

# 24.150 Liberalism, Toleration, and Freedom of Speech, Fall 2023

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+CO

 **Bill Ackman** @BillAckman · 2d  
University of @Penn board meeting on Sunday. Odds makers are now at 99%.

399 434 5,909

 **Daily Mail US** @DailyMail · 13h  
Rep Elise Stefanik and billionaire Bill Ackman lead calls for Harvard and MIT presidents to be FIRED [trib.al/xTFbNh9](#)



91 121 894

 **Michael Tracey** @mtracey · 2d  
The university presidents were trapped by a bullshit series of questions

Nobody marches around chanting, "We call for the genocide of Jews!"

They march around chanting political slogans whose meaning is hotly contested and debated. One side of that debate insists the slogans... [twitter.com/i/web/status/1...](#)

150 178 641

 **Elise Stefanik**    
@EliseStefanik

One down.  
Two to go.

This is only the very beginning of addressing the pervasive rot of antisemitism that has destroyed the most "prestigious" higher education institutions in America.

This forced resignation of the president of @Penn is the bare minimum of what is required.

These universities can anticipate a robust and comprehensive Congressional investigation of all facets of their institutions negligent perpetration of antisemitism including administrative, faculty, funding, and overall leadership and governance.

@Harvard and @MIT, do the right thing. The world is watching.

In the case of @Harvard, Dr. Gay was asked by me 17x whether calling for the genocide of Jews violates Harvard's code of conduct. She spoke her truth 17x. And the world heard.

In the case of @MIT, Dr. Kornbluth answered the question. "If targeted at individuals, not public statements" ie dehumanizing the Jewish people in her antisemitic answer.

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# Penn President Liz Magill signals profoundly misguided willingness to abandon free expression



University of Pennsylvania President Liz Magill (center) testifies at the House Committee on Education & the Workforce hearing on anti-Semitism on college campuses in Washington, D.C. on Dec. 5, 2023.

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Glenn Greenwald @ggreenwald · 2d  
This is the free speech group -- the only one -- doing what ACLU once did. It's so glad they exist.

What makes them extra impressive is that they grew because conservatives applauded them for defending right-wing students' speech, but now do the same for pro-Palestinian speech:

**FIRE @TheFIREorg · 2d**  
BREAKING: FIRE wrote @Penn, urging in the strongest possible terms to stand by its free speech commitments and reject efforts to revise its free speech promises to punish expression protected by 1A standards. [twitter.com/i/web/status/1...](https://twitter.com/i/web/status/1...)



73 220 1,343

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Tonight, University of Pennsylvania President Liz Magill signaled that one of our nation's most prestigious institutions is willing to abandon its commitment to freedom of expression.

"For decades, under multiple Penn presidents and consistent with most universities, Penn's policies have been guided by the Constitution and the law," explained Magill in a [video](#) posted to X. But now, she continued, the university "must initiate a serious and careful look at our policies," a process to start "immediately."

This is a deeply troubling, profoundly counterproductive response to yesterday's congressional [hearing](#) on "Holding Campus Leaders Accountable and Confronting Antisemitism." Were Penn to retreat from the robust protection of expressive rights, university administrators would make inevitably political decisions about who may speak and what may be said on campus. Such a result would undoubtedly compromise the knowledge-generating process free expression enables and for which universities exist.

To be clear: Universities will not enforce a rule against "calls for genocide" in the way [elected officials](#) calling for President Magill's resignation think they will. Dissenting and unpopular speech – whether pro-Israeli or pro-Palestinian, conservative or liberal – will be silenced.

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## Opinion | To fight antisemitism on campuses, we must restrict speech

By Claire O. Finkelstein  
December 10, 2023 at 7:00 a.m. EST



University of Pennsylvania President Liz Magill testifies during a House hearing on Capitol Hill on Dec. 5. (Jabin Botsford/The Washington Post)

Listen 6 min Share Comment Save

Claire O. Finkelstein is Algernon Biddle professor of law and professor of philosophy at the University of Pennsylvania. She is a member of the school's Open Expression Committee and chair of the law school's committee on academic freedom. The views expressed here are the author's own.

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### 'I Am Sorry': Harvard President Gay Addresses Backlash Over Congressional Testimony on Antisemitism



The Harvard Crimson

### Harvard FAS Dean Hoekstra 'Extremely Disappointed' by Capitol Hill Antisemitism Hearing

Dean Says Policies Alone 'Not Sufficient' to Combat Antisemitism



The Harvard Crimson

### Harvard Law Review Face Internal Turmoil After Vote to Block Piece by Palestinian Scholar

Editors of the *Harvard Law Review*, the world's most cited legal journal, have been embroiled in internal strife following public backlash over their decision to block an article by a Palestinian legal scholar.

BY JO B. LEMANN AND NEIL H. SHAH

8 hours ago

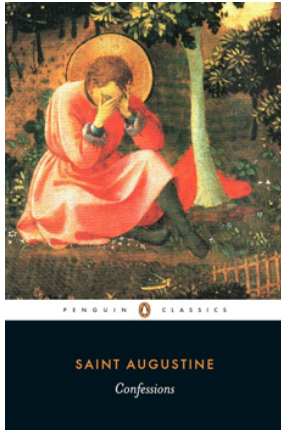
### As Harvard's Governing Boards Meet, More than 500 Faculty Urge Against Gay's Removal, Citing University Independence

### UPenn's President Resigned. What Does it Mean for Harvard President Claudine Gay?

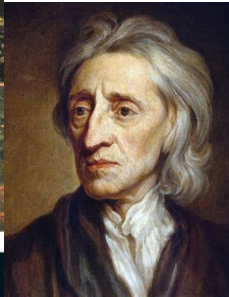
Herszenhorn, Miles J. Herszenhorn and Claire Yuan. From "I Am Sorry': Harvard President Gay Addresses Backlash Over Congressional Testimony on Antisemitism," *Harvard Crimson*, December 8, 2023; Hamid, Rahem D., and Elias J. Schisgall. From "Harvard FAS Dean Hoekstra 'Extremely Disappointed' by Capitol Hill Antisemitism Hearing," *Harvard Crimson*, December 11, 2023; Lemann, Jo B., and Neil H. Shah. From "Harvard Law Review Faces Internal Turmoil After Vote to Block Piece by Palestinian Scholar," *Harvard Crimson*, December 11, 2023; Schisgall, Elias J. From "As Harvard's Governing Boards Meet, More than 500 Faculty Urge Against Gay's Removal, Citing University Independence," *Harvard Crimson*, December 10, 2023; Herszenhorn, Miles J. Herszenhorn and Claire Yuan. From "UPenn's President Resigned. What Does it Mean for Harvard President Claudine Gay?," *Harvard Crimson*, December 10, 2023. © The Harvard Crimson, Inc. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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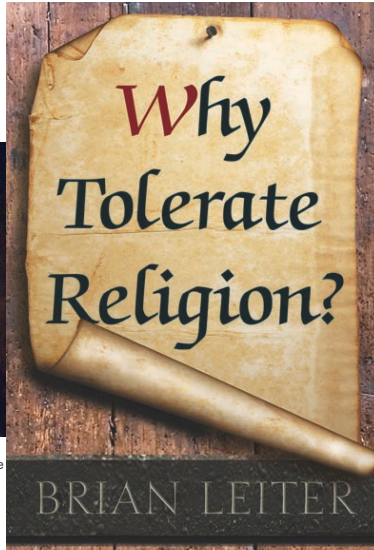
continuing with: religion



Saint Augustine. *Confessions*. Translated by R. S. Pine-Coffin. Penguin Classics, 1961. © Penguin Classics. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.



Portrait of John Locke (1697) by Godfrey Kneller. This image is in the public domain. Source: [Wikimedia Commons](https://commons.wikimedia.org/wiki/File:John_Locke_1697.jpg).



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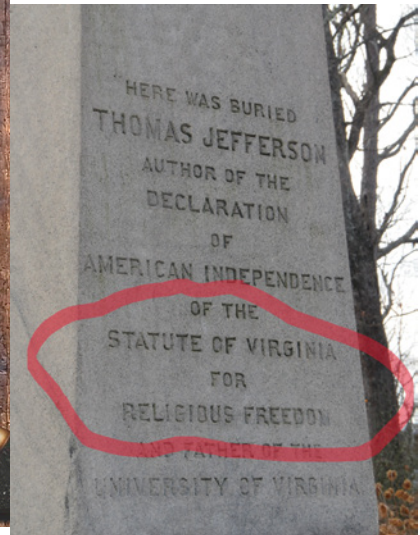
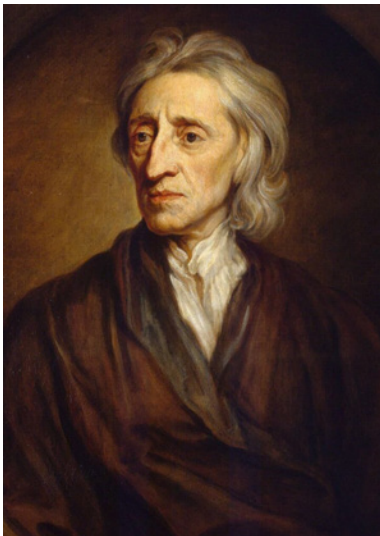


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Portrait of John Locke (1697) by Godfrey Kneller. This image is in the public domain. Source: [Wikimedia Commons](https://commons.wikimedia.org/wiki/File:John_Locke_1697.jpg).



John Locke (1632-1704)

English philosopher and physician

Locke's father served on the Parliamentarian side in the English Civil War

*An Essay Concerning Human Understanding* defends empiricism, the view that there are no "innate ideas"

*A Letter Concerning Toleration* is not actually a letter

8

## Locke

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The commonwealth seems to me to be a society of men constituted only for the purpose of preserving and promoting the public good. By 'the public good' I mean: life, liberty, freedom from bodily illness and pain, and the possession of things such as money, land, houses, furniture, and so on.

Locke, John. From "Toleration: Conventionally Known as 'A Letter about Toleration'." Early Modern Texts. © Jonathan Bennett. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

Why isn't promoting true religion another one of its purposes?

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1. According to Locke, if making laws about religion is a legitimate exercise of government power, then it was given that power either by God or by the people. Why does Locke think the people have not given government that power?

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## Locke

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no-one can be so unconcerned about his own salvation that he blindly leaves it to someone else—whether monarch or subject—to tell him what faith or worship to embrace.

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What if you think others know better than you?

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## Locke's "doxastic involuntarism"

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no-one can just believe what someone else tells him to believe, even if he wants to...Laws without penalties have no force, and in our present context [that is, laws establishing a religion] penalties are just silly, because they have no power to change anyone's mind. (Discussion postponed until Augustine)

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## Locke's libertarianism

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So the responsibility for each man's soul is his; it is to be left to him. You say: 'What if he neglects the care of his soul?' Well, what if he neglects the care of his health? or of his estate? They are nearer to the magistrate's jurisdiction than the man's soul is; so is it all right for the magistrate to set up a law explicitly forbidding people to become poor or sick? Laws try to secure that a person's goods and health are not harmed by fraud or violence on the part of others; but they don't try to secure them against negligence bad management by the person himself.

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## Locke's libertarianism

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If you said 'Idolatry should be avoided, because it is a sin', that would be right. But its being a sin doesn't imply that it should be punished by the magistrate. It's not for the magistrate to wield his sword in punishing everything that he thinks is a sin against God. Covetousness, uncharitableness, idleness, and many other things are generally agreed to be sins, but no-one has ever said that they should be punished by the magistrate. That is because they don't interfere with other people's rights, and don't disturb the public peace.

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## more Locke

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[What if the magistrate could succeed in getting citizens to profess one particular faith?]

The right to rule, and practised skill in ruling, don't bring with them secure knowledge of other things, least of all of true religion.

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Compare: "the right to rule doesn't bring with it secure knowledge of economics"

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2. Locke wrote that "Confiscation of goods, imprisonment, torture—nothing like that can make men change their inward judgments about things." Writing 1200 years earlier, Augustine asserted, to the contrary, that fear of punishment could change people's judgments. How did he think it could happen?

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Saint Augustine of Hippo receiving the Most Sacred Heart of Jesus by Philippe de Champaigne. This image is in the public domain. Source: [Wikimedia Commons](#).



Saint Augustine (354-430), by Philippe de Champaigne (1650)

Augustine, Bishop of Hippo Regius (in present-day Algeria, then part of the Roman Empire)

influential philosopher and theologian



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Augustine arguing with Donatists, Charles-André van Loo (1705-1765),

St. Augustine arguing with donatists by Charles-André van Loo. This image is in the public domain. Source: [Wikimedia Commons](#).

## Augustine

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originally my opinion was, that no one should be coerced into the unity of Christ, that we must act only by words, fight only by arguments, and prevail by force of reason, lest we should have those whom we knew as avowed heretics feigning themselves to be Catholics. But this opinion of mine was overcome not by the words of those who controverted it, but by the conclusive instances to which they could point.

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How many supposed the sect of Donatus to be the true Church, merely because ease had made them too listless, or conceited, or sluggish, to take pains to examine Catholic truth! ... How many, believing that it mattered not to which party a Christian might belong, remained in the schism of Donatus only because they had been born in it, and no one was compelling them to forsake it and pass over into the Catholic Church! To all these classes of persons the dread of those laws in the promulgation of which kings serve the Lord in fear has been so useful, that now some say we were willing for this some time ago;

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Others say: We knew not that the truth was here, and we had no wish to learn it; but fear made us become earnest to examine it when we became alarmed, lest, without any gain in things eternal, we should be smitten with loss in temporal things: thanks be to the Lord, who has by the stimulus of fear startled us from our negligence, that now being disquieted we might inquire into those things which, when at ease, we did not care to know!

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21

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Augustine

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So...is the "you can't compel belief" argument good?

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3. Does Jefferson give any arguments for religious liberty and toleration in the Statute that do not appear in the Locke reading? If so, what are they?

23

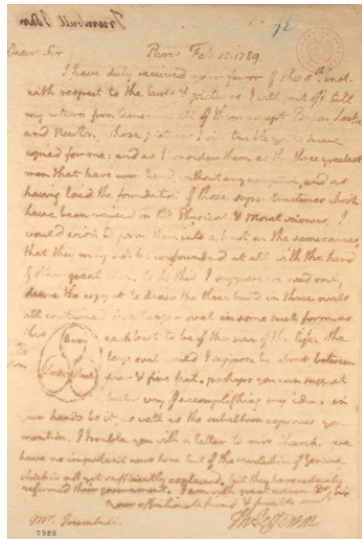


John Trumbull, Declaration of Independence (1818)

Jefferson

Declaration of Independence (1819) by John Trumbull. This image is in the public domain. Source: [Wikimedia Commons](#).

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Thomas Jefferson to John Trumbull

I have duly received your favor of the 5th. inst. with respect to the busts & pictures I will put off till my return from America all of them except Bacon, Locke and Newton, whose pictures I will trouble you to have copied for me: and as I consider them as the three greatest men that have ever lived, without any exception, and as having laid the foundations of those superstructures which have been raised in the Physical & Moral sciences, I would wish to form them into a knot on the same canvas, that they may not be confounded at all with the herd of other great men. to do this I suppose we need only desire the copyist to draw the three busts in three ovals all contained in a larger oval in some such form as this

## Know Your Meme

### Lard\_Baron

When I was young my father said to me:

"Knowledge is Power....Francis Bacon"

I understood it as "Knowledge is power, France is Bacon".

For more than a decade I wondered over the meaning of the second part and what was the surreal linkage between the two? If I said the quote to someone, "Knowledge is power, France is Bacon" they nodded knowingly. Or someone might say, "Knowledge is power" and I'd finish the quote "France is Bacon" and they wouldn't look at me like I'd said something very odd but thoughtfully agree. I did ask a teacher what did "Knowledge is power, France is Bacon" meant and got a full 10 minute explanation of the Knowledge is power bit but nothing on "France is Bacon". When I prompted further explanation by saying "France is Bacon?" in a questioning tone I just got a "yes". at 12 I didn't have the confidence to press it further. I just accepted it as something I'd never understand.

It wasn't until years later I saw it written down that the penny dropped.

"France is Bacon - Hon Hon." © Literally Media Ltd. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

Portrait of Francis Bacon (1617) by Paul van Somer I. This image is in the public domain. Source: [Wikimedia Commons](https://commons.wikimedia.org/wiki/File:Francis_Bacon_1617.jpg).



Francis Bacon, 1561-1626

## Locke or Not?

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The argument in Jefferson's *Notes on the State of Virginia*: appeal to the 'harm' principle.

The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.

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## The Virginia Statute for Religious Freedom

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a) all attempts to influence [the mind] by temporal punishments or burthens, or by civil incapacitations tend only to beget habits of hypocrisy and meanness

Locke or Not?

28

b) legislators and rulers... being themselves but fallible and uninspired men... hath established and maintained false religions over the greatest part of the world and through all time

Locke or Not?

29

c) That to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy which at once destroys all religious liberty because he being of course judge of that tendency will make his opinions the rule of judgment and approve or condemn the sentiments of others only as they shall square with or differ from his own;

Locke or Not?

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d) Truth is great, and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

Locke or Not?

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## Heresy and Treason

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Heresy: an opinion, doctrine, or practice contrary to the truth or to generally accepted beliefs or standards (esp. in religion).

Treason: attempting by overt acts to overthrow the government.

In many cases (see earlier slides), heresy was taken to be treason.

Could there be a religion with this feature: adhering to it automatically made you guilty of treason?

If so, what would Locke and/or Jefferson say about it?

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## Leiter on religious toleration



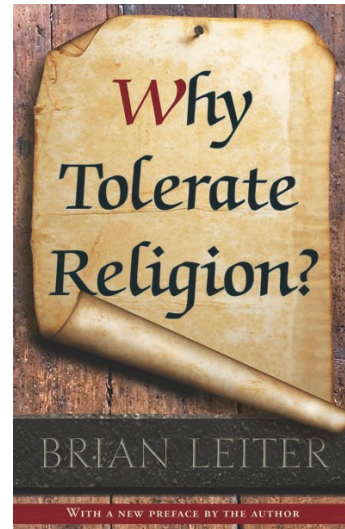
Academic Faculty Full Time Teaching Faculty

### Brian Leiter

*Karl N. Llewellyn Professor of Jurisprudence, Director of the Center for Law, Philosophy, and Human Values*

Brian Leiter came to the Law School in 2008 after thirteen years at the University of Texas at Austin, where he was (at the time) the youngest chairholder in the history of the law school. He has also been a Visiting Professor of Law at Yale University, École des Hautes Études en Sciences Sociales in Paris, Università degli Studi *Roma Tre*, and the University of Paris X-Nanterre, as well as a Visiting Professor of Philosophy at Oxford University and University College London.

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