

# Reason to Ratify: The Influence of John Locke's Religious Beliefs on the Creation and Adoption of the United States Constitution

David L. Wardle\*

## I. INTRODUCTION

"We hold these truths to be self-evident, that all men are created equal."<sup>1</sup> "Life, liberty, and the pursuit of happiness."<sup>2</sup> "We the People."<sup>3</sup> Statements like these evoke powerful emotions and strong attachments from many modern Americans. Yet these sentiments are not uniquely American. They can be traced to the philosophies of a man who lived across an ocean and a century before our Constitution was even ratified: John Locke.

John Locke has been accused of being a Calvinist,<sup>4</sup> a Deist,<sup>5</sup> a Latitudinarian,<sup>6</sup> and a Socinian.<sup>7</sup> However one chooses to categorize Locke's beliefs, he was, at least, a Christian and a baptized member of the Church of England. He put a great deal of effort into personal

---

\* J.D. J. Reuben Clark Law School, Brigham Young University. The author works for the San Diego office of Thomas D. Neelemen, Esq., L.C. The author would like to thank his father, Lynn D. Wardle, a law professor at Brigham Young University, for his help with this article.

1. THE DECLARATION OF INDEPENDENCE ¶ 2 (U.S. 1776).

2. *Id.*

3. U.S. CONST. pmb1.

4. One who accepts "the theological system of Calvin and his followers marked by strong emphasis on the sovereignty of God and esp. by the doctrine of predestination." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 198 (1983). See also Herbert D. Foster, *International Calvinism through Locke and the Revolution of 1688*, 32 AM. HIST. REV. 475, 486-87 (1927).

5. One espousing Deism, "a movement or a system of thought advocating natural religion, emphasizing morality, and in the 18th century denying the interference of the Creator with the laws of the universe." WEBSTER'S DICTIONARY, *supra* note 4, at 335. See also Dewey D. Wallace, Jr., *Socinianism, Justification by Faith, and the Sources of John Locke's THE REASONABLENESS OF CHRISTIANITY*, 45 J. HIST. OF IDEAS 49 (1984).

6. "A person who is broad and liberal in his standards of religious belief and conduct." WEBSTER'S DICTIONARY, *supra* note 4, at 676. See also Wallace, *supra* note 5, at 50.

7. "An adherent of a 16th and 17th century theological movement professing belief in God and adherence to the Christian Scriptures but denying the divinity of Christ and consequently denying the trinity." WEBSTER'S DICTIONARY, *supra* note 4, at 1119 (1983). See also Wallace, *supra* note 5, at 63.

study of the Bible.<sup>8</sup> A graduate of Christ's Church at Oxford University,<sup>9</sup> Locke was also familiar with the writings of Christian reformists and associated with many influential religious leaders of his time.<sup>10</sup> Locke's personal religious philosophy was a major influence in the United States at the time that the Constitution was drafted. The pervasive influence of Lockean religious convictions motivated the framers of the Constitution to establish a new form of government, provided the theoretical basis for the document itself, and inspired its popular ratification.

Part II will lay the groundwork for this thesis by outlining Locke's life and sources of his religious beliefs. Part III will undertake a more substantive examination of Locke's opinions and the writings that memorialized them. Establishing how Lockean ideas of natural law, social contract, and reason are related to the inspiration, drafting, and acceptance of the Constitution takes place in Part IV, before the article's conclusion in Part V.

## II. SOURCES OF LOCKE'S RELIGIOUS PHILOSOPHY

Locke's education and travels, both in and out of England, during the latter half of the seventeenth century provided a foundation of personal experience from which his religious philosophy would derive. Locke was formally educated at Oxford University, where he studied medicine.<sup>11</sup> Although it has been suggested that his coursework at Oxford did more to detract from Locke's education than it did to further it,<sup>12</sup> the Puritan ideals of his formal education at Oxford—the necessity of discipline in education and morals; the duty of men to use their God-given talents in furtherance of the public good; the desirability of a return to the primitive church and original government—stayed with him long after he earned his degrees.<sup>13</sup>

A large portion of Locke's professional life was devoted to the study and practice of medicine, chemistry, and physics,<sup>14</sup> and throughout his life Locke maintained relationships with intellectuals

---

8. See Wallace, *supra* note 5, at 49.

9. See *id.*

10. See Foster, *supra* note 4, at 478–86.

11. The son of a captain in the Parliamentary Army, Locke pursued his education first at Westminster School, then at Christ's Church at Oxford, where he received his Master of Arts degree in 1658. In 1674, Locke graduated as a Bachelor of Medicine, and was afterwards appointed to one of two medical studentships at Oxford. See LORD KING, *THE LIFE AND LETTERS OF JOHN LOCKE* 1–3 (Burt Franklin ed., Lennox Hill 1972) (1884).

12. See *id.*

13. See Foster, *supra* note 4, at 486.

14. KING, *supra* note 11, at 31.

and men of science.<sup>15</sup> Notably, many of these colleagues were also men of God.<sup>16</sup> Some of the most influential relations that Locke had were with Fellows of the Royal Society who were famous advocates of natural law.<sup>17</sup> Locke himself was a student of natural law and studied nature as though it were Scripture, believing the author of both Scripture and nature to be the same.

In addition to Locke's scientific approach to both nature and the Scriptures, his travels to France and Holland influenced his religious ideas by allowing him to observe the social effects of religious and political conflicts. After completing his studies at Oxford, Locke moved to France, where he befriended a community of French Calvinists, the Huguenots.<sup>18</sup> Locke shared the group's desire to return to the primitive church and its belief in the establishment of a church by voluntary contract.<sup>19</sup> The Huguenots had been guaranteed religious freedom by such a contract, the Edict of Nantes.<sup>20</sup> In 1685, however, Louis XIV violated the Edict, after which Locke, along with the Huguenots, began advocating resistance of tyranny based on breach of social contract and fundamental law.<sup>21</sup>

Locke also spent time in Holland where he made friends among the Dutch Calvinists.<sup>22</sup> Like their counterparts in France, the Dutch

15. Through the Fellows of the Royal Society, Locke developed a friendship with Robert Boyle. When Boyle died, Locke organized and substantially rewrote the work that was published as Boyle's *History of the Air* in 1692. HUYLER, LOCKE IN AMERICA: THE MORAL PHILOSOPHY OF THE FOUNDING ERA 69 (1995).

16. Locke exchanged many ideas with Sir Isaac Newton. Newton shared his work in mathematics with Locke for suggestions before publication. Likewise, Locke sent papers on the New Testament to Newton for his review and comment, which were later published (posthumously) as the *Paraphrases of St. Paul's Epistles*. Of Newton, Locke once wrote, "Mr. Newton is really a very valuable man, not only for his wonderful skill in mathematics, but in divinity also, and his great knowledge in the Scriptures, wherein I know few his equals." H. MCLACHLAN, THE RELIGIOUS OPINIONS OF MILTON, LOCKE, AND NEWTON 101 (1941); see also, HUYLER, *supra* note 15, at 69.

17. Fellows of the Royal Society were students and followers of the writings of Francis Bacon. Bacon believed that men should study "God's Work, as a supplement to his Word." HUYLER, *supra* note 15, at 115. Bacon wrote:

God has revealed himself to man by means of two scriptures: first, of course, through the written word, but also, secondly, through his handiwork, the created universe. To study nature, therefore, cannot be contrary to religion; indeed, it is part of the duty we owe to the Great Artificer of the world.

*Id.* (quoting Bacon as quoted in BASIL WILLEY, THE SEVENTEENTH-CENTURY BACKGROUND: THE THOUGHT OF THE AGE IN RELATION TO RELIGION AND POETRY 30, 35 (1953)).

18. Locke stayed in France for about four years. See Foster, *supra* note 4, at 481.

19. See *id.*

20. *Id.*

21. See *id.*

22. Locke returned to England from France in 1679, but was forced to flee to Holland in 1683 because of his association with the Earl of Shaftesbury, who was found plotting to kill King

Calvinists were advocates of natural law and social contract.<sup>23</sup> But, while the Huguenots in France had suffered a tremendous blow, Locke encountered the Dutch as they were coming off of one successful revolution and were in the midst of planning another: the Great Revolution of 1688.<sup>24</sup> Locke supported their efforts to place Prince William on the English throne because he believed that the English court had violated its social contract with the people of England in many ways, including religious intolerance.<sup>25</sup> Locke believed that religious toleration was the key to social harmony and that Christians should unite on the essentials, and agree to differ on the nonessentials.<sup>26</sup> Due in part to Locke's influence, a religious toleration act was passed by the English parliament shortly after William and Mary took the throne in England.<sup>27</sup>

It was against a similar backdrop of political turmoil and feelings of social frustration that the colonists left England nearly a century later to find a New World. Locke's philosophies, memorialized in a legacy of writings and woven into generations of minds, emboldened this nation's founders in their quest for religious toleration and freedom from an oppressive government.

### III. LOCKE'S RELIGIOUS OPINIONS

As a product of his studies, life experiences, and associations with religious men, John Locke developed well-defined religious beliefs and a well-defined worldview. He shared these views in his writings, and influenced a generation of new Americans eighty years after his death by giving them the faith and understanding to create a new Constitution.

#### A. John Locke's Religious Beliefs

John Locke believed that Christianity consists of merely one essential article of faith: belief in Jesus Christ as the Savior of the world.<sup>28</sup> He believed that anyone who confesses a belief in Jesus

---

Charles II. MAURICE CRANSTON, *JOHN LOCKE, A BIOGRAPHY* 184, 226–30 (1957). Locke lived in exile in Holland until 1689, returning after William of Orange invaded England in 1688. *Id.* at 304–11.

23. See Foster, *supra* note 4, at 482.

24. As a result of this revolution, William III, an admirer of Locke's, took the English throne and cleared the way for Locke's return to England. See Foster, *supra* note 4, at 482.

25. Lois G. Schwoerer, *Locke, Lockean Ideas, and the Glorious Revolution*, 51 *J. HIST. OF IDEAS* 531, 531–39 (1990).

26. See HUYLER, *supra* note 15, at 71.

27. See Schwoerer, *supra* note 25, at 544–45.

28. See HUYLER, *supra* note 15, at 70.

Christ as the Messiah is a Christian, “[f]or that this is the sole doctrine pressed and required to be believed in the whole tenor of Our Savior’s and his apostles [sic] preaching.”<sup>29</sup> Locke boiled Christianity down to two means by which persons could be saved: faith and repentance.<sup>30</sup> Alluding to the New Testament,<sup>31</sup> Locke explained:

Though the devils believed . . . yet they could not be saved by the *covenant of grace*; because they performed not the other condition required in it, altogether as necessary to be performed as this of believing; and that is repentance. Repentance is as absolute a condition of the *covenant of grace* as faith; and as necessary to be performed as that.<sup>32</sup>

Locke understood the “covenant of grace” to be that by which God gave people agency and reason, and in exchange also gave them commandments for how they should act.<sup>33</sup> By agreeing to submit one’s will to God’s and keep the commandments, a man might sacrifice his agency in return for grace:

The law of works makes no allowance for failing on any occasion. Those that obey are righteous; those that in any part disobey, are unrighteous, and must not expect life, the reward of righteousness. But by the law of faith, faith is allowed to supply the defect of full obedience; and so the believers are admitted to . . . immortality, as if they were righteous.<sup>34</sup>

Locke believed that a government of men should model the government of their Heavenly Father. Just as God’s purpose is to promote the good of mankind, so also the end of government is the good of mankind.<sup>35</sup> Just as God refuses to take from man that portion of his will which he will not freely offer, so government has power over men

29. “This was the only gospel-article of faith which was preached to [men].” JOHN LOCKE, *THE REASONABLENESS OF CHRISTIANITY* (1695), reprinted in JOHN LOCKE, *ON THE REASONABLENESS OF CHRISTIANITY* ¶ 165, at 123 (Ewing ed., 1965) [hereinafter LOCKE, *THE REASONABLENESS OF CHRISTIANITY*]; see also HUYLER, *supra* note 15, at 70.

30. See LOCKE, *THE REASONABLENESS OF CHRISTIANITY*, *supra* note 29, ¶ 172, at 128.

31. *James* 2:19 (“the devils also believe, and tremble”).

32. LOCKE, *THE REASONABLENESS OF CHRISTIANITY*, *supra* note 29, ¶ 167, at 125; HUYLER, *supra* note 15, at 70–71 (emphasis added).

33. God’s instructions on how to act are found both in the Scripture (the word of God revealed to his prophets) and in nature (the works of God revealed to all mankind). “[T]he law of nature stands as an eternal rule to all men.” See JOHN LOCKE, *CONCERNING CIVIL GOVERNMENT, SECOND ESSAY: AN ESSAY CONCERNING THE TRUE ORIGINAL EXTENT AND END OF CIVIL GOVERNMENT* (1690), reprinted in *GREAT BOOKS OF THE WESTERN WORLD* 25–28 (Mortimer J. Adler ed., 1994) [hereinafter LOCKE, *CONCERNING CIVIL GOVERNMENT*].

34. LOCKE, *THE REASONABLENESS OF CHRISTIANITY*, *supra* note 29, ¶ 22, at 13; HUYLER, *supra* note 15, at 70–71.

35. See generally LOCKE, *CONCERNING CIVIL GOVERNMENT*, *supra* note 33.

only to the extent that they give their consent to be governed.<sup>36</sup> Just as God gave men reason so that they could submit to his will, so must a man have reason before he can consent to be governed.<sup>37</sup> Just as a man may enter a covenant of grace with God in order to receive life and immortality in the next world, men of reason may enter into a covenant with each other, and agree to limit their agency—that is, submit their individual wills to the collective will of society—in order to preserve their lives in this world.

### B. Locke's Writings

These theories were not all uniquely Locke's, but his writings were certainly his own. Locke simply took the shared beliefs of his peers, Calvin, and other philosophers, incorporated his own thoughts, and organized them into well-articulated, rational theories. Locke shared his religious opinions in several influential texts published in his lifetime. Distinct political theories also come through in Locke's writings, including fundamental law, natural rights, contract and consent of people, popular sovereignty, and resistance to tyranny.<sup>38</sup>

Locke's most political texts were his *Two Treatises of Civil Government*.<sup>39</sup> Written while exiled in Holland, the influence of the Dutch and Anglican Calvinists is apparent.<sup>40</sup> In 1695, Locke anonymously published his most controversial, and arguably his most religious, piece, *The Reasonableness of Christianity*, which was so poorly received by some that Locke spent the next few years answering critics in the *Vindications*, published in 1695 and 1697.<sup>41</sup> Locke's *A Letter Concerning Toleration* was published in 1689, the same year his *Essay Concerning Human Understanding* was published in its entirety.<sup>42</sup>

Of all of Locke's works, his *Essay* was by far the most widely distributed in America at the end of the eighteenth century.<sup>43</sup> One study

---

36. *Id.* at 25–28.

37. *Id.*

38. See Foster, *supra* note 4, at 487.

39. Volume one was published in 1690, and the second shortly thereafter.

40. Nearly all of Locke's citations in the *Treatises* are Calvinistic. He cited Scripture seventy-nine times, Calvinists seven times, and a former Calvinist once. See Foster, *supra* note 4, at 478. Only once did he cite a reference that was not Calvinist, and that was when he cited Barclay, a Scottish Catholic who also advocated resistance of tyranny. See *id.*

41. See CRANSTON, *supra* note 22, at 389–92; A VINDICATION OF THE REASONABLENESS OF CHRISTIANITY, &C. FROM MR. EDWARDS'S REFLECTIONS (London, A. & J. Churchill, 1695); A SECOND VINDICATION OF THE REASONABLENESS OF CHRISTIANITY, &C., BY THE AUTHOR OF THE REASONABLENESS OF CHRISTIANITY, &C. (London, A. & J. Churchill & E. Castle, 1697).

42. CRANSTON, *supra* note 22, at 318, 326.

43. Between 1777 and 1790, 82 percent of the libraries searched had a copy of *An Essay Concerning Human Understanding*, which was well received in England at the time of its original

shows that the height of Locke's popularity, as judged by the percentage of libraries carrying his books, was from 1777 to 1790, a critical period for the Constitution.<sup>44</sup> Locke's political philosophy was important to these early Americans, but even more important were the principles that he taught about human nature.<sup>45</sup> Locke's views on natural law and his firm commitment to the existence and attention of God had a significant impact on those who read his books, especially at the time that the Constitution was penned.

#### IV. LOCKE'S INFLUENCE ON THE CONSTITUTION

These philosophies contain ideals that resonated with the American colonists. John Locke's influence in early America has been most directly tied to the Declaration of Independence, portions of which Thomas Jefferson was accused of lifting almost verbatim out of Locke's *Treatises*.<sup>46</sup> Lockean principles are also found in the Bill of Rights, particularly the freedom of religion. The Federalist Papers are often criticized as being weak;<sup>47</sup> part of the reason that they are not stronger is that the Federalists and Antifederalists did not squabble over the fundamentals. Both the Federalists and the Antifederalists agreed on basic Lockean principles.<sup>48</sup>

The impact of Locke's work on the origins of the Constitution was in creating a political climate that encouraged the creation of such a document and, perhaps more importantly, its acceptance. Locke's influence on the Constitution was not as strong in the actual substance and form of the document as that of Montesquieu; rather, it was more indirect, creating an atmosphere in early America conducive to its creation and adoption.<sup>49</sup> Locke's ideas influenced the creation and adoption of the Constitution in three specific ways: they inspired the founding fathers to undertake the creation of a new government; they

---

publication, and 24 percent had a copy of the *Treatises*. *Reasonableness*, heavily criticized at the time of its first publication, was found in 7 percent of the libraries searched. See David Lundberg & Henry F. May, *The Enlightened Reader in America*, 28 AM. QUARTERLY 262, 273 (1976).

44. See *id.*

45. Assertion based on the showing that more libraries stocked the *Essay* than the *Treatises*. See *id.*

46. See Donald L. Doernberg, "We the People": John Locke, *Collective Constitutional Rights, and Standing to Challenge Government Action*, 73 CALIF. L. REV. 52, 65 (1985) ("Richard Henry Lee of Virginia complained that Jefferson had copied the Declaration from Locke.").

47. See generally HERBERT J. STORING, WHAT THE ANTI-FEDERALISTS WERE FOR (1981).

48. See HUYLER, *supra* note 15, at 251-73.

49. Daniel C.K. Chow, *A Pragmatic Model of Law*, 67 WASH. L. REV. 755, 761-62 n.16 (1992); see also HUYLER, *supra* note 15, at 251.

formed the foundation of the document; and they encouraged public ratification of the Constitution.

### A. A Bold Undertaking

Under the Articles of Confederation, the United States was weak, but there was little incentive to change. The states were wary of a strong central government because of the trouble they had suffered as colonies of a country with abusive central powers. Additionally, flawed as they were, the Articles of Confederation had already been accepted by states, and a Congress had been established to run the country.<sup>50</sup> To propose any other system, after one had already been set up, bordered on treason.<sup>51</sup> Even if one undertook to change the government, there were no assurances that the new system would be better than the last. The task was daunting, to say the least.

Nevertheless, change was necessary. The nation suffered from the problems that attend a country with no strong central authority: foreign relations suffered; interstate relations were hampered; moreover, the nation had debts to pay, but no satisfactory method of collecting taxes.<sup>52</sup> It was a precarious position for the country to be in, surrounded by other countries that were waiting for the new union to fail so they could loot the remains. Thus, the framers knew they could not fail, lest the very purpose of establishing a new government be destroyed.

The moral impetus for such a bold undertaking was well articulated in Lockean philosophy. Lockean ideals and Lockean reason moved the founding fathers to action. In the first place, the framers of the Constitution felt as though they had a right to establish a new government. Locke taught:

The power that every individual gave the society when he entered into it can never revert to the individuals again, as long as the society lasts . . . . But if . . . it is forfeited . . . it reverts to the society, and the people have a right to act as supreme, and continue the legislative in themselves or place it in a new form, or new hands, as they think good.<sup>53</sup>

Since England had forfeited its privilege of governing the American people, it was the privilege of the framers to not only continue to govern themselves in the same way that they had been governing

---

50. See generally CATHERINE DRINKER BOWEN, *MIRACLE AT PHILADELPHIA* (1966).

51. *Id.*

52. See HUYLER, *supra* note 15, at 252–58.

53. LOCKE, *CONCERNING CIVIL GOVERNMENT*, *supra* note 33, ¶ 243, at 81.



themselves previously, but also to put the legislative power into new hands.

Armed with a belief in the right to set up a new government, the framers were not entirely certain they had the ability. Again, a firm foundation in Lockean ideals gave them the confidence to try. In Locke's view, rather than focus on obstacles, people should be encouraged to identify problem areas and then search for solutions, with the assurance that God would provide the way to accomplish what was required.<sup>54</sup>

With Lockean optimism, one of the most influential delegates at the 1787 Constitutional Convention, South Carolina's Charles Pinckney, identified the opportunities that the Convention presented, rather than focusing on the obvious obstacles:

Our true situation appears to me to be this—a new extensive Country containing within itself the materials for forming a Government capable of extending to its citizens all the blessings of civil [and] religious liberty—capable of making them happy at home. This is the great end of Republican Establishments.<sup>55</sup>

Connecticut delegate Roger Sherman helped the other delegates at the Constitutional Convention internalize the import of what they were doing when he identified the “citizens” to whom Pinckney was referring: “We are providing for our posterity, for our children [and] our grand Children . . . .”<sup>56</sup> The delegates were securing the “comfortable provision for this life, and the way that leads to a better” not only as representatives of the body politic, but as fathers and grandfathers providing for their children and grandchildren.

Recognizing both the import of the task and the opportunity that was theirs, New York's Alexander Hamilton identified the issue the delegates had to consider: “The great question is what provision shall we make for the happiness of our Country?”<sup>57</sup> The delegates took four months to arrive at an answer, and the states even longer to accept it.<sup>58</sup>

54. Quoting the Apostle Peter, Locke wrote, “[God] has given [men] . . . ‘whatsoever is necessary for the conveniences of life and information of virtue; and has put within the reach of their discovery, the comfortable provision for this life, and the way that leads to a better.’” JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING Intro. ¶ 5 (1690), *reprinted in* GREAT BOOKS OF THE WESTERN WORLD 94 (Mortimer J. Adler ed., 1994) [hereinafter LOCKE, HUMAN UNDERSTANDING].

55. JAMES MADISON, NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787, at 185 (Ohio Univ. Press 1996) (1927) [hereinafter MADISON, DEBATES].

56. *Id.* at 288.

57. *Id.* at 130.

58. See generally BOWEN, *supra* note 50.

One reason for the delay and possible dissatisfaction with the Constitution was that “[a] republican, or free government, can only exist where the body of the people are virtuous, and where property is equally divided.”<sup>59</sup> Afraid of encouraging the same type of abusive government from which they had only recently won independence, critics of the Constitution recognized that “every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over everything that stands in their way.”<sup>60</sup>

To these fears, supporters of the Constitution replied, “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”<sup>61</sup> “Is it not time to awake from the deceitful dream of a golden age, and to adopt as a practical maxim for the direction of our political conduct that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?”<sup>62</sup> Like John Locke, the supporters of the Constitution seemed to believe that as humans we are not perfect, but we have been given the ability to think, reason, and devise ways to make a society operate smoothly.<sup>63</sup>

The framers addressed the issue of perfect virtue with Locke’s rational sensibilities as well. Pennsylvania’s Benjamin Franklin said, “[W]e [should] not depress the virtue [and] public spirit of our common people.”<sup>64</sup> The framers felt that “[Americans] are . . . as active, intelligent [and] susceptible of good [government] as any people in the world.”<sup>65</sup> Still, they recognized that “in a free [government] those who are to be the objects of a [government] ought to influence the operations of it.”<sup>66</sup> To this end, it was suggested that “[i]n free Governments the rulers are the servants, and the people their superiors [and] sovereigns.”<sup>67</sup> Salaries of government officers were also limited, because the framers thought that “[w]ealth tends to corrupt the mind [and] to nourish its love of power, and to stimulate it to oppression.”<sup>68</sup>

Issues of a strong national government and public virtue were not the only obstacles to overcome in negotiating the document that would become the Constitution. “[T]he greatest danger,” observed Conven-

---

59. THE ANTIFEDERALIST PAPERS NO. 47, at 134 (Centinel) (Morton Borden ed., 1965).

60. *Id.*

61. THE FEDERALIST NO. 51, at 322 (James Madison) (Clinton Rossiter ed., 1961).

62. THE FEDERALIST NO. 6, at 59 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

63. Or, in other words, to preserve ourselves.

64. MADISON, DEBATES, *supra* note 55, at 404.

65. *Id.* at 187.

66. *Id.* at 291.

67. *Id.* at 371.

68. *Id.* at 323.

tion organizer James Madison, “[was] that of disunion of the States.”<sup>69</sup> The States’ different interests and different opinions about key issues threatened on more than one occasion to tear the Union apart. The issue that most cleanly split the debate along state lines was that of slavery.<sup>70</sup>

The debate about slavery and the related question of representation in the Senate was bitter. On one occasion, Connecticut delegate Oliver Ellsworth prophesied, with eerie accuracy, “This widening of opinions has a threatening aspect. If we do not agree on . . . middle [and] moderate ground . . . we should lose two States, with such others as may be disposed to stand aloof, should fly into a variety of shapes [and] directions, and most probably into several confederations and not without bloodshed.”<sup>71</sup>

After a particularly difficult day for the Convention, when tempers were flaring and the delegates seemed ready to give up, Benjamin Franklin, the oldest and most respected delegate at the Convention, called the delegates back to their senses. He reminded them:

To [the Father of lights] we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? Or do we imagine that we no longer need his assistance? I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth—that *God Governs in the affairs of men.*<sup>72</sup>

Franklin’s plea for the delegates to remember that God would help them is reminiscent of Locke, who often referred to God as the “Father of lights” when explaining how God inspires men.<sup>73</sup>

69. *Id.* at 516.

70. See MADISON, DEBATES, *supra* note 55, at 503–12.

71. *Id.* at 508.

72. *Id.* at 209.

73. LOCKE, HUMAN UNDERSTANDING, *supra* note 54, book IV chap. XVIII. ¶ 11, at 387. Perhaps Franklin’s plea rang true in the hearts of his fellow delegates in part because of their familiarity with this passage of Locke’s:

We shall not have much reason to complain of the narrowness of our minds, if we will but employ them about what may be of use to us; for of that they are very capable; and it will be an unpardonable as well as childish peevishness, if we undervalue the advantages of our knowledge, and neglect to improve it to the ends for which it was given us, because there are some things that are set out of the reach of it. It will be no excuse to an idle and untoward servant, who would not attend his business by candle-light, to plead that he had not broad sunshine. The candle that is set up in us shines bright enough for all our purposes.

*Id.* Intro. ¶ 5, at 94 (“the candle that is set up in us” references *Proverbs* 20:27, which says that “the spirit of man is the candle of the Lord.”).

Even though Franklin was successful at averting disaster for a time and convincing the delegates not to forsake such an important undertaking, disagreement still existed over how the new government should be set up. The disagreement was so great that in September 1787, at the end of the Convention, some delegates were unwilling to put their names to the final document.<sup>74</sup> At this time, Franklin spoke again, assuring the delegates of his confidence that they had done the best they could and reflecting that it was time to resign themselves to the public's reaction.<sup>75</sup>

There is a Lockean thread running through such declarations.<sup>76</sup> To those who would refuse to act at all for fear of acting wrongly, Locke advised, "If we can find out those measures whereby a rational creature, put in that state which man is in in this world, may and ought to govern his opinions, and actions depending thereon, we need not be troubled that some other things escape our knowledge."<sup>77</sup>

Although the delegates recognized that the Constitution might not be perfect, Lockean ideals prevented them from shrinking from the task of drafting it.<sup>78</sup> It was the beginning of a new social contract.

### B. A New Social Contract

The foundational concepts of freedom and liberty contained in the Constitution are derived from Locke's teachings. The reason that the framers of the Constitution felt that a social contract is the basis of free government goes back to Lockean principles of natural law.<sup>79</sup>

---

74. See generally BOWEN, *supra* note 50.

75. Directing his comments to George Washington, the president of the Convention, Franklin opined:

[The new government] is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic Government, being incapable of any other . . . . I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good.

MADISON, DEBATES, *supra* note 55, at 653-54.

76. Ellsworth had previously made a similar statement when he said of himself that he "was not in general a half-way man, yet he preferred doing half the good we could, rather than do nothing at all. The other half may be added, when the necessity shall be more fully experienced." *Id.* at 219.

77. LOCKE, HUMAN UNDERSTANDING, *supra* note 54, Intro. ¶6, at 95.

78. In the end, all but three of the delegates put their names to it. See MADISON, DEBATES, *supra* note 55, at 659.

79. Locke explained that laws of countries "are only so far right as they are founded on the law of Nature, by which they are to be regulated and interpreted." LOCKE, CONCERNING CIVIL GOVERNMENT, *supra* note 33, ¶ 12, at 27-28.

Natural law, according to Locke, is that "men, being once born, have a right to their preservation."<sup>80</sup> In order to effectuate that preservation, "as much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in. Whatever is beyond this is more than his share, and belongs to others."<sup>81</sup> In a state of nature, then, man has rights to property to the extent that he uses that property for his preservation. In this state, man may also enforce his right to property. Each man is a government unto himself.

In a state of nature, all men are free.<sup>82</sup> Freedom, according to Locke, is the "power of acting or not acting."<sup>83</sup> It is the power of acting in accordance with our own judgment of what is good and what is evil.<sup>84</sup> To this extent, freedom seems to be synonymous with liberty:

So that the idea of liberty is, the idea of a power in any agent to do or forbear any particular action, according to the determination or thought of the mind, whereby either of them is preferred to the other: where either of them is not in the power of the agent to be produced by him according to his volition, there he is not at liberty; that agent is under necessity.<sup>85</sup>

In [the mind having a power to suspend the execution and satisfaction of any of its desires] lies the liberty man has; and from the not using of it right comes all that variety of mistakes, errors, and faults which we run into in the conduct of our lives, and our endeavours after happiness; whilst we precipitate the determination of our wills, and engage too soon, before due examination. . . . This seems to me the source of all liberty . . . .<sup>86</sup>

According to Locke, then, an individual's liberty hinges on his power of self-control, his ability to suspend the "steady prosecution of true felicity" until determining for himself "whether that particular thing which is then proposed or desired lie[s] in the way to their main end, and make a real part of that which is their greatest good."<sup>87</sup> This greatest good, "though apprehended and acknowledged to be so, does not determine the will, until our desire, raised proportionably to it, makes us uneasy of the want of it."<sup>88</sup> Therefore, a man's ability to

80. *Id.*, ¶ 24, at 30.

81. *Id.*, ¶ 30, at 31.

82. *Id.*, ¶ 4, at 25.

83. LOCKE, HUMAN UNDERSTANDING, *supra* note 54, book II chap. 21 ¶ 23, at 183.

84. *See id.*, ¶ 73, at 198.

85. *Id.*, ¶ 8, at 180.

86. *Id.*, ¶ 48, at 190.

87. *Id.*, ¶ 53, at 191-92.

88. *Id.*, ¶ 35, at 186.

choose good gives him liberty.<sup>89</sup> Liberty, consequently, belongs only to agents because the ability to choose good is “grounded on his having reason.”<sup>90</sup>

In the state of nature, man “is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of Nature for his rule.”<sup>91</sup> The Antifederalists paraphrased this Lockean explanation of natural law when they wrote: “[A]ll men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows.”<sup>92</sup> A person can only be put out of the state of nature and subjected to the political power of another by his own consent, “by agreeing with other men, to join and unite into a community for their comfortable, safe, and peaceable living. . . .”<sup>93</sup> When people join a society, “they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest.”<sup>94</sup> When they do this by express consent, men give up their powers of the state of Nature, namely, to punish crimes and preserve his life.<sup>95</sup> Not every compact puts an end to the state of Nature between people, “only this one of agreeing together mutually to enter into one community, and make one body politic.”<sup>96</sup> Once a man has given his consent to be of any society, he is “perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of Nature, unless by any calamity the government he was under comes to be dissolved.”<sup>97</sup>

This was the concern of the Antifederalists in advocating a Bill of Rights. They were concerned that the American people would too easily part with the liberty of the state of Nature. The Antifederalists cautioned:

So the government is committed, to establish laws for the promoting the happiness of the community, and to carry those laws into effect. But it is not necessary, for this purpose, that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered . . . . Others are

---

89. *Id.*, book IV chap. 12 ¶ 11, at 361 (“morality is the proper science and business of mankind in general”).

90. LOCKE, CONCERNING CIVIL GOVERNMENT, *supra* note 33, ¶ 63, at 38.

91. *Id.*, ¶ 22, at 30.

92. THE ANTIFEDERALIST PAPERS NO. 84, at 242–46 (Brutus) (Morton Borden ed., 1965).

93. LOCKE, CONCERNING CIVIL GOVERNMENT, *supra* note 33, ¶ 95, at 46.

94. *Id.*, ¶ 95, at 46.

95. *See id.*, ¶ 8, 97, at 26, 47.

96. *Id.*, ¶ 14, at 28.

97. *Id.*, ¶ 121, at 53.

not necessary to be resigned in order to attain the end for which government is instituted; these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good. From these observations it appears, that in forming a government on its true principles, the foundation should be laid . . . by expressly reserving to the people such of their essential rights as are not necessary to be parted with.<sup>98</sup>

. . .

[P]ersons who attempt to persuade people that such reservations were less necessary under this Constitution than under those of the States, are willfully endeavoring to deceive, and to lead you into an absolute state of vassalage.<sup>99</sup>

According to Locke, once a man, by mutual consent between himself and the other members of the society, decides to join a society, he becomes subject to its laws.<sup>100</sup> Freedom in society consists of being at liberty to follow one's own will "in all things where that rule prescribes not" and not being subject to "the inconstant, uncertain, unknown, arbitrary will of another man."<sup>101</sup> One must know what the law is in order to be subject to it.<sup>102</sup> Lawmaking power is therefore vested in a legislative body that creates laws common to everyone in the society and makes those laws known to the people.<sup>103</sup>

This power of making and enforcing laws, political power, is limited to the extent that it is used to further the public good, the end of government being "the good of mankind."<sup>104</sup> "The rules that [a legislative body] make . . . must . . . be conformable to the law of Nature—i.e., to the will of God," which, according to Locke, "stands as an eternal rule to all men."<sup>105</sup> The "fundamental law of Nature," according to Locke, is "the preservation of mankind."<sup>106</sup>

Locke believed that the will of God is the preservation of mankind and that governments of men must conform to the will of God. The two essentials for Locke's "covenant of grace" were faith and repentance. By covenanting to repent and keep God's commandments, one can receive preservation, which is life and immortality in the next

98. THE ANTIFEDERALIST PAPERS NO. 84, *supra* note 92, at 243.

99. *Id.*

100. LOCKE, CONCERNING CIVIL GOVERNMENT, *supra* note 33, ¶ 122, at 75–76.

101. *Id.*, ¶ 22, at 30.

102. *See generally id.* at 46–59.

103. *Id.*

104. *Id.*, ¶ 229, at 78.

105. *Id.*, ¶ 135, at 56.

106. LOCKE, CONCERNING CIVIL GOVERNMENT, *supra* note 33, ¶ 135, at 56.

world. The social contract patterns the covenant of grace. By covenanting to keep the laws of society, one is entitled to preservation of his life, and property, which is used to preserve life in this world. In both the covenant of grace and the social contract, the purpose of the covenant is to effectuate God's will, the preservation of life, and the good of man.

Accordingly, the Antifederalists wrote: "The common good, therefore, is the end of civil government, and common consent, the foundation on which it is established."<sup>107</sup> And similarly, the Federalists wrote: "[T]he Constitution is to be founded on the assent and ratification of the people of America . . . [T]his assent and ratification is to be given by the people . . . as composing the distinct and independent States to which they respectively belong."<sup>108</sup>

When a government fails to preserve the natural rights, like lives and property, of the people it governs, it is no longer promoting God's will and the covenant is broken. In such a case, the relationship between the government and the governed is no longer consensual. Locke taught that in the absence of consent, "shaking off a power with force, and not right, hath set over any one, though it hath the name of rebellion, yet is no offence before God, but that which he allows and countenances."<sup>109</sup>

It was precisely to avoid this situation that the framers required ratification by the American people. As Maryland delegate John Francis Mercer said at the Convention:

It is a great mistake to suppose that the paper we are to propose will govern the [United] States? It is the men whom it will bring into the [government] and interest in maintaining it that is to govern them. The paper will only mark out the mode [and] the form. Men are the substance and must do the business. All [government] must be by force or influence. It is not the King of France—but 200,000 janissaries of power that govern that Kingdom. There will be no such force here; influence then must be substituted . . .<sup>110</sup>

Ultimately, it was the ratification by the American people that gave the Constitution its life.

---

107. THE ANTIFEDERALIST PAPERS NO. 84, *supra* note 92, at 243.

108. THE FEDERALIST NO. 39, at 243 (James Madison) (Clinton Rossiter ed., 1961).

109. LOCKE, CONCERNING CIVIL GOVERNMENT, *supra* note 33, ¶ 196, at 70.

110. MADISON, DEBATES, *supra* note 55, at 455–56.



### C. Ratification

One concern of those opposed to popular ratification of the Constitution was that the average American would not be able to understand or appreciate the political import of the Constitution. Said Delaware delegate John Dickinson on one occasion, "Experience must be our only guide. Reason may mislead us."<sup>111</sup> Others, however, like Massachusetts delegate Rufus King, urged, "We ought to be governed by reason, not by chance."<sup>112</sup> Although some of the framers were uneasy about entrusting ratification of the Constitution to the ability of the American people to reason, the founders decided that in order to secure an enforceable social contract, they would have to rely on the intellect of the American people.<sup>113</sup> This was quite a leap of faith, considering prevailing political opinions of the day, but the framers of the Constitution were able to make that leap because of a solid core of Lockean ideals.<sup>114</sup>

Locke defined reason as "nothing else but the faculty of deducing unknown truths from principles or propositions that are already known."<sup>115</sup> He said it is "natural revelation, whereby the eternal Father of light and fountain of all knowledge communicates to mankind that portion of truth which he has laid within the reach of their natural faculties . . . ."<sup>116</sup> The founders had faith that the American people would recognize true principles in the Constitution because Locke had assured them that "[God] has given [mankind] a mind that can reason."<sup>117</sup> This was not a case where God was going to communicate a set of new discoveries immediately. This was a case where a portion of truth had been laid within the reach of men's natural faculties. "God hath given [reason] to be the rule betwixt man and man,"<sup>118</sup> and in the case of the Constitution, those who subscribed to Locke's philosophies would rely on the operation of basic natural principles, like

111. *Id.* at 447.

112. *Id.* at 362.

113. When asked "Wh[e]ther then must we resort?" to ratification of the Constitution, delegate George Mason of Virginia answered, "[T]o the people with whom all power remains that has not been given up in the Constitutions derived from them." He noted that "it was of great moment . . . that this doctrine [of social contract] should be cherished as the basis of free Government." *Id.* at 348.

114. Locke once observed that "all peaceful beginnings of government have been laid in the consent of the people." LOCKE, CONCERNING CIVIL GOVERNMENT, *supra* note 33, ¶ 112, at 51.

115. LOCKE, HUMAN UNDERSTANDING, *supra* note 54, book I chap. I ¶ 9, at 97.

116. *Id.*, book IV chap. XIX ¶ 4, at 385.

117. *Id.*, book IV chap. XVII ¶ 4, at 373.

118. LOCKE, CONCERNING CIVIL GOVERNMENT, *supra* note 33, ¶ 172, at 65.

human reason, to inspire the American people to accept and ratify the new social contract.

Adopting a Lockean worldview, the members of the Constitutional Convention recognized that they had done all that they could do. In order to achieve the government by social contract to which they aspired, they had to take a step into the unknown and exercise faith, that first principle of Locke's covenant of grace. They had to trust that God, through the natural process of revelation known as reason, would reveal to the American public the wisdom of the Constitution and inspire them to put their hands to it. Fortunately, God did reveal His will to the Americans and they ratified the Constitution, thereby sealing the great American social contract.

## V. CONCLUSION

John Locke's religious beliefs were shaped by his extensive study of Scripture and science, his life experience, and his associations with other religious men. Locke conveyed his religious beliefs to a great generation of Americans who, inspired by his assurance that God blessed men with the power to govern themselves, boldly undertook the task of creating a new government at the Constitutional Convention of 1787. Sharing Locke's belief that the government of men should model God's plan for their salvation, the Convention delegates determined to create a government by social contract. Because they believed that a social contract was necessary and because they shared Locke's belief that God would inspire men through the gift of reason, they exercised faith and surrendered the Constitution to the American people for their ratification. Although John Locke's voice may be literally absent from the text of the United States Constitution, his writings and thoughts were in the minds of our nation's founders. The result is a document that contains ideals and freedoms infused with John Locke's spirit.