁹ In that case, the Lord Chancellor mentioned (without comment) a notorious dictum of the great jurist Sir Edward Coke,

⁴ *R. v. Osborne*: W. Kel. 230, 25 Eng. Rep. 584 (1732).

⁵ *R. v Osborn* 2 Barnardiston 138, 94 Eng. Rep. 406.

⁶ *R. v Osborn* 2 Barnardiston 166, 94 Eng. Rep. 425.

⁷ *R. v. Osborne*: W. Kel. 230, 25 Eng. Rep. 584 (1732).

⁸ *In re Bedford Charity*, 2 Swans. 471, at 532; 36 Eng. Rep. 696 (1819), at 717.

⁹ *Ibid.*, at 502 n4; at 717. It’s a Law Report within a Law Report.

cited against the Jewish petitioners, to the effect that “[a]ll infidels are in law *perpetui inimici*, perpetual enemies (for the law presumes not that they will be converted, that being *potentia remota*, a remote possibility), for between them, as with the devils, whose subjects they be, and the Christian, there is perpetual hostility, and can be no peace.”¹⁰ The Lord Chancellor did say that that it is the duty of every judge presiding in an *English* Court of Justice, when he is told that there is no difference between worshipping the Supreme Being in chapel, church, or synagogue, to recollect that Christianity is part of the law of *England*.”

That’s the background. So the decision in *Osborne’s case*—convicting someone for anti-Semitic libel or for fomenting anti-Semitic disorder—almost ninety years earlier is all the more remarkable.

II

In this lecture, I want to look more closely into this business of group libel or religious defamation and the way in which it might be regarded as inimical to public order and inconsistent with the foundations of a tolerant society.

In October last year (2009), I delivered the annual Oliver Wendell Holmes Memorial Lectures at Harvard Law School.¹¹ The overall title of

¹⁰ *Ibid.*, at 502; at 705. But counsel for the petitioners repudiated the Coke dictum utterly (*ibid.*, 512; 707):

It is painful to comment on the doctrine cited from Lord *Coke’s* report of *Calvin’s* case; a doctrine disgraceful to the memory of a great man ... That passage has never been cited without reprobation. In *The East India Company v. Sandys*, Sir *George Treby* condemned it in the strongest terms. "I must take leave to say that this notion of Christians not to have commerce with infidels is a conceit absurd, monkish, fantastical, and fanatical."

They cited in a footnote the opinion of Coke’s contemporary, Lord Littleton, who insisted (1 Salkeld 47; 91 Eng. Rep. 46) that

Turks and Infidels are not *perpetui inimici*, nor is there a particular enmity between them and us; but this is a common error founded on a groundless opinion ... ; for though there be a difference between our religion and theirs, that does not oblige us to be enemies to their persons; they are the creatures of God, and of the same kind as we are, and it would be a sin in us to hurt their persons

They also cited Chief Justice Willes in in *Omichund v. Barker* Willes, 538, at 542; 125 Eng. Rep. 1310 at 1312 (1727) to the effect that

[t]his notion, though advanced by so great a man [Coke], is, I think, contrary not only to the Scripture, but to common sense and common humanity; and I think that even the devils themselves, whose subjects he says the heathens are, cannot have worse principles; and besides the irreligion of it, it is a most impolitic notion and would at once destroy all that trade and commerce from which this nation reaps such great benefits.

¹¹ The Holmes lectures can be read at http://www.harvardlawreview.org/issues/123/may10/2009_Oliver_Wendell_Holmes_Lectures_7058.php

my three Holmes lectures was “Dignity and Defamation: The Visibility of Hate,” and the second of them echoed the title I originally gave for today’s talk “What does a Well-Ordered Society Look Like?” I argued the case for laws restricting group libel—the public defamation of vulnerable groups in our society, such as racial or religious minorities—laws which you have in the United Kingdom, in the Public Order Act, and in almost all other advanced democracies, but which have by and large been rejected by the courts on First Amendment principles in the United States.

I used the Rawlsian theme of a well-ordered society,¹² and what a well-ordered society looks like, to convey the point that the publicly-affirmed dignity of all members of a decent society is compromised when the visible environment is disfigured by posters or pamphlets portraying vulnerable minorities as sub-human or endemically criminal or by signage saying things like “Whites only,” or “No Irish” or “Jews and Dogs Prohibited.” I said that posters, pamphlets, signage of this kind is inimical to public order, not just in the straightforward sense of inflaming violence but also in the deeper sense of undermining the dignitary order of society, which maintains among us a proper, public respectful sense of each other’s legal status. Following Rawls, I argued that in a well-ordered society, citizens accept and know that others likewise accept fundamental principles of respect and dignity, “and this knowledge in turn is publicly recognized,” in a spirit of pervasive and implicit assurance.¹³ That assurance is, from the point of view of justice, an essential public good, provided to all by all and sponsored and protected by the state. And the point of hate speech, of the sort that I addressed in the Holmes Lectures—racist pamphlets, Nazi parades, burning crosses, Islamophobic blogs—is to undermine this public good of implicit assurance that a society offers to the members of vulnerable groups—to undermine it, call it in question, and compromise it with public and visible expressions of hatred, exclusion and contempt.

That’s what I argued last year in the Holmes Lectures. I am not going to pursue any of that today. Instead I want to go back to the idea of a tolerant society that emerged in the late seventeenth and the eighteenth centuries. I want to consider the role that anti-defamation, the sort of public-

or watched at http://www.law.harvard.edu/news/spotlight/constitutional-law/28_waldron.holmes.html . They have just appeared in HARVARD LAW REVIEW (May 2010) and in due course they will appear as a book.

¹² Though the phrase “well-ordered society” comes originally from Diderot.

¹³ RAWLS, POLITICAL LIBERALISM, 35 and 66.

order-based prohibition on group libel that we see at work in 1732 in *Osborne's case*, played in contemporary conceptions of toleration.

III

My questions are: How large did the issue of hateful defamation loom in Enlightenment theories of toleration? Were 17th and 18th century *philosophes* committed to the idea that people should refrain not only from violence against one another on religious grounds but also from expressions of hatred and vituperation? I want to ask about the imagery of a tolerant society that we find in Enlightenment philosophy from Locke and Bayle to Montesquieu, Diderot, and Voltaire: Is a tolerant society just a society free from religious persecution, or is it a society in which people cohabit and deal with one another in spite of their religious differences in an atmosphere of civility and respect, an atmosphere that is not disfigured by grotesque defamations of the sort that we saw in the case of *R v Osborne*?

Toleration, we know, is a principle that can be more or less expansive, more or less grudging. Everyone agrees that at its core is a requirement that force or legal sanctions should not be used against people to coerce them to abandon their religious beliefs and practices or adopt those approved by the state. Almost everyone agrees that toleration imposes duties on ordinary members of society as well; they must not press their government to impose penalties or coercion on members of unpopular religions or religious minorities, and they must refrain themselves from acts of violence against people who do not share their faith or worship as they do. That's the core of toleration. But our conception of the state's duty of toleration can be expanded to include not just non-persecution, but disestablishment or even comprehensive dissociation of state and law from religion—what Richard Hooker called, “a wall of separation between church and state.”¹⁴ And equally our conception of the citizen's duty of toleration can also be expanded to include not just refraining from religiously motivated violence, but refraining also from religious insult, libel and vituperation; the citizen might also be conceived to have a duty of non-discrimination on religious grounds; he might even have, as John Locke argued, a duty of “charity, bounty, and liberality” towards those of other religions, a duty required of us by what Locke called “that natural fellowship” that exists between all men,

¹⁴ My American friends tell me this phrase was invented by Thomas Jefferson. But Richard Hooker used it in *ECCLESIASTICAL POLITY* almost two centuries before Jefferson did, and Hooker used it as though the phrase were in common circulation in Elizabethan times. (Hooker of course opposed the idea.)

regardless of their faith.¹⁵ On each of these issues—each of these possible expansions or elaborations of the duty of toleration—there is debate, in modern times and perhaps also there was debate in Enlightenment times, when our modern conceptions of toleration were formed. That’s what I want to investigate. What was there in the way of consideration of what we nowadays would call religious hate speech in Enlightenment theories of toleration?

Religious hate speech, too, is something that can be understood in a more or less expansive way: it can range from the sort of horrendous blood libel that we see in *Osborne’s case* through more straightforward but still vicious insults and vituperations such as the claim that followers of a certain dissident faith are dishonest or promiscuous, all the way through to what might possibly be regarded as simple inferences from the speaker’s own theology such as that the followers of a certain faith are God-forsaken or idolaters or damned. In our day, it can include proclamations that followers of Islam are inclined by their faith to be supporters of terrorism.

We can understand the range of religious hate speech along a number of spectrums (spectra?). (1) The simplest is what I just mentioned: a spectrum of viciousness or intensity, where the hate speech varies, for example, according to the monstrosity of the content conveyed. (2) Or we can imagine a spectrum strung between two poles—the pole of public order at one end (where religious hate speech may be assimilated to incitement to disorder) and, at the other end, the pole of simple disagreement, where hate speech merges into what is merely the forceful expression of disagreement with another’s position. (3) Or we can imagine a different sort of spectrum where an attack on the precepts and practices of a given church is distinguished from an attack on the personality and dignity of the members of the church: one might say “Transubstantiation is nonsense” or one might say, “All Catholics are drunkards.” We are conscious of some such range in the laws currently administered in the UK—laws that, on the one hand, prohibit public expressions of religious hatred when they take an abusive and threatening form and, on the other hand, privilege (in the words of section 29J) “discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions.”¹⁶

One might imagine that the case for banning hate speech is strongest when the speech in question is at the extreme end of each of these

¹⁵ LOCKE, A LETTER CONCERNING TOLERATION 31 (1689), James Tully ed. 1983) hereafter LCT.

¹⁶ Public Order Act, section 29J.

spectrums: it conveys a terrible defamation; it threatens public order; and it goes to the dignity of the person not just to the reputation of his church. *Osborne's case* illustrates all three extremities. Our hypothesis might be that calumnies and libels of this extreme kind come close to being prohibitable by the principles of mutual toleration, just as physical attacks are prohibited or attacks upon the property of non-believers.

IV

With all this in mind, what does an investigation of the historical texts reveal about Enlightenment models of toleration? What do the *philosophes* say about libels, hate speech, and religious calumnies?

Well, the first thing to notice is that a reading of the Enlightenment literature on toleration reveals nothing on this matter comparable in explicitness or extent to their discussion of the use of force and legal sanctions by the state against religious minorities. John Locke's *Letter Concerning Toleration* is the most sustained piece of writing on all this in the early modern period—sustained, not just in length (Pierre Bayle's *Philosophical Commentary on ... Luke 14:23* is much longer) but in the analytic density of argumentation. The *Letter* devotes a tremendous amount of discussion to the relation between coercion and belief and a considerable amount of discussion to the philosophical difference between the idea of a church and the idea of civil society, but nothing comparable is devoted to the question of how we should regard vituperation in the context of religious diversity.

Nothing comparable—but the theme *is there* if you read the *Letter* carefully. Locke's view of an intolerant society is in part a conception of anger and uproar:

No man is angry with another for an error committed in sowing his land or in marrying his daughter. ... But if any man do not frequent the church, ... or if he brings not his children to be initiated in the sacred mysteries of this or the other congregation, this immediately causes an uproar. The neighbourhood is filled with noise and clamour.¹⁷

In characterizing the horrors of an intolerant civil society, Locke talks about the “endless hatreds” between religious groups. He lambasts ministers for what they preach from the pulpit:

¹⁷ LOCKE, LCT 34.

[A]ll men, whether private persons or magistrates (if any such there be in his church), [should] diligently endeavour to ally and temper all that heat and unreasonable averseness of mind which either any man's fiery zeal for his own sect or the craft of others has kindled against dissenters.¹⁸

What we need to do is calm down the furious vituperations. And Locke intimates “how happy and how great would be the fruit, both in Church and State, if the pulpits everywhere sounded with this doctrine of peace and toleration.”

Speaking more specifically of the duties that the principle of toleration imposes upon churches, Locke says this:

[N]o church is bound, by the duty of toleration, to retain any such person in her bosom as, after admonition, continues obstinately to offend against the laws of the society [*by which he means the church's own laws of faith and worship*]. ... [N]evertheless, in all such cases care is to be taken that the sentence of excommunication, and the execution thereof, carry with it *no rough usage of word or action* whereby the ejected person may any wise be damnified in body or estate.¹⁹

“No rough usage of word or action”—there’s a strong suggestion there of limits on what may be said about excommunicates as well as limits on what may be done to them.

Even when Locke is conceding to Jonas Proast, in the later *Letters on Toleration*, that coercion may perhaps work indirectly to promote religion, he still opposes it and it is interesting that the doubts he expresses include doubts about the use of attacks on people’s honor as well as attacks on their person and property:

Loss of estate and dignities may make a proud man humble: sufferings and imprisonment may make a wild and debauched man sober: and so these things may "indirectly, and at a distance, be serviceable towards the salvation of men's souls." I doubt not but God has made some, or all of these, the occasions of good to many men. But will you therefore infer, that the magistrate may take away a

¹⁸ Ibid.

¹⁹ Ibid., 31 (my emphasis).

man's honour, or estate, or liberty for the salvation of his soul; or torment him in this, that he may be happy in the other world?²⁰

So there: we have two themes from Locke. One is a belief that public expressions of hatred and vilification are typical of an intolerant rather than a tolerant society; and the second is the claim that there is a specific duty to refrain from rough usage of word, as well as rough usage of action, if that is calculated to have a detrimental impact on an individual's person or honor or estate.

A third theme from Locke is one that we have already noticed. For Locke the duty of toleration is continuous with a general duty of charity, civility, and good fellowship:

[N]o private person has any right in any manner to prejudice another person in his civil enjoyments because he is of another church or religion. All the rights and franchises that belong to him as a man, or as a denizen, are inviolably to be preserved to him. These are not the business of religion. No violence nor injury is to be offered him, whether he be Christian or Pagan. Nay, we must not content ourselves with the narrow measures of bare justice; charity, bounty, and liberality must be added to it. This the Gospel enjoins, this reason directs, and this that natural fellowship we are born into requires of us.²¹

I know—I can hear you saying—that “charity, bounty, and liberality” is just happy talk, not a *serious* requirement of toleration. Who ever heard of anyone having a *right* to another's “charity, bounty, and liberality”? Well, actually *John Locke* did believe that, with the famous doctrine of charity set out in Chapter IV of the *First Treatise*.²² And I am with historian John Marshall in insisting we should not underestimate either the force or the importance of this strand in Locke's theory.²³ Locke talks of our duty to maintain “love and charity in the diversity of contrary opinions” and adds that by this he means not just “an empty sound, but an effectual forbearance

²⁰ The works of John Locke: in nine volumes, Volume 5 Kindle Loc. 902-6 (SECOND LETTER).

²¹ Locke, LCT, 31

²² LOCKE, TWO TREATISES, I, 42.

²³ JOHN MARSHALL, JOHN LOCKE, TOLERATION AND EARLY ENLIGHTENMENT CULTURE (2006) 656-7: “Although political scientists nowadays tend to pass by Locke's arguments in the Letter for toleration on the basis of charity . . . , there is no question that for Locke, as for his contemporaries arguing for toleration, the duty of charity was a crucial argument for toleration as charity was the most important duty of Christianity....”

and good will.”²⁴ We may be nervous about this because we worry that a doctrine of charity is to be understood as a specifically Christian doctrine—in the passage just quoted Locke calls it “an indispensable duty for all Christians”²⁵—and we want, if possible to recover from Locke’s work a theory of toleration with a broader foundation than that. But it is far from clear that Locke would endorse such a project.²⁶

The three points I have drawn from Locke—(1) public execration as typical of an intolerant society, (2) the claim that there is a specific obligation to refrain from using words to harm people you disagree with, and (3) an affirmative image of peace and charity amidst diversity—these themes are developed also in a much longer work, Pierre Bayle’s *Philosophical Commentary on these Words of the Gospel, Luke 14.23, ‘Compel Them to Come In, That My House May Be Full’*, published in 1686 a few years before Locke’s *Letter*.

Of the second point, that it is possible to harm people by execration as well as by physical violence, Bayle has no doubt. He knows that religious authorities use this method; on their view, “smiting and slaying Men, blackning ’em by all kind of Calumny, betraying ’em by false Oaths, are all good Actions in a Member of the true, against a Member of a false Church.”²⁷ Bayle talks of slander as “that Pest of Civil Society,”²⁸ and insists that its use is never justified, any more than murder, theft or perjury for the sake of bringing a heretic to salvation:

[R]efraining from the Goods or Good Name of our Neighbor, not swearing a false Oath, not debauching our Neighbor’s Wife or his Daughter, not smiting, reviling, or insulting him, are all matters of Obligation; and therefore whatever Benefit he may be suppos’d to reap from our calumniating ... with regard to Salvation, it’s by no means allowable to treat him after this manner.²⁹

²⁴ Locke, *Pacific Christians* (1688), in LOCKE, *POLITICAL ESSAYS* (Mark Goldie ed., 1997) 305.

²⁵ *Idem*.

²⁶ Cite to JW, GLE.

²⁷ *Ibid.*, 363.

²⁸ BAYLE, *COMMENTARY*, 317.

²⁹ *Ibid.*, 312. He criticizes the common practice of “giving things very hard names o’ purpose to create a horror for ’em” (*ibid.*, 205). And the theme is continued in his sarcastic comment against those who say that sometimes law is needed to act against the pride of heretics. Bayle says: “Why not force those, who make an ill use of their Youth and Beauty, to take Pouders or Potions to destroy their Complexion and Vigor, or get defamatory Libels against ’em publicly dispers’d, that they might never dare shew their faces abroad?” (*ibid.*, 359).

Bayle, like Locke, is in no doubt that execration as well as violence is typical of the horrors of an intolerant society: “Must not this exasperate the Spirits of both sides, kindle a deadly *Hatred* to one another, force ’em to traduce and slander each other, and become mutually wicked and worse Christians than they were before?”³⁰

And when Bayle concocts his affirmative vision of a tolerant society characterized unavoidably by religious diversity, it is a society free of reviling—free of “the furious and tumultuous Outcrys of a Rabble of Monks and Clergymen”—as well as free of the more tangible forms of persecution. The imagery Bayle uses is that of the marketplace or bazaar: “the Diversity of ... Churches, and Worship, wou’d breed no more Disorder in Citys or Societys, than the Diversitys of Shops in a Fair.”³¹

Did each Party industriously cultivate that Toleration which I contend for, there might be the same Harmony in a State compos’d of ten different Sects, as there is in a Town where the several kinds of Tradesmen contribute to each others mutual Support. All that cou’d naturally proceed from it wou’d be an honest Emulation between ’em which shou’d exceed in Piety, in good Works, and in spiritual Knowledge. ... Now it’s manifest, such an Emulation as this must be the Source of infinite publick Blessings; and consequently, that Toleration is the thing in the world best fitted for retrieving the Golden Age, and producing a harmonious Consort of different Voices, and Instruments of different Tones, as agreeable at least as that of a single Voice.³²

The marketplace image—not Oliver Wendell Holmes’s “marketplace of ideas,” but the economic market as an image of tolerant and amicable interchange—is well known from the later Enlightenment as well, in Voltaire’s portrayal of the Royal Exchange in London in his *Letters on the English*. Voltaire speaks of the Royal Exchange in London “where the representatives of all nations meet for the benefit of mankind.”

There the Jew, the Mahometan, and the Christian transact together, as though they all professed the same religion, and give the name of infidel to none but bankrupts. There the Presbyterian confides in the Anabaptist, and the Churchman depends on the Quaker’s word. At the

³⁰ Ibid., 104.

³¹ Ibid., 209.

³² Ibid., 199-200

breaking up of this pacific and free assembly, some withdraw to the synagogue, and others to take a glass. This man goes and is baptized in a great tub, in the name of the Father, Son, and Holy Ghost: that man has his son's foreskin cut off, whilst a set of Hebrew words (quite unintelligible to him) are mumbled over his child. Others retire to their churches, and there wait for the inspiration of heaven with their hats on, and all are satisfied.³³

But all can gather together civilly and do business in the Royal Exchange without hatred, without vituperation.

For his own part, Voltaire added this about spoken expressions of hatred: even though he condemned certain aspects of Mohammedan practice, “destest[ing] them as tyrants over women and enemies of the arts,” he said “I hate calumny” even more and he added that for this reason he would refrain from defaming “the Turks,” as he called them.³⁴ (I'll come back in a moment to this question of whether a prohibition on expressions of hatred can interfere with the vehement expression of disagreement.)³⁵ The hatred of calumny seems to be a matter of personal ethics rather than political morality. But Voltaire saw a clear connection between private and public intolerance:

Who is a persecutor? It is he whose wounded pride and furious fanaticism irritate the prince or magistrate against innocent men guilty only of the crime of holding different opinions.³⁶

Persecution is not just what the state does. Voltaire makes it clear that it includes individuals using public denunciations in order to goad the state into the wrongful use of law.

Let us round off our little survey of Enlightenment views on these matters with some material from Diderot's *Encyclopédie*. My reference is to the entry for “*Intolérance*.” The striking thing about Diderot's conception of intolerance is his association of it with hate and expressions of hate:

The word intolerance is commonly understood as this ferocious passion that stirs one to hate people that are in the wrong. ...
Instruction, persuasion, and prayer, here are the only legitimate ways

³³ VOLTAIRE, LETTERS ON THE ENGLISH: Letter VI—On the Presbyterians

³⁴ Voltaire, *Mohammedans*, in THE PHILOSOPHICAL DICTIONARY.

³⁵ See section VI, below.

³⁶ Voltaire, *Persecution*, in THE PHILOSOPHICAL DICTIONARY, quoted in RELIGIOUS PLURALISM IN THE WEST (David George Mullan ed., 1998) 187-8.

to spread religion. Any means that would excite hatred, indignation, and scorn, is impious.³⁷

Like Voltaire, Locke, and Bayle, Diderot also associates intolerance with the breaking of the ordinary bounds of sociability, the use of ostracism, for example, as well as with more violent means of persecution. “Secular intolerance consists in ... ostracizing and ... chasing ... those that think differently from us about God and his cult.”³⁸

So these are the points I want to stress—on the one hand, the natural association, in the minds of these Enlightenment thinkers, of intolerance with hatred and abuse as well as with physical persecution; and the natural association of tolerance on the other hand with the ordinary bonds of charity and sociability.

V

The latter point —the point about sociability: the idea that public calumnies should be banned because they disrupt ordinary sociable relations among members of the same society —I think is quite important.

The idea is that, as well as not being attacked or physically sanctioned for their faith or religious practice, men and women who belong to a religious minority have the right to be treated as members of society in good standing, with a status and acceptance that enables them to participate without fuss in the ordinary routines and transactions of everyday life. They don’t have to be loved or befriended by those who differ from them on matters of religion. But ordinary dealings among people who are, in the circumstances of mass society, strangers rather than friends to one another—I am thinking of Adam Smith’s observation at the beginning of *The Wealth of Nations*: “In civilized society [man] stands at all times in need of the cooperation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship of a few persons”³⁹—dealings among people on this basis are the currency of ordinary dignity and respect. That’s why the Voltaire passage about the Royal Exchange in London is so important.

³⁷ DIDEROT, POLITICAL WRITINGS (John Hope Mason and Robert Wokler eds., 1992), p. 29. The last sentence of this quotation is omitted, with an ellipsis, from this edition, but can be found at <http://quod.lib.umich.edu/cgi/t/text/text-idx?c=did;cc=did;rgn=main;view=text;idno=did2222.0000.564>

³⁸ “Secular intolerance consists in completely ostracizing and in chasing, through all sorts of violent means, these that think differently from us about God and his cult. ... It is impious to expose a religion to the odious imputations of tyranny, of hardness, of injustice, of unsociability, even in the goal of bringing back those who might have strayed away from it.”

³⁹ SMITH, THE WEALTH OF NATIONS, Bk. I, Ch. 2, p. 18 (Edwin Cannan ed., 1976).

I think (and I argued in the Holmes Lectures) that it is a requirement of human dignity that we should deal with one another in this relaxed and civilized way. It may seem strange to associate dignity with dealings so mundane and materialistic; we think of dignity as carrying a sort of shimmering Kantian aura, fitting it for a much more transcendent role in political morality than this. But that's a mistake. The primary habitat of human dignity is the mundane. Philosophically, dignity may be a Kantian conception of immeasurable worth (*Würde*), personality as something noumenal, an end-in-itself, and so on.⁴⁰ But in law it's a matter of status—one's status as an ordinary member of society in good standing, entitled to the same liberties, protections, and powers as everyone else has—and it generates demands for recognition and treatment that accord with that status. The guarantee of dignity is what enables a person to walk down the street without fear of insult or humiliation, to find the shops and exchanges open to him, and to proceed with an implicit assurance of being able to interact with others without being treated as a pariah.

And I believe that this conception of dignity as a matter of ordinary presence—the status of being respected in myriad anonymous interactions as a member of society in good standing—that this is actually a large part of what is at stake with toleration. The virtue of the passages I have quoted to you from Bayle and Locke, Diderot and Voltaire, is that they emphasize how incomplete a regime of toleration is when it merely restrains coercion and violence, leaving hatred, insult and ostracism untouched.

It may be worth adding one other point. Peter Gay, in his work on Enlightenment has emphasized the continuity between Enlightenment thinking about toleration and Enlightenment thinking about peace in international affairs.⁴¹ In international affairs, the analogue of a narrow conception of toleration limited only to non-persecution and a prohibition on the use of violence or coercion for religious ends would be a conception of peace that was simply an absence of war. I think it is interesting that by and large Enlightenment theorists were not satisfied with that image of peace. They looked forward to a more affirmative harmony among nations. The idea that peace could coexist with mutual denunciation among nations so long as it didn't issue in actual fighting—that possibility, analogous to the idea of those who argue both for religious toleration and for the protection of religious hate speech, would have struck them as absurd.

⁴⁰ Cite to KANT, GROUNDWORK

⁴¹ PETER GAY, THE ENLIGHTENMENT: THE SCIENCE OF FREEDOM, 398-406.

V

I acknowledge that I have had to dig to find these Enlightenment materials. They are not front and center in 17th and 18th century writings on toleration and, as I said at the beginning of section IV, they are not discussed in anything like the detail or with anything like the analytic power that Locke and Bayle, for example, devote to the issue of physical coercion.

The fact that excavation has been necessary in order to find *something* to support the conclusion that religious hate speech might be as much at odds with toleration as more physical forms of persecution might persuade some people that our *philosophes* didn't really regard public expressions of religious hatred as a matter of concern at all, and that they did not really regard the suppression of religious insult as part of their tolerationist agenda. Their relative silence on the matter might be thought to support the modern "First Amendment" position that suppression of religious insult is not required—indeed, that it is prohibited—by liberal principles.

I think that would be premature. For one thing, there are the hints we have just been talking about and the quite substantial passages we have managed to dig up. Something has to be said about them, before we saddle Locke, Bayle, Diderot, and Voltaire with the view that there is nothing intolerant about screaming vile insults or publishing blood libels.

There is also a question about burden of proof. There may be little that is explicit in the work of these authors so far as a legitimate prohibition on religious hate speech is concerned. Equally, however, there is nothing that appears explicitly to support the opposite view that toleration requires religious hate speech to be left unmolested. And fitting that second position—the modern "First Amendment" position—into the rest of what the Enlightenment philosophers say about toleration seems (for my money, at least) to be actually quite difficult. If they are to be saddled with the view that religious hate speech is not to be prohibited, then considerable doubt is cast on their overall claim that toleration augurs in a new area of peace and cooperation in civil society.

Thirdly, whatever is said or not said explicitly or whatever the default position is taken to be, there is the direction or tendency of their overall arguments to consider. Let me concentrate for a moment on John Locke, because I know his arguments best.

Apart from a specifically Christian argument for toleration at the beginning of the *Letter*, Locke's general position is that power used coercively is quite inappropriate in religious matters. Religion is a matter of belief; indeed, there is a premium on sincere belief; God is not interested in

the insincere variety. Now sincere belief is not subject to the will; we can't decide what to believe. But coercion works only on the will, the association of sanctions with one course of action making us decide to choose another. Since we cannot decide what to believe, coercion is not an appropriate means to use for religious ends. That's the essence of Locke's case.⁴²

How does this apply to insults or libels? Well, considered as strategies to bring about religious change or conversion, they seem to fall before the same Lockean argument. It may be thought that people will give up their deviant beliefs under the lash of public calumny. The cost of maintaining a minority faith will be simply too high: that may be the thought. But Locke's main argument refutes the proposition that the coercive power of opinion can be effective in this way. It may lead people to conceal their beliefs, to cower in hiding to avoid public expressions of hatred and the boycotts and exclusions (not to mention the violence) that they intimate. But that won't get them to change their beliefs, because their beliefs are not subject to the will and therefore not vulnerable to this pressure. The best that a torrent of hatred and calumny can do is to get them to change their religious behavior. But to aim just at that would be a mockery, Locke says.

In the *Second*, *Third*, and mercifully uncompleted *Fourth Letters on Toleration*, Locke had to come to terms with an opponent (Jonas Proast) who conceded Locke's main line of argument, but suggested that coercive means applied carefully might lead to a situation in which people's beliefs changed even if they couldn't bring about that change directly. Forcing a change in behavior might result indirectly and in the long run in a change in belief. And I suppose the same might be true of calumny. Locke had a lot to say about the details of this argument; but he also indicated a readiness to retreat to a back-up position. No doubt anything at all might bring about a given result—our Savior, Locke said, used clay and spittle to cure blindness—but we have to ask whether this particular means was ordained by God for religious conversion. Locke makes a pretty clear case that, in the preaching of Jesus Christ, there was certainly no ordaining of violent means, and it would not be hard to establish that there was no ordaining of abuse or vilification either.

Now, as it stands this Lockean argument I have cobbled together is perhaps a little too quick. It ignores the fact that calumny may be used defensively rather than offensively—to warn vulnerable people who hold the orthodox faith against hobnobbing with infidels and heretics. Maybe the

⁴² See Waldron, *Locke, Toleration and the Rationality of Persecution*, in JUSTIFYING TOLERATION: CONCEPTUAL AND HISTORICAL PERSPECTIVES (Susan Mendus ed., 1988), reprinted in LIBERAL RIGHTS.

point of publicly damning Jews as baby-killers or, I don't know, denouncing Anabaptists as sodomites, is to ensure that vulnerable Anglicans steer well clear of them. Locke doesn't address this possibility explicitly. But the whole dynamic of religious argumentation that he imagines eschews virulent expressions of hatred, even as a defensive strategy. The *Letter concerning Toleration* is dominated by a conviction that such means are vicious and inefficacious, certainly compared to less virulent alternatives:

[H]ow many, do you think, by friendly and christian debates with them at their houses, and by the gentle methods of the gospel made use of in private conversation, might have been brought into the church; who, by railing from the pulpit, ill and unfriendly treatment out of it, and other neglects and miscarriages of those who claimed to be their teachers, have been driven from hearing them?⁴³

The methods by which the members of a congregation are to be kept in check by their religious leaders are “exhortations, admonitions, and advices,”⁴⁴ not raillery and abuse.

In addition, Locke talks specifically about denunciations and rumors of misconduct by various religious sects. Having said that the magistrate may not regulate religious worship, he imagines a response:

You will say, by this rule, if some congregations should have a mind to sacrifice infants, or (as the primitive Christians were falsely accused) lustfully pollute themselves in promiscuous uncleanness, or practise any other such heinous enormities, is the magistrate obliged to tolerate them, because they are committed in a religious assembly? I answer: No. These things are not lawful in the ordinary course of life, nor in any private house; and therefore neither are they so in the worship of God, or in any religious meeting.

His view seems to be that either the denunciations are true, in which case what is appropriate is a complaint to the authorities about unlawful conduct, or they are false, in which case they should not be voiced at all.⁴⁵ Even when he himself is voicing doubts about the toleration of Roman Catholics, what is remarkable is how careful he is to try to separate denunciations

⁴³ The works of John Locke: in nine volumes, Volume 5 – Kindle Loc. 1155-58

⁴⁴ LOCKE, LCT, __.

⁴⁵ I differ here from John Marshall, who reads this passage as though Locke was willing to echo common denunciations of religious promiscuity: see Marshall, *op. cit.*, 706 ff..

which might genuinely be matters of public concern from those used simply as a form of abuse or as a way of bolstering one's own religious position.⁴⁶

Perhaps the most common use of calumny is not as a means to an end (either the end of drawing people to one's own faith or the end of protecting one's co-religionists from apostasy), but simply as a form of religious self-expression. Almost a century after the end of the period of Enlightenment that we are studying, John Stuart Mill confronted a similar difficulty in his essay, *On Liberty*. What is to be done about social sanctions visited by some people upon others whose religion or ethics they despise? Boycotts and ostracism may be frowned upon, but they may also have an important expressive function:

We have a right ... to act upon our unfavorable opinion of any one, not to the oppression of his individuality, *but in the exercise of ours*. We are not bound, for example, to seek his society; we have a right to avoid it (though not to parade the avoidance), for we have a right to choose the society most acceptable to us.⁴⁷

Maybe something analogous can be said about religious vituperation: we use it, not to the oppression of anyone else's individuality, but in the exercise of our own.

Well, if it is just a matter of letting off steam, then I think Locke's arguments for social peace and civility require people to find other outlets. The difficulty arises when what seems like hate speech to the audience seems to the speaker to be just a natural mode of forcefully expressing his own view. It is to this knotty problem that we now turn.

VI

Earlier I quoted an observation by Voltaire, from his *Dictionary*, under the heading "Mohammedans." Voltaire said: "I hate calumny so much that I do not want even to impute foolishness to the Turks, although I detest them as tyrants over women and enemies of the arts."⁴⁸

Now in modern debates about hate speech, Nazis in Skokie and so on, Voltaire is often quoted to the following effect: "I hate what you say, but I

⁴⁶ See the discussion of the complexities of Locke on the toleration of Roman Catholics in Waldron, GLE, pp. 218-23.

⁴⁷ MILL, ON LIBERTY, p. 94 (my emphasis). See also the extended discussion in Waldron, *Mill as a Critic of Culture and Society*, in an edition of JOHN STUART MILL, ON LIBERTY, edited by David Bromwich and George Kateb (Yale University Press, 2002), 224.

⁴⁸ <http://history.hanover.edu/texts/voltaire/volmoham.html>

will defend to the death your right to say it.” I guess everyone knows by now that Voltaire probably never said or wrote any such thing. Apparently, an English writer called Beatrice Hall, writing under a male pseudonym at the beginning of the 20th century,⁴⁹ used this language in summing up Voltaire’s attitude to the burning of a book written by Helvétius. It was her readers—and after that, countless ACLU opportunists—who made the mistake of attributing the saying to Voltaire himself.⁵⁰ And even if the words were spoken by Voltaire, there is no evidence they were directed particularly to the protection of hate speech. But the passage I have quoted from Voltaire’s dictionary has him saying specifically that he detests religious hate speech. He hates “calumny so much” that he intends himself to refrain from casting aspersions on Muslim customs. You can imagine the dictum being applied to the Danish cartoons. (It is not quite diametrically opposed to the quotation normally attributed to him: I suppose Voltaire could defend to the death calumnies issued against Muslims by others, even though he hates them and will not issue them himself.)

Still, the passage about Muslims raises a point that we have to confront. Isn’t there a danger that, if the principle of toleration extends so far as to ban calumnies, blood libels, insults, religious defamation, and other attacks on people’s dignity and honor, such a ban will also inhibit vehement discussion of others’ failings, errors, absurdities, or wickedness. People will no longer be able to say what they think—to say, for example, with Voltaire, that they despise the way Muslims treat women—for fear of running foul of the ban on expressions of racial and religious hatred. And isn’t *that*—you may say—the real reason for confining toleration to a ban on legal sanctions and not extending it generally to prohibit speech acts that diminish the dignity of those whose beliefs and practices one despises? This may be the real reason why you don’t find a whole lot in Locke and in the other thinkers about banning expressions of hatred: maybe Locke and others do not want the rigors of a tolerationist regime to diminish the amount or intensity of debate and mutual criticism among different religious groups in society.

After all, John Locke wants to be able to say, of many of the beliefs for which he urges toleration, “I readily grant that these opinions are false

⁴⁹ S. TALLENTYRE, *THE FRIENDS OF VOLTAIRE* 199 (1907).

⁵⁰ See JOHN DURHAM PETERS, *COURTING THE ABYSS: FREE SPEECH AND THE LIBERAL TRADITION* (Chicago, 2005), p. __.

and absurd,”⁵¹ and presumably this is not just a privilege for the philosopher: he wants others to be able to say that too. But how can he say it if the targeted group takes it as an affront, and if the tolerationist regime cultivates a far-reaching norm of civility designed to protect people against all such affronts? “Every man,” says Locke, “has commission to admonish, exhort, convince another of error, and, by reasoning, to draw him into truth.” Toleration is not supposed to silence us.

We might take this point even further. Some have said that toleration makes no sense except against a background of strong disagreement. We do not tolerate those of whom we approve or those to whom we are indifferent. We don’t tolerate those whom we suspect might have the truth or part of the truth in a pluralistic world. We tolerate those whom we judge wrong, mistaken, or benighted.⁵² And surely toleration must permit us to give voice to those judgments. Otherwise it demands too much.

Moral philosophers may be particularly sensitive on this point. I mean the kind who take their own vehemence as a mark of the objective truth of what they say, or who regard the offensiveness to others of what they say as an honorable badge of their refusal to accept any scruples based on relativism. My own view (for what it is worth) is that it would be no bad thing if this vehemence and offensiveness were curbed, and if philosophers were required to secure their High Table credibility in other ways.

Even so: apart from philosophic vanity, many people do feel that they are morally and legally required to tolerate practices and opinions they

⁵¹ The context is: “If a Roman Catholic believe that to be really the body of Christ which another man calls bread, he does no injury thereby to his neighbour. If a Jew do not believe the New Testament to be the Word of God, he does not thereby alter anything in men's civil rights. If a heathen doubt of both Testaments, he is not therefore to be punished as a pernicious citizen. ... I readily grant that these opinions are false and absurd. But the business of laws is not to provide for the truth of opinions, but for the safety and security of the commonwealth and of every particular man's goods and person.” (LCT 45)

⁵² I actually don’t accept that as a definitional move. Many thinkers in the Enlightenment tradition based what they called toleration in part on principles of relativity or uncertainty or indifference towards religious belief; and I don’t think much is gained in modern philosophical debate by saying they used the word “toleration” wrongly. What we may say is that the case for toleration is usually thought to require that practices and beliefs should not be persecuted even if they are (or turn out to be) wrong; but we don’t necessarily postulate their wrongness as a starting point. (See Waldron and Raz essays in Mendus (ed.) *JUSTIFYING TOLERATION: CONCEPTUAL AND HISTORICAL PERSPECTIVES*.) So toleration need not necessarily commit us to finding an outlet for the condemnation that it presupposes. (I mention this because it helps a bit with what Bernard Williams and others have called “the paradox of toleration.” See Bernard Williams, *Toleration: An Impossible Virtue?* in *TOLERATION: AN ELUSIVE VIRTUE* (David Heyd ed., 1996), 18. According to Williams, toleration seems to commit us, by way of presupposition, to the judgment that a given practice or belief is wrong or mistaken; and it seems to commit us as a matter of principle to not doing what we would ordinarily do in regard to stuff that is wrong or mistaken—namely, try to stamp it out.)

believe (perhaps rightly) to be wrong. And the question is: is it not unreasonable to impose limits on what they may say or publish in expression of that belief?

Well, the beginning of wisdom is surely to distinguish between some of the things that may be said or published in pursuance of the tolerator's beliefs and other things that maybe said or published in pursuance of them. John Locke's saying that it is absurd for Jews to deny the divine inspiration of the New Testament is one thing; presumably Mr. Osborne's saying that Jews kill Christian babies is another. To punish those who spread a blood libel is one thing; to shut down what Locke called "affectionate endeavours to reduce men from errors" is another.⁵³

But how to draw the line? Locke summed up his position by saying "Nothing is to be done imperiously," meaning nothing is to be done by way of sanction. We may express our disagreement with a religious dissenter; but we are not to vituperate him in order to hurt him or in order to punish him. This position anticipates that of John Stuart Mill, who—in response to the problem I mentioned at the end of section V—permitted unpleasant reactions to others' depravity "only in so far as they are the natural, and, as it were, the spontaneous consequences of the faults themselves."⁵⁴ We may avoid someone's company because the teachings of our own faith tell us to mind the company we keep; but we are not to set out deliberately to organize boycotts or ostracism to punish him or to bring him to his senses. Likewise, one can imagine Locke saying that punitive vituperation against others is not necessary for the integrity or reasonable self-expression of a person's own religious faith: Locke's insistence on the Protestant character of individual salvation establishes that.⁵⁵ And forceful disagreement, when it is expressed, should be expressed in terms that can be engaged with intellectually, which is the only means by which belief might possibly be affected. Such interactions may of course involve vigorous debate and contestation. But

⁵³ LCT 46-7: I would not have this understood as if I meant ... to condemn all charitable admonitions and affectionate endeavours to reduce men from errors, which are indeed the greatest duty of a Christian. Any one may employ as many exhortations and arguments as he pleases, towards the promoting of another man's salvation. But ...[n]othing is to be done imperiously."

⁵⁴ J.S. MILL, *ON LIBERTY*, Ch.4, p. 95 (Currin Shields ed., 1956). See also the discussion in Waldron, *Mill as a Critic of Culture and Society*, in an edition of JOHN STUART MILL, *ON LIBERTY*, David Bromwich and George Kateb eds. (Yale University Press, 2002), 224.

⁵⁵ LCT, __: "seeing one man does not violate the right of another by his erroneous opinions and undue manner of worship, nor is his perdition any prejudice to another man's affairs, therefore, the care of each man's salvation belongs only to himself."

this will be, in Shaftesbury's words, "a sort of amicable collision,"⁵⁶—forceful discussion without persecution or defamation.⁵⁷

And all this is against the background of a commitment, which Locke shared with Bayle, Voltaire and Diderot, to the common presence and respectful dignity in civil society of all those engaged in mutual toleration.

VII

The issue I have been examining—the relation between religious toleration as an Enlightenment ideal and religious hate speech, epitomized by the 18th century blood libel that we began with—is not one that features all in the modern literature on toleration. There is a very considerable literature on hate speech (and in England after the 2006 amendments to the Public Order Act, on religious hate speech), but most of it lacks an historical dimension going very far back beyond the passage of the Race Relations Act in the UK in the mid-1960s and the beginnings of modern First Amendment jurisprudence in the United States after 1919. And there is a very considerable philosophical and historic literature on toleration; but it hardly connects with the hate speech debate at all. Hate speech is discussed without reference to Enlightenment toleration; and the tolerationist theories of Locke and Bayle are discussed without reference to hate speech. I have tried to bridge that gap.

I have shifted the emphasis slightly, from physical sanctions to violent speech; in doing so I may have taken the discussion of toleration out of the zone with which both the Enlightenment *philosophes* and modern philosophers have been preoccupied. And of course I don't want to minimize the importance of the concerns about legal sanctions and physical coercion—all those "horrid cruelties ... that have been committed under the name and upon the account of religion"⁵⁸—that, in most people's minds, particularly in the 17th century, were the core of what toleration had to address. Of course the concern about physical sanctions is of paramount importance, and liberating people from the threat of them would be important even if those who were freed from the threat of violence, coercion

⁵⁶ Lord Shaftesbury, 3rd Earl of Shaftesbury (Anthony Ashley Cooper): "All politeness is owing to liberty. We polish one another, and rub off our corners and rough sides by a sort of amicable collision. To restrain this is inevitably to bring a rust upon men's understandings."

⁵⁷ From a sermon preached by Bartholomew Stosch, court chaplain, before the Brandenburg Landtag in 1653, and printed by the Elector's special order in 1659. Quoted by Oliver H. Richardson, *Religious Toleration under the Great Elector and Its Material Results*, 25 ENGLISH HISTORICAL REVIEW 93 (1910), pp. 94-5.

⁵⁸ LOCKE, THIRD LETTER CONCERNING TOLERATION, K3602

and punishment were left hated and despised, ostracized and boycotted, publicly libeled and dishonored. The violent stuff matters. But it is not all that matters under the heading of toleration.

I also don't want to minimize the possibility of addressing the blood libels and other religious calumnies under the auspices of the threat they pose to public order. That was the key in *Osborne's case*: what we saw there was that a license to defame was likely to feed passions that would lead to pogrom. The violent potential of insult was well-known in the early modern world, so much so that Thomas Hobbes identified a prohibition on offensive declarations as a leading principle of the law of nature, "because all signs of hatred, or contempt, provoke to fight,"⁵⁹ and Machiavelli insisted that "detestable calumnies"—wild accusations put about in a legally unstructured and irresponsible way—were to be repressed by any means necessary to prevent tumults and preserve order in a republic.⁶⁰

Modern defenders of free speech think that they have defused the problem of hate speech by making concessions under the headings of public disorder, incitement, or fighting words.⁶¹ But what we have seen from the Enlightenment *philosophes* is that public order means more than just the absence of fighting: it includes the peaceful order of civil society and the dignitary order of ordinary people interacting with one another in ordinary ways, in the exchanges and the marketplace, on the basis of arms-length respect. Above all, it conveys a principle of inclusion and a rejection of the calumnies that tend to isolate and exclude vulnerable religious minorities. "[I]f we may openly speak the truth," said John Locke, "as becomes one man to another, neither Pagan nor Mahometan, nor Jew, ought to be excluded from the civil rights of the commonwealth because of his religion."⁶²

⁵⁹ HOBBS, *LEVIATHAN*, Ch. 14.

⁶⁰ MACHIAVELLI, *DISCOURSES*, I, 8. See also the excellent discussion in DAVID CRESSY, *DANGEROUS TALK: SCANDALOUS, SEDITIOUS, AND TREASONABLE SPEECH IN PRE-MODERN ENGLAND* (2010), p. 6: Sixteenth and seventeenth century Englishmen "knew from the bible, from literature, from legal proceedings, and form everyday discourse that speech could provoke violence, discord, unhappiness, or sedition. An oath or a slur, an insult or a curse, a joke or a lie, could all intensify divisions within communities and erode the fabric of society."

⁶¹ For example, they are not unhappy with John Stuart Mill's condemnation in the essay *ON LIBERTY*, a century or so later, of the public expression of an opinion that "corn dealers are starvers of the poor ... when delivered orally before an excited mob assembled before the house of a corn dealer." MILL, *ON LIBERTY*, Ch. 3, pp. 67-8.

⁶² LOCKE, *LCT*, 56.

We began with one anti-Semitic libel; let us end with another. Montesquieu tells us, in *The Spirit of the Laws*, published in 1748, that [u]nder the reign of Philip the Tall, the Jews were run out of France, having been accused of allowing lepers to pollute the wells. This absurd accusation certainly should cast doubt on all accusations founded on public hatred.⁶³

Our temptation is to take hate speech too lightly, to forget what it contains and what its effect can be. In *Osborne's case*, the effect was rioting and beatings; in the case cited by Montesquieu the effect was exclusion and banishment. Both involved fundamental assaults on the ordinary dignity of the members of vulnerable religious minorities—their dignity, like all others, as members of the society in good standing. Neither type of effect nor the calumnies that gave rise to them should be neglected by those who care about the integrity of a well-ordered society. They should certainly not be neglected just because they involved the power of speech.

⁶³ MONTESQUIEU, *THE SPIRIT OF THE LAWS* (Cohler, Miller and Stone eds., 1989), p. 193 (Book XII, Chapter 5).