

To be truly everyone's state¹

Religious subjectivism and the limits of modern-day democracy

Michael Oliva Córdoba (michael.oliva-cordoba@uni-hamburg.de)

University of Hamburg

Tuesday, 7. June 2022

Introduction

1. Religious conscience makes the case for religious subjectivism

- 1.1 *Luther's conscience and the Diet of Worms*
- 1.2 *Conscientiousness and freedom of conscience*
- 1.3 *Luther, a religious subjectivist?*

2. Religious subjectivism challenges moral objectivism

- 2.1 *Objectivism, relativism, and subjectivism*
- 2.2 *Intentional inexistence and the futility of metaphysics*
- 2.3 *The challenge explained*

3. Moral subjectivism demands strict democratic neutrality

- 3.1 *Respect, subjectivism and the appropriate basis for a democratic society*
- 3.2 *Modern-day democratic theory in light of the fact of pluralism*
- 3.3 *Thinking the unthinkable: The consequences of strict neutrality*

Conclusion

Introduction

Public discourse routinely refers to a “wall of separation” between church and state:² *Laicism*, as this is called, is seen as a matter of *freedom of conscience*.³ Those matters are not always religious, though. They may also be moral.⁴ That creates a problem: If “all that concerns religion lies beyond the limits of state action”, as

¹ Presentation for the workshop “Are religious worldviews still relevant to democracy today? Anglo-American, Dutch, and German perspectives”, 16-17 June 2022, Faculty of Divinity, University of Cambridge.

² Cf. Audi 2011. The wording quoted is Jefferson's (1802, 397). Jefferson had an important precursor in *John Locke's* „Letter Concerning Toleration“: „I affirm, that the Magistrate's Power extends not to the establishing of any Articles of Faith, or Forms of Worship, by the force of his Laws. [...] The care of the Salvation of Mens Souls cannot belong to the Magistrate. [The Church and the Commonwealth] are perfectly distinct and indefinitely different from each other.“ (Locke 1689, 14 & 24)

³ Cf. *Thomas Jefferson* on religious toleration (Jefferson 1785, 394): “The rights of conscience we never submitted, we could not submit.”

⁴ Kukathas 2003, 114: “Usually, we associate liberty of conscience with the idea of religious freedom, since the idea has been pressed most vigorously in defence of religious toleration. Yet one does not have to hold to any religious beliefs to possess a conscience. An atheist may have a conscience, for he may regard certain kinds of action as morally wrong—and performing them as unconscionable.” For an even broader account of the demands of conscience cf. Oliva Córdoba *forthcoming*, sec. 1.3.

Wilhelm von Humboldt claimed,⁵ must we not assume that all that concerns *morals* lies beyond these limits too?⁶ The foreseeable move is to drive a wedge between morality and religion:⁷ “All religion rests upon a need of the soul,”⁸ meaning: Religion is *subjective*, morality is not.⁹ So, since surely the state must not intervene arbitrarily, moral *objectivism* became the bulwark protecting the dominant Rawlsian political philosophy against the call for a strict moral neutrality of the state,¹⁰—a view some fear would amount to “cultural suicide” anyway.¹¹ Scrutinising religious subjectivism is apt to cast light on this.

⁵ Humboldt 1792, 70. Humboldt’s view is anticipated in Jefferson 1777, 390–392. Jefferson 1777 became the canvas for the „Virginia Statute for Religious Freedom“ of 1786 after which the first amendment to the constitution of the United States of America was modelled. Bear in mind, though, that nothing prevents us from accepting Audi’s caveat “neutrality does not imply indifference” (Audi 2011, 48) provided it is acknowledged that in present-day political philosophy the state is seen to be at liberty, perhaps even compelled, to promote and enable the attainment of certain *moral* values or ends while not being at liberty to promote and enable the attainment of certain *religious* values or ends *as such*.

⁶ Cf., e.g., Rawls 1971, 516f. and in particular Rawls 1997, 766, 769 & 806f. For a discussion of an objectivist reading of Rawls cf., e.g., Melenovsky 2018, Laden 2014, Gledhill 2012, and Brink 1987. For an objectivist underpinning of recent democratic theory cf., e.g., Estlund 2008, 10ff. and *passim*.

⁷ Sometimes, that wedge is rejected on other grounds. Cf., e.g., Gamwell 1993, 495: “Moral theory should be realist because it should be religious.” This, however, presupposes religious objectivism, *i.e.*, that position “axiomatic secularism that so pervades academic discourse” (Smith 1999, 465) typically rejects. Therefore, adopting this view is not helpful in the present context. It cannot help to explain what challenges religious subjectivism has in store for modern-day democracy as it is conceived of in Rawlsian political liberalism. Apparently, axiomatic secularism seems to amount to atheistic moral objectivism, although this is not meant to dispute that Rawls at least cared very deeply about religion but perhaps predominantly for political reasons: “Rawls’s heightened interest in religion in PL is connected with nothing less than his desire to see constitutional democracy survive” (Dombrowski 2001, xi; also, cf. Rawls 1996, xix).

⁸ Humboldt 1792, 57

⁹ This view seems implicit in Audi’s claim (2011, 152) of the priority of ethics over religion: “Ethics is epistemically autonomous relative to religion. It is, moreover, a domain of possible knowledge. Natural theology, however, is also epistemically autonomous relative to the moral domain, even if not in relation to the realm of value. A particular religion may be expected to draw its moral standards from many sources, including its theology (and possibly natural theology as well), its scriptures, and its surrounding culture, but by no means excluding reflection of a kind possible for moral agents independently of their religious commitments.” Ultimately, Audi commits to some sort of moral objectivism: “This is not the place for a theory of value, but that there is objectivity in matters of value and what sorts of things are valuable in themselves are argued for in my ‘Intrinsic Value and Reasons for Action’” (Audi 2011, 172). In that paper he distinguishes between *intrinsic* and *inherent* goodness. He declares full objectivism concerning the latter while remaining ambiguous concerning the former. Cf. Audi 2003, 96.

¹⁰ Cf. Maclure & Taylor 2011, 13 as quoted in sec. 1 below.

¹¹ Dougherty 2011, 435: “[Maclure and Taylor’s] call for ‘neutrality’ seems but a call for cultural suicide.”

Religious subjectivism comprises *Luther's theology of justification*¹² (redemption by grace alone, manifesting God's all-encompassing, unearned love)¹³ and the *individual character* of this love¹⁴ (everyone has his *own* path to salvation; he must not judge another's)¹⁵. Consider someone who would not dispute that religious beliefs oblige the believer but would dispute that God exists.¹⁶ Does he not invite the objection that, analogously, moral beliefs should be able to oblige the moral person even if there were no moral facts?¹⁷ In so challenging moral objectivism, *religious subjectivism seems to undermine the very cornerstone of modern-day democratic theory.*

1. Religious conscience makes the case for religious subjectivism

1.1 *Luther and the diet of Worms*

Traditionally, the subjective-objective distinction is between that which is dependent upon our minds or attitudes and that which is not.¹⁸ Given this understanding, the reasoning presented here is this: First, religious conscience makes the case for religious subjectivism. Secondly, subjectivism challenges moral objectivism. Thirdly, modern-day democratic theory presupposes objectivism. Therefore, religious subjectivism undermines modern-day democratic theory. So, if laicism were the correct answer to the demands of religion, an answer in kind would be required for dealing with the exigencies of morality. Or, as *Jocelyn Maclure* and *Charles*

¹² Cf., e.g., Härle 2002 & McGrath 2005, 233 ff.

¹³ Cf. 1 John 4:9: "In this the love of God was manifested toward us, that God has sent His only begotten Son into the world, that we might live through Him"

¹⁴ Lewis 1952, 168: „When Christ died, He died for you individually just as much as if you had been the only man in the world“

¹⁵ Cf. Oliva Córdoba 2021, 24.

¹⁶ For our purposes it does not matter, whether this atheism is *methodological* (e.g. as a skeptical challenge for the strength of one's arguments, or a refusal to make one's philosophical points dependent upon the existence of God) or *factual* (e.g. because of personal preferences or the views held concerning religion). A methodological atheist in this sense can still be a devout believer. But he would then refuse to assume God's existence as a premise of the arguments he advances. Of course, a methodological atheist might be a factual atheist as well. The point matters, because some of the theorists we are directly or indirectly looking at (Hobbes, Rawls) may be assumed to be methodological atheists although they are not necessarily factual ones. For a factual atheist to whom our reasoning would apply cf. Maitzen 2009 & 2013. But more relevant is that our reasoning would apply to Rawls as long as he is understood, correctly I think, to be a methodological atheist at the least.

¹⁷ Cf. Brink 1989, 14: "Moral realism, it seems, is committed to moral facts and truths that are objective in some way."

¹⁸ Cf., e.g., Huemer 2008, 2: "*F*-ness is subjective = Whether something is *F* constitutively depends at least in part on the psychological attitude or response that observers have or would have towards that thing. I define an 'objective' feature as one that is not subjective." For a more comprehensive account cf. Oliva Córdoba 2018 and the literature referred to there.

Taylor write: “In the realm of core beliefs and commitments, the state, to be truly everyone’s state, must remain ‘neutral.’”¹⁹

Whether we are compelled to accept that conclusion we must examine. Therefore, the *first* part of the presentation addresses the connection between religious conscience and subjectivism. The *second* part addresses how it is that religious subjectivism challenges moral objectivism. The final and *third* part relates this to modern-day democratic theory and spells out some consequences of democratic neutrality.

Let us start with religious conscience, then. A famous display of it was provided by *Martin Luther* at the diet of Worms. Asked to recant his views Luther declared: “I cannot and will not retract anything since it is neither safe nor right to go against conscience. May God help me. Amen.”²⁰ What precisely was it that he could not tolerate? Obviously, Luther held his beliefs to be *true*. But was it really their being true that made them conscientious?²¹

1.2 *Conscientiousness and freedom of conscience*

Scrutinising conscientiousness leads back to antiquity. *Euripides* described the devastating state of mind *Orestes*, the mother-slayer, found himself in after having complied with the sun-god’s command. To *Menelaus*, asking what “sickness” was destroying him, the nephew replied “my conscience; that I am aware of [my] fearful deed”.²² This gives some idea of the kind of suffering resulting from going against one’s conscience. The connection to freedom of conscience, however, requires more. It requires adding a party to the picture, which either bars the individual from avoiding, or compels him to undertake, a course of action the individual fears would result in a suffering of Orestian magnitude.

¹⁹ Maclure & Taylor 2011, 13

²⁰ The minutes of the diet read: “Weder kann, noch will ich irgendetwas widerrufen. Denn weder ist es sicher, noch steht es dem Menschen frei, gegen das Gewissen zu handeln. Gott helfe mir, Amen.” (Wrede 1896, 555). English translation after Kolb 2009, 92.

²¹ Cf. Sorabji 2014, 205.

²² Euripides, *Orestes* 396: “ἡ σύνεσις, ὅτι σύννοια δειν’ ἐίργασμένος.” The Latin term “conscientia” is merely a derivation from Greek σύνεσις (*sunesis*).

As *Welsh vs. United States* illustrates, it must be avoided to explain conscientiousness by way of the *objects* or *contents* of beliefs.²³ Ignoring this inevitably results in intellectual embarrassment: In *Welsh* the Supreme Court declared that an avowed *atheist* “was exempt [from military service] under the existing stretched understanding of *belief in a Supreme Being*.”²⁴ So rather than to their content, the German Federal Constitutional Court took to the *function* of beliefs:

Conscientious is any [...] decision predicated upon the categories of “good” and “bad”, which the individual internally experiences in a given situation as binding and categorically obligatory in such a way that he could not act against it without severely troubling his conscience.²⁵

The underlying rationale for freedom of conscience thus is to avoid harm: To not shatter our peace of mind and make us suffer for firm convictions deeply held.

1.3 *Luther, a religious subjectivist?*

Looked at more closely, it is the “I can do no other” rather than *what* Luther refused to recant that makes him a paradigm conscientious objector. But why could he not recant? To fully understand we would have to see what he saw in what he refused to deny; “some feature or aspect” of it he very deeply “prized, held dear, thought dutiful”, or deemed categorically “obligatory”.²⁶ But whether we manage to adopt Luther’s view or not, this much is clear: What we are after is basically

²³ Cf. 398 U.S. 333 *Welsh v. United States*; 380 U.S. 163 *United States v. Seeger*; Koppelman 2011, Sorabji 2015. Cf. also Böckenförde 1970, 68: “This demonstrates what almost all theories of conscience emphasise, [namely] that matters of conscience can neither be delimited by reference to the contents of the dictates of conscience nor by any reasons or motives. Due to the supervisory role of conscience, all behaviour, as long as it critically affects the integrity of a person [or] the nature of the collection of qualities which makes that person a distinctive individual, can become relevant to considerations of conscientiousness.” (“*Es zeigt sich, was auch nahezu alle Gewissenslehren betonen, daß Wissensfragen weder gegenständlich noch nach dem Inhalt des Wissensgebots noch nach Gründen und Motiven irgendwie begrenzt sind. Alles Verhalten, sofern es die Integrität und Identität der Persönlichkeit kritisch betrifft, kann, wegen der Kontrollfunktion des Wissens, gewissensrelevant werden.*”)

²⁴ Sorabji 2014, 204 (emphasis added)

²⁵ BVerfG 12, 45 Rn. 30 (“*Als eine Gewissensentscheidung ist [...] jede ernste sittliche, d. h. an den Kategorien von „Gut“ und „Böse“ orientierte Entscheidung anzusehen, die der Einzelne in einer bestimmten Lage als für sich bindend und unbedingt verpflichtend innerlich erfährt, so daß er gegen sie nicht ohne ernste Wissensnot handeln könnte.*”) Cf. also Luhmann 1965, 258: “not tied to or delineated by a particular topic, perhaps not even to the general ethical distinction of good and bad, [...] but differently, namely by the conscience’s *function*.” (“*nicht an eine bestimmte Thematik, vielleicht nicht einmal an die allgemeine ethische Unterscheidung von gut und böse gebunden und dadurch begrenzt [...], sondern anders, nämlich durch die Funktion des Wissens*”.)

²⁶ Cf. Davidson 1963, 1: There is a parallel here to *Donald Davidson*’s account of “rationalizations”. That account brings out the essential *internal* nature of action-motivating pro-attitudes. It is true that Davidson would reject paraphrasing that in terms of the essentially *subjective* nature of motivation. But this is a weakness rather than a strength of his account. It leaves us with no explanation for what the internalism of his internalist account amounts to.

what *Thomas Nagel* could describe as the “subjective character” of Luther’s experience: *What it would be like for him* to recant those deeply and sincerely held beliefs.²⁷

Luther’s point of view is subjective in another respect as well. Assume for a moment, like Luther does, that God loves everybody in a unique way, as a distinct and unique individual. What that means, what it obliges to, is deeply individual, personal even.²⁸ According to Luther, God comprehends us in a completeness way beyond our grasp. *How can he love me this much? What does he even love me for?* This remains utterly inconceivable; calling it “unearned” does not even begin to explain it. On closer inspection it means even more. Rather than there being one thing obligatory for all of us, or there being nothing obligatory at all, for each and everyone of us there is something, not necessarily the same thing, obligatory for that very person. This would aptly be called *religious subjectivism*.

2. Religious subjectivism challenges moral objectivism

2.1 *Objectivism, relativism, and subjectivism*

Subjectivism is a notoriously ambiguous term. Using it assimilates our discussion to a central debate in the moral domain. Recall that among those studying the foundation of ethics it is usual to distinguish between *objectivism* on one hand and *relativism* and *subjectivism* on another.²⁹ It is unfortunate that that terminological ground remains constantly shifting but since usage there shall be our guide here a brief sketch is in order.

The dominant position with regard to the foundation of ethics is *moral objectivism*, often self-styled as *moral realism*. It is the view that

there are moral facts and true moral claims whose *existence* and nature are independent of our beliefs [...] Moral realism, it seems, is committed to moral facts and truths that are objective in some way.³⁰

Opponents of moral objectivism are often lumped together as *anti-realists*.³¹ This ragbag label seems to have confused some into mistaking *relativism* and *subjectivism* for basically the same thing.³² But they are not.

The acid test for telling all these positions apart can be found in the question of moral obligation. *Is there anything that morally obliges everybody (absolutely)?*

²⁷ Cf. Nagel 1974, 436.

²⁸ Cf. Lewis 1952, 168: „When Christ died, He died for you individually just as much as if you had been the only man in the world“

²⁹ Cf., e.g., Frankel Paul et al. 2008.

³⁰ Brink 1989, 7 & 14

³¹ Another pair of terms in currency is *cognitivism* for the one and *non-cognitivism* of the other.

³² Cf. Huemer 2008, 4: “*Subjectivism* (which includes relativism)”

Objectivists and relativists are antagonistically opposed in this regard.³³ However, the quantificational structure of that divide allows for a third contender, logically and materially distinct from both objectivism *and* relativism: *For everyone there is something (absolutely) morally obligatory for him.*³⁴ Subjectivism in this sense shares the realist's view that there is moral obligation but sides with the relativist in rejecting that it is universal.³⁵

2.2 *Intentional inexistence and the futility of metaphysics*

There seems to be an exaggerated reliance on naive metaphysics where in fact what is required cannot be external to the subject. For instance, some of the most sophisticated intellectual efforts of mankind have been directed towards proving that God exists. But it is unclear what that would establish. The believer who takes offence at *Joan Osbourne's* song “*What if God was one of us? Just a stranger on the bus?*” will certainly not reject the assumption of God's existence. He will reject her description of what God *might be like*. In *Meinongian* terms: Only God's *Sosein* (his *nature*), not his *Sein* (his *being*), will contribute to an understanding of the true source of the believers sense of obligation.³⁶

In this regard, religious and moral objectivism are in the same boat. Only the nature of moral facts, values or truths, not merely their alleged existence, could explain what the objectivist alleges to be “the action-guiding character of morality”.³⁷ Therefore, objectivism *as such* must always fall short of an answer to why either God's commands or the dictates of morality oblige us. Of course, the believer will insist that God exists. But his peace of mind and the deep convictions he holds emanate from what he understands God's nature to be.

³³ For ‘F’ as “morally obliges ... (absolutely),” depending on whether you want to include the qualification “absolutely” or not, the objectivist assumes that there *is* something that is (absolutely) morally obligatory for everyone: $(\exists x)(y) (Fxy)$. It is to this end that he posits (objective) moral truths and (objective) moral facts. In contrast, the relativist, as portrayed here, assumes that *nothing* is (absolutely) morally obligatory for anyone: $\neg(\exists x)(\exists y) (Fxy)$. Relativism in this sense is sometimes called *nihilism*, cf. Rescher 2008, 393ff.

³⁴ Schematically: $(x) (\exists y) (Fyx)$. The logical difference between objectivism and subjectivism thus comes down to a well-known example popular in introductory logic classes: “Everybody loves somebody” can either mean that there is somebody (e.g. *Beyoncé*) who is loved by everybody in the world: $(\exists x)(y) (Fxy)$; this is the “lucky guy” reading. Or it can mean that for everyone in the world there is someone (e.g. his partner, a parent, relative or friend) who is loved by him: $(x) (\exists y) (Fyx)$; this is the “normal bloke” reading. In the present context, objectivism is the lucky guy and subjectivism the normal bloke.

³⁵ Subjectivism in this sense therefore has very little in common with two better known accounts sometimes called subjectivist: Neither John Mackie's *error theory* (Mackie 1977) nor Alfred Jules Ayers *emotivism* (Ayer 1936; 1949) would qualify as subjectivism in the sense described here. Nothing in our present discussion hinges on any of this.

³⁶ Cf. Meinong 1904, 8.

³⁷ Brink 1989, 79f. Cf. for an early version of this view Plato, *Protagoras* 352c.

Also, bear in mind that attitudes in general, including religious and moral ones, display *intentional inexistence* in *Franz Brentano's* sense.³⁸ Hence, their truth, force and phenomenal quality does not depend on the reality of what their content is about.³⁹

2.3 *The challenge explained*

Actually, the case that religious subjectivism challenges moral objectivism has already been made. It originated in the atheist's assumption that a believer can strictly be obliged by his religious beliefs even if God does not exist. This concession cannot be undone easily. It is implicit in our understanding of laicism as a matter of conscience not limited to Christianity but including *Muslims, Buddhists*, and believers of all sorts as well. It is obvious, then, that he who describes someone as a staunch believer does not incur the believer's existential presuppositions. This result alone challenges moral objectivism: It renders its objectivism futile. Consequently, the atheistic moral objectivist is either guilty of a double standard or merely begging the question.

But religious subjectivism is also superior in that it can give a *positive* account of obligation where objectivism cannot. Recall that religious subjectivism assumes that God loves everybody in an all-encompassing, unique, and personal way. Where does the believer's urge to live up to God's word spring from? *From fear? From God? Divine compulsion?* No such answer does justice to what some have called Luther's *theology of the cross*.⁴⁰ In revelation, Christ crucified himself stands before us, dying and suffering. Heartfelt shame, gratitude, and *respect* for Christ's death on the cross—perceived, not pondered—instil that burning sense of obligation.

A similarly subjectivist view in the realm of morals might be capable of filling the void created by the incapability of objectivism of explaining the nature and source of moral obligation.

³⁸ Note, very basically, that attitude verbs ($\lceil \varphi \rceil$) quite generally conform to the rule that $x \varphi$ -s that p does not imply p nor vice versa: That Petey *believes/wants/hopes/fears/...* that Santa Claus is coming to town neither implies that Santa Claus is coming to town nor is implied by it. In logical terms, the context created by *attitudinal operators* of the type of $\lceil x \varphi$ -s that \rceil is *intentional*. This ultimately takes us back to Brentano 1874, II.1, § 5, where Brentano describes *intentional inexistence* as the mark of the mental (cf. Crane 1988; Oliva Córdoba 2018, 5f.). Cf. also W.V.O. Quine's conception of *referential opacity* (Quine 1953, 142ff.). Quine stumbles across what basically is a very similar point as Brentano's but approaches it from an even narrower logico-semantic angle.

³⁹ Cf. Oliva Córdoba 2021, 27.

⁴⁰ Cf., McGrath 2011, 202–214. Note that this latter “theology”, in contrast to the theology of justification mentioned earlier, is less a systematic conception in the sense of a scientific treatment than a centring around the idea, pivotal to this approach, of Christ's suffering and death as manifestly present to your experience.

3. Moral subjectivism demands strict democratic neutrality

3.1 *Respect, subjectivism and the appropriate basis for a democratic society*

The theology of the cross antedated Luther's theology of justification. It most likely paved the way for it. Obviously, it will not appeal to the atheist nor will it sit well with religious objectivists who might fear that God's place in the spiritual order of things is about to be axed. But we did not sketch that theology of the cross in order to endorse it. It primarily served as a demonstration that religious subjectivism need not lack an explanation for the phenomenon of obligation. Also, bringing up *religious* obligation raises the question whether an analogous account of *moral* obligation is feasible. And so it seems:

Immanuel Kant, in his *Groundwork of the Metaphysics of Morals*, famously described duty as “*the necessity of an action from respect for the law.*”⁴¹ He added that “nothing remains for the will that could determine it except, objectively, the *law* and, subjectively, *pure respect* for this practical law”.⁴² So, along Kantian lines moral obligation is both subjective and internalist: “Nothing other than the representation of the law in it self — *which of course can take place only in a rational being* — [...] can therefore constitute the pre-eminent good that we call moral”. Religious subjectivism thus is apt to heighten awareness that *respect* might fundamentally play a similar role in the realm of morals.

But if moral obligation turns out to be subjective and internalist, how can a corresponding Kantian conception of morality “give the most appropriate basis for a democratic society” in Rawls' sense?⁴³

3.2 *Modern-day democratic theory in light of the fact of pluralism*

The democratic society presupposed here is, of course, that envisaged in Rawls' *A Theory of Justice* (1971) and redescribed in *Political liberalism* (1996). These works define political philosophy to the present day. Luckily, Rawls himself explained what these books have in common:

In the first, public reason is given by a comprehensive liberal doctrine, while in the second, public reason is a way of reasoning about political values shared by free and equal citizens that does not trespass on citizens' comprehensive doctrines so long as those doctrines are consistent with a democratic polity.⁴⁴

⁴¹ Kant 1786, IV 400

⁴² *Ibid.*

⁴³ Rawls 1997, 807. Note that *pace* Rawls his conception is Kantian. Cf. Hampton 1980, 338: “Rawls says in section 40 of *A Theory of Justice* that he has departed from Kant's views in several respects, in particular: ‘The person's choice as a noumenal self I have assumed to be a collective one’ (TJ 257). I hope to have shown that Rawls is incorrect here, that he has been more fully Kantian than he realizes.”

⁴⁴ Rawls 1997, 807

So, the first book assumed that behind the veil of ignorance (reasonable) citizens would ultimately come to affirm “a single comprehensive doctrine.”⁴⁵ The second book conceded that would be unrealistic and turned to a political question instead:

Given the fact of the plurality of “comprehensive doctrines, religious or nonreligious,” how can believers in these doctrines be loyal citizens?⁴⁶ Rawls concluded they could if they put their moral obligations towards a constitutional democratic society first. But this view of “how the political relation is to be understood”⁴⁷ is revisionary rather than descriptive. It does not really address, much less defuse, concerns like *Jefferson’s* or *Thoreau’s* that the demands of a free conscience take precedence over the political relation.⁴⁸ Given our findings, the requirements of “comprehensive doctrines” in Rawls’ sense can only be subjective. Consequently, assuming political equality, modern-day democracy is incompatible with the “oppressive use of state power”⁴⁹ to impose or enact any religious or moral obligations.⁵⁰

⁴⁵ The supposed *contractarianism* of Rawls is thus rendered immaterial, cf. Hampton 1980, 337: “Understanding the deliberation in the original position as carried out by a single deliberator following the dictates of practical reason, rather than understanding it as carried out by many parties trying to forge a contract, is a far better way of showing how Rawls thinks a state organized according to the two principles is something to which we would voluntarily consent, its constraints and obligations recognized by us as self-imposed.” Immaterial is also the championed *ignorance requirement* that those behind the veil of ignorance do not know of their own position etc. in the society they are contemplating. Like Kant before him, Rawls ultimately relies on the requirement of *reasonableness*. However, reasonableness will get Kant only so far; that is why the cornerstone of his account of moral obligation is ultimately the notion of *respect* (*Achtung*). Building on the same Kantian tenet, Rawls seems committed to an underlying inter-nalistic subjectivism of sorts too.

⁴⁶ Rawls 1997, 807: “How is it possible for those affirming a comprehensive doctrine, religious or nonreligious, and in particular doctrines based on religious authority, such as the Church or the Bible, also to hold a reasonable political conception of justice that supports a constitutional democratic society?”

⁴⁷ Rawls 1997, 766

⁴⁸ Jefferson 1785, 394: „The rights of conscience we never submitted, we could not submit“. Thoreau 1849, 191: “„Must the citizen ever for a moment, or in the least degree resign his conscience to the legislator? Why has every man a conscience, then? I think that we should be men first, and subjects afterward.”

⁴⁹ Rawls 1987, 4: “A public and workable agreement on a single general and comprehensive conception could be maintained only by the oppressive use of state power.”

⁵⁰ Pace Huemer 2008, xxiii: “People will argue that the government should not ‘legislate morality’ because morality is subjective. [...] Of course, most professional philosophers would be embarrassed to hear such arguments. If morality is subjective, it does not follow that the government should not legislate it; what follows is that the government should legislate morality if doing so accords with the legislators’ subjective preferences.”

3.3 *Thinking the unthinkable: The consequences of strict neutrality*

So, are we advocating “cultural suicide”?⁵¹ The state in its purified remit would certainly be *minimal*. It would be limited to securing that all interaction in society remains strictly co-operative; it would prevent all and only harm to others;⁵² it would enforce only such an understanding of harm everyone would agree to.⁵³ In short, the state, to be truly everyone’s state, would confine itself to keeping the peace.

Such a state has been described before, often mocked as the “nightwatchman state”.⁵⁴ But it is worth noticing that religious subjectivism envisages such a state not out of a cold-hearted Manchester style egotism but out of a sincere concern for the sanctity and worthiness of our deeply and sincerely held beliefs. This minimal state would be a *liberal archipelago* in the sense of *Chandran Kukathas*,⁵⁵ with a multitude of “islands”, some liberal, some not, “in a sea of mutual toleration”,⁵⁶ governed by two principles only: freedom of conscience and freedom of association.⁵⁷

In contrast to the dominant contender, *the welfare state*, this commonwealth of the conscientious would not and could not aim at “a single comprehensive doctrine.” Far from thereby being limited, the space of religion and morality would *broaden*. Of course, no longer state-sponsored, culture would eventually have to evolve naturally again. It would sustainably thrive only by appealing to those will-

⁵¹ Dougherty 2011, 435

⁵² Cf. Mill 1869, 13: “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. [...] Over himself, over his own body and mind, the individual is sovereign. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise.”

⁵³ That would probably rule out substantial and controversial reinterpretations of harm like those put forward in current debates on *privilege*, *hate speech*, *safe spaces*, and the like.

⁵⁴ Lasalle 1862, 39: “This is a nightwatchman idea, gentlemen, a nightwatchman idea because it can conceive of the state in itself only by picturing it as a nightwatchman whose sole function is to prevent breaking and entering.” (“*Dies ist eine Nachwächteridee, meine Herren, eine Nachwächteridee deshalb, weil sie sich den Staat selbst nur unter dem Bilde eines Nachwächters denken kann, dessen ganze Function darin besteht, Raub und Einbruch zu verhüten.*”). Nozick 1974 did a lot to rehabilitate this conception. However, his success, if he was successful at all, did not last.

⁵⁵ Kukathas 2003, 19ff.

⁵⁶ Kukathas 2003, 22

⁵⁷ Kukathas 2003, 74ff.

ing to support it. Also, most “public goods” would have to be provided privately again.⁵⁸ But by which non-arbitrary criterion would all of that be worse?

Conclusion

In a way, we started out aiming to understand what makes a believer act upon his religious convictions. Religious subjectivism placed the source of obligation in the mind of the believer, in his religious experience. Also, it paved the way for seeing that what initially may have appeared to be a peculiarity of religion ultimately applies to the realm of morals as well. In this way, religious subjectivism made us see that modern-day democratic theory is predicated upon an objectivism that is untenable for a variety of reasons. But if moral subjectivism wins the day a Rawls style reliance on a single comprehensive conception of the good as a regulating idea for a society appears unfounded and ultimately unacceptable. Therefore, if laicism were the correct answer to the demands of religion, the state would have to endorse strict neutrality in moral matters as well.

It is hard to see how the emerging picture of a strictly neutral commonwealth that takes seriously the conscientious objections of its citizens can be found menacing. To the contrary, a commonwealth established by consent and kept alive by trust cannot but take the sincerely held heartfelt beliefs of its citizens into considerations at all times or degenerate into a thinly veiled tyranny at best. Also, the kind of consideration for the beliefs of its citizens cannot be adjudicating. If that commonwealth will treat its citizens as political equals—as it must if it is contractarian—it must choose unanimity over majority in all matters where even a single dissenter would sincerely object.

This is where we would have to part company with both Hobbes and Locke: The priority of unanimity over majority is not just a one-time theoretical necessity, it is a real and daily requirement of a functioning polity. Paradoxically, this is seen especially clearly in the behaviour of those who lose an election or a vote.

How institutions shape losing, and how losers respond to their loss [...] is critical for understanding how democracy works since being able to accept losing is one of the central, if not the central, requirement of democracy.⁵⁹

Therefore, acceptance of loss is a vital contribution to unanimity in accepting the outcome. Still, unanimity keeps being widely misunderstood, resulting in the temptation for the majority to seize the bounty and make the government do their

⁵⁸ Bear in mind that the theory of public goods claims the necessity of public provision of public goods out of considerations of *welfare* (the problem of *waste*) or *justice* (the problem of *free-riding*). Both these considerations are, openly or implicitly, *normative*. But how could we non-arbitrarily determine what the correct number of highways, opera houses, fire stations, etc. in a given municipality would be save by resorting to the number of those installations the inhabitants of that municipality are actively willing to provide for?

⁵⁹ Anderson et al. 2005, v

bidding. Better understanding religious subjectivism would teach us that in succumbing to that temptation modern-day democracy ultimately goes against itself.⁶⁰

References

- Anderson, Christopher J.; Blais, André; Bowler, Shaun; Donovan, Todd & Listhaug, Ola (2005), *Losers' Consent: Elections and Democratic Legitimacy*, Oxford: Oxford University Press.
- Audi, Robert (2003), "Intrinsic Value and Reasons for Action", in: Horgan, Terry & Timmons, Mark (eds.), *Metaethics after Moore*, Oxford 2006: Clarendon Press, 79–106.
- (2011), *Democratic Authority and the Separation of Church and State*, Oxford: Oxford University Press.
- Ayer, Alfred (1936), *Language, Truth and Logic*, London: Penguin.
- (1949), „On the analysis of moral judgements“, in: *Philosophical Essays*, London 1954: The Macmillan Press, 231–249.
- Brentano, Franz (1874), *Psychology from an Empirical Standpoint*, London 1995: Routledge
- Böckenförde, Ernst-Wolfgang (1970), "Das Grundrecht der Gewissensfreiheit", *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer* 28, 33–88.
- Brink, David (1987), "Rawlsian Constructivism in Moral Theory", *Canadian Journal of Philosophy* 17, 71–90.
- (1989), *Moral realism and the foundation of ethics*, Cambridge: Cambridge University Press.
- Crane, Tim (1998), "Intentionality as the Mark of the Mental", in: O'Hear, Anthony (ed.), *Current Issues in the Philosophy of Mind*, Cambridge: Cambridge University Press, 229–251.
- Dombrowski, Daniel A. (2001), *Rawls and Religion. The Case for Political Liberalism*, Albany: State University of New York Press.
- Dougherty, Jude P. (2011), „Review of Secularism and freedom of conscience by Jocelyn Maclure and Charles Taylor“, *The review of metaphysics* 65, 434–435.
- Estlund, David (2008), *Democratic authority: A philosophical framework*, Princeton: Princeton University Press.
- Frankel Paul, Ellen; Miller, Fred D. & Paul, Jeffrey (2008), *Objectivism, Subjectivism, and Relativism in Ethics*, Cambridge: Cambridge University Press.
- Gamwell, Franklin (1993), "Moral Realism and Religion", *The Journal of Religion* 73, 475–495.
- Gledhill, James (2012), "Rawls and Realism", *Social Theory and Practice* 38, 55–82.
- Hampton, Jean (1980), "Contracts and Choices: Does Rawls Have a Social Contract Theory?", *The Journal of Philosophy* 77, 315–338.
- Härle, Wilfried (2002), „Luthers reformatorische Entdeckung — damals und heute“, *Zeitschrift für Theologie und Kirche* 99, 278–295.
- Huemer, Michael (2008), *Ethical intuitionism*, Basingstoke: Palgrave Macmillan.
- Humboldt, Wilhelm von (1792), *Ideen zu einem Versuch, die Gränzen der Wirksamkeit des Staats zu bestimmen*, Breslau 1851: Eduard Trewendt, translated as *The limits of state action*, edited with an introduction and notes by J.W. Burrow, Cambridge 1969: Cambridge University Press. [Page references refer to the translation.]
- Jefferson, Thomas (1777), „A Bill for establishing Religious Freedom“, in Jefferson 2004, 390–392.
- (1785), „Notes on the State of Virginia: Query XVII“, in Jefferson 2004, 392–396.
- (1802), „To Messrs. Nehemiah Dodge, Ephram Robbins and Stephen S. Nelson, a Committee of the Danbury Baptist Association, in the State of Connecticut, January 1, 1802“, in Jefferson 2004, 396–397.

⁶⁰ Cf. Oliva Córdoba, forthcoming, where I make the point that only that conception of the state gives the citizen his true place that conceives of the state as a *creatio continua* where both the government and the citizens act as if the commonwealth was constantly being renewed every logical second again.

- (2004), *Political Writings*, Cambridge: Cambridge University Press.
- Kant, Immanuel (1786), *Groundwork of the Metaphysics of Morals. A German-English Edition*, edited and translated by Mary Gregor and Jens Timmermann, Cambridge 2011: Cambridge University Press.
- Kolb, Robert (2009), *Martin Luther. Confessor of the Faith*, Oxford: Oxford University Press.
- Kukathas, Chandran (2003), *A liberal archipelago*, Oxford: Oxford University Press.
- Laden, Anthony Simon (2014), “Constructivism as Rhetoric”, in: Mandle, Jon & Reidy, David A., *A Companion to Rawls*, Chichester: Wiley-Blackwell, 60–72.
- Lasalle, Ferdinand (1862), *Über den besonderen Zusammenhang der gegenwärtigen Geschichtsperiode mit der Idee des Arbeiterstandes*. Zürich 1863: Meyer & Zeller.
- Lewis, C. S. (1952), *Mere Christianity*, London 2009: Harper Collins.
- Locke, John (1689), *A Letter Concerning Toleration and Other Writings*, Indianapolis 2010: Liberty Fund.
- Luhmann, Niklas (1965), „Die Gewissensfreiheit und das Gewissen“, *Archiv des öffentlichen Rechts* 90, 257–286.
- Mackie, John (1977), *Ethics. Inventing Right and Wrong*. London 1990: Penguin.
- Maclure, Jocelyn & Taylor, Charles (2011), *Secularism and freedom of conscience*, Cambridge, MA: Harvard University Press.
- McGrath, Alister E. (2005), *Iustitia Dei. A History of the Christian Doctrine of Justification*, third edition, Cambridge 2005: Cambridge University Press.
- (2011), *Luther’s Theology of the Cross. Martin Luther’s Theological Breakthrough*, second edition, Chichester: Wiley-Blackwell.
- Meinong, Alexius (1904), „Über Gegenstandstheorie“, in: *Untersuchungen zur Gegenstandstheorie und Psychologie*, Leipzig: Johann Ambrosius Barth, 1–50.
- Melenovsky, C. M. (2018), “Rawlsian Objectivity”, *Journal of the American Philosophical Association* 4, 545–564.
- Maitzen, Stephen (2009), “Ordinary morality implies atheism”, *European Journal for Philosophy of Religion* 1, 107–126.
- (2013), “Atheism and the Basis of Morality”, in: Musschenga, Bert & van Harskamp, Anton (eds.), *What Makes Us Moral? On the capacities and conditions for being moral*, Dordrecht: Springer, 257–269.
- Mill, John Stuart (1869), „On liberty“, in: *On Liberty, Utilitarianism, and Other Essays*, Oxford 2015: Oxford University Press, 5–112.
- Nozick, Robert (1974), *Anarchy, State, Utopia*, New York: Basic Books.
- Oliva Córdoba, Michael (2018), “Subjectivity and objectivity. Intentional inexistence and the independence of the mind”, *unpublished manuscript*, Hamburg July 2018. (<https://www.philosophie.uni-hamburg.de/philosophisches-seminar/personen/oliva-cordoba-michael/material/oc-subjective-objective-20180704.pdf>)
- (2021), “Von der Möglichkeit des moralischen Subjektivismus. Eine Untersuchung zum Einstellungscharakter von Moral und Religion”, *Methodus—International Journal for Modern Philosophy* 10, 3–31. doi.org/10.5771/0718-2775-2021-1-3
- (forthcoming), “Gewissensfreiheit und die Grenzen des Staates”, forthcoming in: *Allgemeine Zeitschrift für Philosophie*, Jahrgang 2023.
- Plato (*Protagoras*), *Laches, Protagoras, Meno, Euthydemus (The Loeb Classical Library)*, translated by W.R.M. Lamb, Cambridge, MA 1952: Harvard University Press.
- Quine, Willard Van Orman (1953), „Reference and modality“, in: *From a logical Point of View*, second edition, Cambridge, MA, 1961: Harvard University Press, 139–159.
- Rescher, Nicholas (2008), „Moral Objectivity“, in: Frankel Paul et al. 2008, 393–409. Smith, Steven D. (1999), “[Review of] *Religion and Contemporary Liberalism* by Paul Weithman”, *Ethics* 109, 464–468.
- Rawls, John (1971), *A Theory of Justice (Original Edition)*, Harvard, MA: The Belknap Press.
- (1987), “The Idea of an Overlapping Consensus”, *Oxford Journal of Legal Studies* 7, 1–25.

- (1996), *Political Liberalism. Expanded Edition*, New York 2005: Columbia University Press.
- (1997), “The Idea of Public Reason Revisited”, *The University of Chicago Law Review*, 64, 765–807.
- Thoreau, Henry David (1849), „Civil disobedience“, in: Pepperman Taylor, Bob (Hg.), *The Routledge Guidebook to Thoreau’s Civil Disobedience*, London 2015: Routledge, 189–215.
- Weithman, Paul (2016), *Rawls, Political Liberalism and Reasonable Faith*, Cambridge: Cambridge University Press.