

PAUL GUYER

ARGUING FOR FREEDOM OF RELIGION

1. INTRODUCTION

In a previous paper, “Mendelssohn and Kant on Religious Pluralism,”¹ I argued that Moses Mendelssohn and Immanuel Kant represented two different approaches to the title topic: Mendelssohn, in this regard like John Locke before him and James Madison about the same time, argued for freedom in religious belief and practice—from what I called the religious premise that only freely arrived at belief and practice could be pleasing to God—while Kant argued for freedom of belief and practice simply as part of the innate right to freedom due to all human beings in virtue of their humanity, that is, the *right* due to everyone in virtue of the *obligation* of everyone always to treat humanity as an end and never merely as a means (*MM*, DR, Introduction, 6:237; *G*, 4:429).² Here I will refine and expand upon the argument of that paper, introducing some additional authors into the mix and distinguishing three rather than two approaches:

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¹ Paul GUYER, “Mendelssohn, Kant, and Religious Pluralism,” *Deutsche Zeitschrift für Philosophie* 68, no. 4 (2020): 590–610, <https://doi.org/10.1515/dzph-2020-0039>.

² I will cite Kant by volume and page number of his collected works as in *Kant's gesammelte Schriften*, edited and published by the Königlich Preussische Akademie der Wissenschaften, 29 vols. (Berlin: Georg Reimer, subsequently Walter de Gruyter, 1900–). The *Akademie* pagination is included in *The Cambridge Edition of the Works of Immanuel Kant*, in this case in the unnumbered volume *Practical Philosophy*, ed. trans. Mary J. Gregor (Cambridge: CUP, 1996), from which translations will be drawn. Abbreviations will include “*G*” for the *Groundwork for the Metaphysics of Morals*, “*MM*, DR” for the *Metaphysics of Morals*, Doctrine of Right, and “*MM*, DV” for the Doctrine of Virtue in the same work.

– again, the approach based on the specifically religious premise that free belief and practice are required for people to be well-pleasing to God, so coercion has no place in religion;

– an approach based on an epistemological premise *about* religion, that since all religion is a matter of belief rather than knowledge coercive enforcement of any particular religion is always inappropriate;

– finally, the approach that I previously found in Kant but will here find in other natural law theorists as well, namely that quite apart from the specific premises of any religion or the epistemic status of all religions, religious pluralism is mandated as part of the completely general innate right to freedom, along with maximally equal freedom in all sorts of contexts—there is nothing intrinsically special about the case of religion, although that might be the most pressing case in various historical contexts, perhaps including our own in the present-day United States.

Before I illustrate these three approaches, however, I will make three more general points.

First, I can hardly claim complete knowledge of the vast primary and secondary literatures on this issue, nor can I claim originality for my approach here: in his magisterial book *Toleration in Conflict: Past and Present*, for example, Rainer Forst distinguishes the approaches on which I will focus from each other and from further approaches.³ If there is anything to be said for the present paper, it might just be that its brevity can make the distinctions that I will draw more perspicuous than they could be in such a comprehensive and detailed treatment of the history of the topic as Forst's, which includes his own (120-page) theory of toleration following his (400-page) history.

Second, in the previous paper I simply contrasted arguments for religious pluralism that depend upon a religious premise from those that do not, not directly comparing the possible merits of the two approaches while leaving implicit my personal preference for the latter. But here I want to add the perhaps obvious point that while from a purely or abstractly philosophical point of view an argument for religious pluralism from a more general right to freedom that does not presuppose any religious premise that could itself be contested from within another religion, particular when the latter is an a position of political and/or social power, might seem preferable, in the his-

³ Rainer FORST, *Toleration in Conflict: Past and Present*, trans. Ciaran Cronin (Cambridge: CUP, 2013), originally published in German as *Toleranz im Konflikt: Geschichte, Gehalt und Gegenwart eines umstrittenen Begriffs* (Frankfurt am Main: Suhrkamp Verlag, 2003).

torical context of debates over religious pluralism, from early modern Europe to the contemporary U.S., there might be sound rhetorical reason to structure an argument for religious pluralism from a premise that religious believers in the majority or otherwise in a position of power accept and will recognize that they accept. The more general philosophical argument might be preferable in some contexts for some audiences, but there might be cases in which a religious argument for religious pluralism is more useful in the rough-and-tumble of the real world. Various proponents of the religious approach in the historical literature on the topic surely understood that.

The third point is concerns terminology. In the previous paper I adopted the term “religious pluralism” in order to avoid the terms “tolerance” or “toleration” because the latter may suggest a favor or indulgence granted by a majority or those in power to a minority or less-favored group, or even forbearance to prosecute control over others when one party has the power or even the right to prosecute such control. Forst has called this “permission toleration,” although he does not for that reason try to avoid the term altogether.⁴ This problem was already raised about the term “tolerance” (*Toleranz*) by the German writer Christoph Martin Wieland, the editor of the *Teutsche Merkur*, a major organ of the German Enlightenment along with Johann Erich Biester’s *Berlinische Monatsschrift*.⁵ In an essay he published in his journal in September, 1783 (the same year as Mendelssohn’s *Jerusalem*), he asked,

What is the *tolerance* about which so much is written and said these days? Is it merely an arbitrary merciful gift [*willkürliches Gnadengeschenk*] of monarch, that everyone can do what he wants—or a *duty*, that originates from an *inalienable right of humanity*, from the right to *freedom of conscience*? Do those, who confess to the Augsburg or Helvetic confession,⁶ have another and better *right* to *indulgence* [*Duldung*] than the general right of every human being on account of which he cannot be forced to declare something to be *true* by his *external* actions

⁴ FORST, *Toleration in Conflict*, 27. On this terminological point, I am distancing myself from Forst, who does use the word *Toleranz* in the title of his German original and allows the translation of that as “toleration” in the English edition of his book.

⁵ Although Forst’s cast of characters is very large, he does not discuss Wieland anywhere in his book.

⁶ The Augsburg confession of 1530 and the second Helvetic confession of 1666 became the official creeds of the Lutheran and Reformed or Calvinist churches respectively, the Helvetic confession also being quickly adopted by Calvinists in Scotland, France, Poland, Hungary and others.

that he *inwardly* holds to be *delusion* and *error*? Does the *law of nature* allow *limits* to be set to freedom of conscience?⁷

Wieland does not actually say that we should not use the word “tolerance” to connote religious pluralism because it *can* mean merely that those in power indulge or allow others to believe or act differently from some norm held by the former at their own pleasure, an indulgence that they could revoke at any time,⁸ rather than an inalienable right that is independent of any such indulgence. But given the ambiguity that Wieland points out, an alternative term to “toleration” might seem preferable. I will not use the term “religious liberty” as that alternative because at least in the U.S. that term has been co-opted to mean a putative right to practice whatever one’s own religious beliefs might demand regardless of the impact of such practice on the rights of others.⁹ But neither will I use my previous term “religious pluralism,” because that might be taken to mean a freedom to practice one religion or another, but not to leave room for refraining from religious belief or practice altogether.¹⁰ Instead, I will use the term “freedom of religion,” because that could be understood to include the permissibility of freedom *from* religion, that is, to be the freedom to believe what one wants about religion, thus to believe in one religion or another, or in no religion at all, and to practice religion or non-religion as one pleases, as long as one does not thereby trample the rights of others. As a good Kantian, at least in this regard, I take that constraint to be built into the idea that *everyone* has a right to maximal freedom, which can therefore mean only and nothing less than *as great a freedom as is compatible with an equal freedom of all*. Unbridled freedom

⁷ Christoph Martin WIELAND, “Über religiöse Toleranz,” *Teutsche Merkur* 11 (September, 1783): 257–66, in WIELAND, *Ein paar Goldkörner oder Was ist Aufklärung? Ein Lesebuch*, edited by Hans-Peter Nowitzki and Jan Philipp Reemtsma (Göttingen: Wallstein, 2022), 97.

⁸ As Louis XIV infamously did in 1685 in his revocation of the 1598 edict of Nantes, which had granted Huguenots, French Calvinists, freedom from persecution. The large-scale emigration of Huguenots to other European countries such as England and Prussia that followed enriched and strengthened the enemies of France for centuries to come, a practical point to which Wieland does not allude.

⁹ For one among countless examples, see Linda GREENHOUSE, “Alito’s Call to Arms to Secure Religious Liberty,” *New York Times*, August 11, 2022.

¹⁰ The right to be free from all religion whatsoever was by no means part of all early conceptions of religious freedom; Forst notes, for example, that it was not included in the Virginia constitution of 1776, but was established only by a separate bill pushed by Thomas Jefferson in 1786 (FORST, *Toleration in Conflict*, 337–38). We will see below that freedom even for atheists was advocated a decade earlier in the German context by Georg Friedrich Meier, another author whom Forst does not discuss.

for one, that is, absolute freedom for one regardless of the consequences for others, can only mean an unequal constraint on the freedom of others, whatever believers in unbridled personal “religious liberty” (or, for example, in the right to refuse vaccines as a matter of “personal freedom” regardless of the danger to others) might think.

I will come back to the rest of Wieland’s argument later, because he will be my example of the approach that I am adding here to the two that I previously recognized. But now let me begin the description of the three approaches with the first, that is, the approach that a religious premise itself requires the concession of freedom of religion to others who may not hold all the same religious beliefs.

2. THE RELIGIOUS ARGUMENT FOR FREEDOM OF RELIGION

This is the argument that Forst calls the argument from conscience and properly identifies with Protestant writers who emphasized that only the believer’s own, freely adopted belief could be salvific.¹¹ The classical example of such an approach is the argument of Locke’s 1689 *Epistola de tolerantia*. I will leave his title in Latin to avoid using what I have now declared to be the potentially misleading word “toleration,” although I will quote from the contemporaneous English translation by Samuel Popple which does use that word in its title.¹² Locke had earlier held a different position on the matter,¹³ but here is the argument that he honed during his exile in Holland from 1683 to 1689, where the Reformed church was indeed established and privileged but where the practice of other Christian confessions and even Judaism had been tolerated throughout the century: (1) True religion concerns faith, or what one believes, and salvation depends on sincere belief, not external practices or actions; (2) the business of the state is the “civil Concernments” of its citizens, their security in their persons and property, not their salvation, so the state would have no business in attempting to intervene in or interfere with the beliefs of its subjects; and (3) in any case, the beliefs that

¹¹ However, the strict Calvinist doctrine of pre-election might be an exception to this generally Protestant view.

¹² In John LOCKE, *A Letter Concerning Toleration and Other Writings*, ed. and introduction by Mark Goldie (Indianapolis: Liberty Fund, 2010), 1–67.

¹³ See Timothy STRATTON, “Natural Law, Nonconformity, and Toleration: Two Stages on Locke’s Way,” in *Natural Law and Toleration in the Early Enlightenment*, Proceedings of the British Academy 186, ed. Jon Parkin and Timothy Stratton (Oxford: OUP, 2013), 35–58.

people hold, in contrast to their outward actions, are not amenable to change by force, so efforts by the state to change the beliefs of citizens by any of the coercive means available to it would be doomed to failure and for that reason alone an unjustified use of force and infliction of pain. In Locke's words, (1) "All the Life and Power of true Religion consists in the inward and full persuasion of the mind: And Faith is not Faith without believing"; (2) "the whole Jurisdiction of the Magistrate reaches only to these civil Concernments" or "*Civil Interests* [that] I call Life, Liberty, Health, and Indolency of Body; and the Possession of outward things, such as Money, Lands, Houses, Furniture, and the like," thus "all Civil Power, Right, and Dominion, is bounded and confined to the only care of promoting these things; and ... it neither can nor ought in any manner to be extended to the Salvation of Souls"; and (3) "The care of Souls cannot belong to the Civil Magistrate, because is Power consists only in outward Force; But true and saving Religion consists in the inward Perswasion of the Mind; without which nothing can be acceptable to God. And such is the nature of the Understanding, that it cannot be compell'd to the belief of any thing by outward Force, Confiscation of Estate, Imprisonment, Torments" (LOCKE, *Letter Concerning Toleration*, 12–13). Magistrates may attempt to teach others what they regard to be true about religion, but they have no more right to do this than any other persons does, and no right to do it in their capacity as magistrates with the coercive means that they can use in that position (14). Locke adds to his main argument that a church is a free or "voluntary Society of Men, joining themselves together of their own accord, in order to the publick worshipping of God, in such a manner as they judged acceptable to him, and effectual to the Salvation of their Souls" (15), so the state has no right to control the membership in churches, either by establishing any, governing them, or preventing individuals from joining the church of their choice—all subject, of course, to the proviso that the actions of churches or members do not interfere with the proper "civil Concernments" of the state, that is, the safety of its subjects and security of their possessions. Thus "*No body* ... neither single Persons, nor Churches, nor even Commonwealths, have any just Title to invade the Civil Rights and Worldly Goods of each other upon pretence of Religion" (23), and states have just as much right to intervene to prevent and if necessary punish religiously inspired breaches of the peace as they do in any other case. Moreover, as voluntary organizations, churches themselves do have the right to regulate their own membership, including the right of excommunication: "no Church is bound by the Duty of Toleration to retain any such Per-

son in her Bosom, as, after Admonition, continues obstinately to offend against the Laws of the Society” (19).

Locke made two notorious exceptions to his general view that religious beliefs and practices are simply not a matter for concern to the state as long they do not “*endanger the publick Peace, and threaten the Commonwealth,*” which is of course the proper business, indeed the *raison d’etre* of the state (54). First, Roman Catholicism is excluded from Locke’s general policy of freedom of religion, on the ground “that all those who enter into it, do thereby, *ipso facto*, deliver themselves up to the Protection and Service of another Prince” (52), namely the Pope. This may seem a strange idea to many now, at least those not old enough to remember the suspicion with which many greeted John F. Kennedy’s candidacy for President in 1960—isn’t the Pope a purely spiritual leader? However, in Locke’s time the Pope was a secular prince, and Pius V’s excommunication of Elizabeth I was still remembered; other Catholic “princes,” such as Philip II of Spain and Louis XIV had also tried to meddle with English sovereignty in order to bring England back to the Catholic fold. So Locke’s reservation was at least explicable. Second, Locke also excepted atheists, that is, those who would exercise freedom from religion, from his conception of freedom of religion, on the ground that “Promises, Covenants, and Oaths ... are the Bonds of Human Society” but those who do not aver the existence of God cannot make meaningful promises, covenants, and oaths. “The taking away of God, though but even in thought, dissolves all” (52–53). This is a less plausible argument, for if someone who makes a promise without belief in God can be insincere, cannot someone who avers the existence of God in order to obtain some benefit also be insincere?

Locke’s position might be considered a critique of another position that could be and indeed had been constructed on the same premise as his own, namely the Anglican position advocated by Richard Hooker in the *Laws of Ecclesiastical Polity* (1593) and Thomas Hobbes in *De Cive* (1642) and *Leviathan* (1651). They accepted the standard Protestant premise that all that counts for salvation is inward belief, which in any case, they supposed, cannot be modified by the coercive means of the state, but then held that since everything else is *adiaphora*, that is, indifferent as far as salvation is concerned, here is therefore no reason why the state should not regulate external religious practice, including imposing uniformity on it, if that is what the state judges is necessary for civil peace—which Hobbes certainly thought it was. But perhaps the difference between Locke on the one hand and Hooker

and Hobbes on the other is a matter of degree rather than principle: Locke thought that religious practice would disturb the peace only in special cases, but Hooker and Hobbes, the one writing amidst the Catholic-Protestant tensions of Elizabeth's reign and the other amidst the sectarian turmoil of the 1640s, thought that almost any diversity of religious practice could disturb the peace. And since outward practice is indifferent to salvation, they thought, why not just regulate it as much as necessary, in the form of a state-established church, in order to avoid all danger of factionalist turmoil, or as much as is humanly possible?¹⁴

Such variations aside, the religious argument for freedom of religion was deeply influential, including in the colonies of British America and their successor, the United States of America (at least until recently). It is the basis of James Madison's argument in the "Memorial and Remonstrance Against Religious Assessments," a successful protest against a 1785 bill in Virginia to pay teachers of religion from state-raised tax money. (This was before the U.S. Constitution was drafted and before freedom of religion was incorporated into it by the First Amendment, and in any case it would be decades before the post-Civil War amendments that made it clear that the provisions of the federal constitution governed state constitutions.) Madison's very first point is that "Because we hold it for a fundamental and undeniable truth, 'that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence[,] [t]he Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate.'" Madison then continues that since religion is a matter for the individual conscience, it must "be exempt from the authority of the Society at large," and *a fortiori* it cannot be a matter for control by any legislative body. "The latter are but the creatures and viceregents of the former."¹⁵ The logic of Madison's argument is crystal-clear: religion is a matter of individual conviction or conscience, no one has any right to control anyone else's conscience, and individuals cannot delegate a power they do not have in the first place. (We will see below that Kant clearly enunciated the same principle a dozen years later.)

A critical variant of Locke's position was offered by Moses Mendelssohn in *Jerusalem, or on Religious Power and Judaism*, published in 1783, thus

¹⁴ On Hooker and Hobbes, see FORST, *Toleration in Conflict*, 174, 187–96.

¹⁵ James MADISON, "Memorial and Remonstrance Against Religious Assessments," in MADISON, *Writings*, ed. Jack N. Rakove (New York: Library of America, 1999), 30.

two years before Madison's "Remonstrance," although I am not aware of any reason to believe that Madison knew or was influenced by it. Locke's argument turned on the premise that the goals or *ends* of the state and of religion were different, the state being concerned solely with public order and security, religion being concerned solely with salvation. Mendelssohn did not think that the ends of the state and of religion, or the church, in a generic sense, are necessarily different (although he speaks of "eternal felicity" rather than "salvation," which would be too specifically Christian), but that their *means* are: the state can use coercion, but religion can use only instruction and exhortation. In particular, Mendelssohn sees no reason why the "purpose of society" should be restricted strictly "to the *temporal*": "If men *can* promote their eternal felicity by public measures, it should be their natural duty to *do so*."¹⁶

Hence actions and convictions belong to the perfection of man, and society should, as far as possible, take care of both by collective efforts, that is, it should direct the actions of its members toward the common good, and cause convictions which lead to these actions. The one is *government*, the other the *education* of societal man. To both man is led by *reasons*; to actions by *reasons that motivate the will*, and to convictions by *reasons that persuade by their truth*. Society should therefore establish both through public institutions in such a way that they will accord with the common good. (Mendelssohn, 40)

Government may be able to promote institutions that in turn promote eternal as well as secular welfare; but in any case, genuine conviction is a necessary condition of eternal felicity, genuine conviction can be promoted only by education, education in what the educator sincerely regards as truth, but the educator can never use coercive means. If religious variety and freedom of religion is the consequence of this approach, so be it.

Mendelssohn makes clear both his general difference from Locke, namely that it is the means of religious instruction rather than the end of salvation as such that requires freedom (37). He also emphasizes several more particular points of difference. For one, he rejects Locke's view that although government should not have the right to excommunicate, churches should; Mendelssohn argues that refusing to educate a difficult student is abdication of the religious duty to educate precisely when it is needed most: expelling the

¹⁶ Moses MENDELSSOHN, *Jerusalem, or on Religious Power and Judaism*, trans. Allan Arkush, introduction by Alexander Altmann (Hanover-London: University Press of New England, 1983), 38.

recalcitrant student from religious instruction is “like forbidding a sick person from entering a pharmacy,” the only place he could get the help that he needs (74). And he rejects Locke’s argument that oaths are a necessary bond of society, and therefore that atheists cannot be indulged. He does this for much the reason that I suggested, namely, that there is nothing to prevent anyone from making an insincere or as he calls it blasphemous oaths, and indeed the practice of requiring oaths is a temptation to blasphemy (71). Finally, the entire second part of *Jerusalem* is devoted to arguing, contrary to popular opinion rather than against Locke, that Judaism is not a coercive religion, not, as Spinoza had argued in the seventeenth century and as Johann Salomo Semler would still be arguing a decade after *Jerusalem*, the relic of the civil legislation of a long-gone state:¹⁷ according to Mendelssohn, the many (613) rituals required by Jewish law are not requirements for compliance with which one is rewarded and for violation of which one is punished, but simply occasions for instruction, for free reflection and discussion, throughout the hours of the day, the weekly, monthly, and annual calendar. To be sure, although Mendelssohn always regarded himself as an orthodox Jew, the orthodox rabbis of his time did not care for this interpretation, and no doubt many still do not; but this was the way that Mendelssohn reconciled his commitment to Judaism with his commitment to the non-coercive conception of religion that had developed in Protestant quarters.

An argument for freedom of religion based on a premise accepted by a group in power and thus able to ensure religious freedom has obvious advantages. It also has an obvious defect, for it may call for freedom for a religious group that does not share that premise and might not itself be committed to freedom of religion on that basis: if that group were to come to power, it might not be committed to the same freedom of religion for others from which it benefited itself. This could also have been a ground for Protestant animosity toward Catholics in early modern Britain, or towards Mormons later in the U.S., if the latter were regarded as not requiring personal commitment

¹⁷ This view of Judaism goes back at least to the *Theological-Political Treatise* of Spinoza (1670), e.g., chap. 17, para. 31, in *The Collected Works of Spinoza*, ed. trans. Edwin Curley (Princeton: Princeton University Press, 1985 and 2016), 2:302. It is repeated in the final work of the prolific Protestant theologian Johann Salomo SEMLER, *Letztes Glaubensbekenntniß über natürliche und christliche Religion* (1792), ed. Dirk Fleischer (Nordhausen: Traugott Bautz, 2012). The appearance of this book a year before Kant’s *Religion within the Boundaries of Mere Reason* (1793) could have been the proximate cause of Kant’s adoption of the same view of Judaism there (Part Three, 6:1215).

for salvation. This would be a reason to look for an argument for religious freedom that does not depend upon any specifically religious premise.

2. THE EPISTEMOLOGICAL ARGUMENT FOR FREEDOM OF RELIGION

I borrow this term from Forst, although as he makes clear the argument does not turn solely on an epistemological premise. But the epistemological premise is that whatever their content, the specific claims of any religion are by their very nature, dealing with matters beyond the limits of human confirmation, uncertain, and therefore unsuitable for coercive enforcement. This kind of argument does not turn on the *content* of any specific religion, *a fortiori* on the specific premise that salvation or eternal felicity can be earned only by free conscience or conviction; rather, the argument is that beliefs *about* religion, including that one, are by their very nature uncertain, their truth lies beyond our finite faculties, and there is no justification for imposing conformity with regard to that which any rational person must admit is uncertain. Forst illustrates this argument with the work of Pierre Bayle, whom he treats at a length befitting Bayle's own voluminous writings.¹⁸ I will discuss Bayle more briefly, but then return to Christoph Martin Wieland, whom Forst does not discuss.

Bayle, a Huguenot who fled France for Holland shortly before the Revocation of the Edict of Nantes but whose younger brother was imprisoned, tortured, and killed in his stead, tried out a number of arguments against the coercive enforcement of religious uniformity. One is certainly based on the standard Protestant premise that only freely formed convictions are pleasing to God, so that the attempt to induce religious belief by coercion is contrary to the very point of religion. In his own words, "the first and most indispensable of all our obligations, is that of never acting against the promptings of

¹⁸ FORST, *Toleration in Conflict*, 237–65. Bayle (1647–1706) argued for freedom of religion throughout his career, including in his main works. I will focus here on *A Philosophical Commentary on These Words of the Gospel, Luke 14:23, "Compel Them to Come In, That My House May be Full"*, an anonymous English translation from 1708, edited by John Kilcullen and Chandran Kukathas (Indianapolis: Liberty Fund, 2005). Proponents of the coercive enforcement of religious uniformity in France appealed to these words from Luke to justify their position; Bayle argues that they are inconsistent with everything else Jesus is reported to have said. The book was published shortly before Locke's *Epistola*.

conscience,”¹⁹ or as Forst puts it, “it is conscience which is the decisive court of appeal.”²⁰ However, this remark comes in the course of Forst’s description of what he calls Bayle’s “normative-epistemological argument.” This argument is prefaced with the remark that Common Sense requires, that we on our parts “shou’d prove from Common Principles, and not from a bare Presentation ... but from Principles common to them and us.”²¹ But here Bayle does not mean the specifically Protestant assumption that faith or conscience must be free, but two more general premises, one epistemological and one moral. The epistemological premise is that certainty about religious matters is beyond our finite human capacities. In Bayle’s words,

I have firmly believ’d a thousand things in some part of my Life, which I am far from believing at present; and what I now believe, a great many others I see of as good Sense as my self, believe not a tittle of: My Assent is often detemin’d, not by Demonstrations which appear to me cou’d not be otherwise, but by Probability which appear not such to other men.²²

To be sure, with his infinite power and infinite goodness, God could put certainty about everything within our reach, but we have no evidence that he has done so, and it would be presumptuous on our part to assume that he will do so at any particular point.²³ The moral or “normative” part of the argument is what Forst, with an eye to his own position, calls “reciprocity,” but what Bayle calls “equity,”²⁴ the requirement of pure reason that like cases should be treated alike, from which, among other things, follows the moral requirement “*not to do to others what we wou’d not have done to ourselves.*” “Every Philosophical attentive Mind clearly conceives ... this lively and distinct Light which waits on us at all Seasons.”²⁵ The argument is very simple: because I cannot deny the epistemological premise that my knowledge of the truth of potential religious beliefs is uncertain, I wouldn’t want anyone else to force me to affirm something that might be false; but because I cannot deny the moral or normative premise that like cases should be treated alike, or

¹⁹ BAYLE, *Philosophical Commentary*, Second Part, chap. 2, p. 156, cited by FORST, *Toleration in Conflict*, 253.

²⁰ FORST, *Toleration in Conflict*, 240.

²¹ BAYLE, *Philosophical Commentary*, Preliminary Discourse, 43.

²² *Ibid.*, First Part, chap. 5, 94.

²³ *Ibid.*, 93.

²⁴ *Ibid.*, First Part, chap. 1, p. 69.

²⁵ *Ibid.*, 73.

that I should not do to others what I would not have them do to me, so I should not try to force them to believe anything that they regard as uncertain. (Forst emphasizes that Bayle anticipates Kant in this conception of the pure rationality of morality, but Kant explicitly rejects the restriction of morality to this version of the Golden Rule because it does not make room for duties to oneself, which Kant regards as an essential and indeed the most important part of morality.)²⁶

Let us now come back to Wieland, who states the epistemological premise of an argument for religious freedom very straightforwardly: “All religions are grounded on *opinion* and *belief*” rather than “mathematical certainty”; if they were grounded on anything like the latter, “then there would always have only ever been one single religion in the world,” just as there has only ever been one mathematics (as Wieland presumably thought), but there has always been more than one religion. That just confirms that religion is a matter of opinion and belief. In that case, then proponents of one religion should be free to “*instruct others of their own opinion*,” but no one has a “right to *coerce* anyone else to *his own opinion*.”²⁷ Wieland’s underlying assumption is that some particular content of religion would have to be a matter of fact—of course the existence of religion is a fact, but the existence of multiple, different *religions* is a fact, the one that proves his point that the content of *none* is a fact—in order to make it rational even to consider the permissibility of coercive enforcement in matters of religious belief.

However, Wieland adds several points to this basic one to make his own argument for an affirmative duty of the state to *protect* freedom of religion. One is the standard point, going back to Hobbes at least, that belief *cannot* be changed by coercive methods (even if practices might be, as Hobbes was happy to propose): “*Opinion and belief, by their nature, cannot be subjected to external coercion*” (99). We can think of him here as presupposing a variant of “ought implies can,” namely “permissibility implies possibility”—that it be possible to bring about a desired result by a particular means must be a necessary condition for the permissibility of using that means, although perhaps some further condition would be necessary to secure sufficient conditions for the use of that means. That in turn would be compatibility with or more strongly necessity for the preservation of the freedom of all involved, for the second point that Wieland adds in this context that freedom of belief is just part of freedom in general, to which we have a “universal, innate, in-

²⁶ E.g., FORST, *Toleration in Conflict*, 249; KANT, *G*, 4:430n.

²⁷ WIELAND, “Über religiöse Toleranz,” 98.

alienable right”—here is where Wieland’s argument takes a step beyond its purely epistemological premise and points to the fundamental argument for freedom of religion in the natural law tradition that we will consider in the next section:

It is an absurdity to say “*that freedom of belief [Glaubensfreyheit] depends on the will [Willkühr, that is, choice] of any particular person.*” It is a universal, innate, inalienable right of human nature. Whoever has the right to draw breath, to see with his eyes, to walk on his legs, etc., also has the right to believe what he believes, and is accountable for his belief to no one. (97–98)

Wieland’s other examples of innate and inalienable right are striking. He does not use the abstract concept of freedom itself, nor any sort of technical concepts like those of equality before the law, the right to acquire property, and so on. He compares freedom of belief to the right to use the most basic human capacities, to breathe, to see, to move about, that could not be denied without denying human life itself, *a fortiori* any and every specific form of human freedom. It is also noteworthy that his comparisons are to other physical, or, in the case of vision, at least partly physical abilities: this suggests that he is drawing no distinction between inward belief and external action, so he is not about to tolerate, again, a Hobbesian doctrine that belief might be left free while practice is externally constrained, as if belief and practice were completely independent of each other.

Finally, Wieland draws a specifically political consequence from his conception of freedom of religion as part of our inalienable freedom in general. Far from it being permissible for the ruler of a state to “*introduce* any religion through *coercive laws* and *hinder* or *suppress*” any others, “The ruler as head of state is the *protector* and *overseer* of religion” in general, that is, whatever *religions* his subjects themselves freely choose to believe and practice.

This he is insofar as he has the general duty to protect every member of the state in all of his rights, that is, not to allow that any may be disturbed in their enjoyment or robbed of them. To that extent he is also obligated to protect each in whatever religion he has; and if two hundred religions were to arise at once in his state, then all two hundred have the same right to his protection. (98)

This is a remarkable statement, the likes of which I at least have not seen elsewhere: not only does the ruler *not have the right* to impose any particular religion, *a fortiori* any religion at all, on his subjects, but he *does have the*

obligation to protect whatever religions, no matter how many, his subjects themselves freely choose to practice. And indeed, while Wieland adds the usual proviso that the practice of all such protected religions must be compatible with the “*inner security or peace [Ruhe]* of the state,” he spells out what this really requires of the ruler in a way that others do not: far from having any right to persecute anyone on grounds of their religious beliefs or practices, the duty of the ruler is to make sure that the security and peace of the state are not disturbed by the “lust for conversion, spirit of persecution, and other outbursts of an avidity for religion that is either uncomprehending or misdirected by priests or levites.” Far from “punishing *opinions* as *crimes*,” the charge of the ruler is to “prohibit *actions* which, through a *natural consequence*, would disturb the peace of the state” (98). The actions that would do that and therefore must be prohibited, through coercive laws and thus through the actual exercise of coercion when necessary, are precisely those by which adherents of any one religion would attempt to impose their beliefs and practices on others.

Perhaps in the end we should say that for all his clarity Wieland fails to make one point clearly: his overall argument for freedom of religion does *not* in the end depend upon the premise that there is no truth about religion to be known by any human being; even if there were, still no one would have the right to attempt to impose belief in that truth and corresponding practices on anyone else. Rulers too would have no such right, but would instead have the obligation to protect the freedom of subjects to believe and practice what they want, even if demonstrably false, as long as that does not disturb the peace of the state, that is, the right of everyone else to precisely the same freedom.

Wieland’s argument includes an explicit statement of an epistemological premise, but turns out to be an instance of the general argument that freedom of religious belief and practice is just part of freedom in general, and that each must have as much of this particular kind of freedom as is compatible with an equal freedom for all, just as each must have as much freedom in general as is compatible with equal freedom for all.

4. THE NATURAL LAW ARGUMENT THAT FREEDOM OF RELIGION IS JUST PART OF FREEDOM

In this section, I will comment on assertions of the freedom of religion found in Francis Hutcheson, Georg Friedrich Meier, and Immanuel Kant. In

associating Kant with the natural law tradition, I am understanding the latter quite broadly. While it is traditional to understand the gist of the natural law tradition, perhaps going back to Aquinas, to lie in the claim that God has commanded certain laws for human beings, for their own good, but that those commandments can be known by human reason without the need for revelation, Kant is of course famous for the view that the normative force of the moral law does not depend upon any divine origin for it but lies in human reason itself; thus human reason is not merely epistemically but substantively sufficient for human morality. But Kant's views in morality and political philosophy share not just surface similarity with the views of such natural law theorists as Alexander Gottlieb Baumgarten and Gottfried Achenwall, who wrote the textbooks that Kant used for his courses on ethics and natural right respectively,²⁸ but also shares with them and the natural law tradition more generally the views that the fundamental principle of morality is rooted in an essential feature of human nature, for Kant of course human reason, thus that morality is natural in the sense of being grounded in human nature; further that this fundamental principle grounds human obligations and therefore human rights that hold in all circumstances, thus in the "state of nature" and not just in civil society of any particular kind, thus that these obligations and rights are natural in this sense; and finally that the actual particular or "positive" laws of any particular civil society derive their normative force from these "natural" laws and must be answerable to them. I am not going to expound or defend all of that here, of course, but I mention it just to explain why I am comfortable calling Kant's approach to freedom of religion, that freedom of religion is simply part of freedom in general and to be maximized just as freedom in general is to be maximized, part of the natural law tradition.

I will comment briefly on the views of Hutcheson and Meier, both of whose works were well-known to Kant even if they did not have the same influence on the shape and surface of his published works as did the text-

²⁸ Baumgarten's *Initia philosophicae practicae primae acroamatice* (1760), or *Elements of First Practical Philosophy*, ed. and trans. Courtney D. Fugate and John Hymers (London: Bloomsbury, 2020), and *Ethica philosophica* (3rd ed., 1763, reprinted in the *Akademie* edition, 27.2.1:871–1015), were always Kant's textbooks for his course on moral philosophy, and provide the models for the *Groundwork for the Metaphysics of Morals* and the Doctrine of Virtue in the *Metaphysics of Morals* respectively. There was also a posthumous *Ius Naturae* by Baumgarten (Halle: Carl Hermann Hemmerde, 1763), but Kant did not use this for his course on natural right, using instead Gottfried Achenwall, *Natural Law* (3rd ed., also 1763), ed. Pauline Kleingeld, trans. Cornelia Vermeulen, introduction by Paul Guyer (London: Bloomsbury, 2020), which would then be the model for the Doctrine of Right in the *Metaphysics of Morals*.

books of Baumgarten and Achenwall, before turning to Kant himself. Hutcheson included freedom of religious belief and practice in his enumeration of rights in all three of his chief works on morality, the “Inquiry concerning Moral Good and Evil,” Treatise II of his *Inquiry into the Original of Our Ideas of Beauty and Virtue* of 1725;²⁹ his *Short Introduction to Moral Philosophy*, published in Latin in 1742 and 1745 and in English in 1747;³⁰ and his posthumous *System of Moral Philosophy* of 1755.³¹ He defines a right as “a Faculty of doing, demanding, or possessing any things, universally allow’d in certain Circumstances” as on the whole tending “to the general Good.” In other words, right is what one or some persons are entitled to demand of one or some others. Providing his own version of a traditional distinction, he immediately divides the sphere of right into perfect rights, those of “such necessity to the publick Good, that the universal Violation of them would make human Life intolerable” and thus where “a violent Defence, or Prosecution of such Rights ... cannot in any particular Case be more detrimental to the Publick, than the Violation of them with Impunity,” and imperfect rights, those that contribute to the public good but that when “universally violated, would not necessarily make Men miserable,” thus the fulfillment of which “tends to the improvement and increase of positive Good in any Society” but is not “absolutely necessary to prevent universal Misery” while the “violent Prosecution” of the “Violation” of which “would generally occasion greater Evil than the Violation of them” causes.³² In other words, perfect rights are those that may be coercively enforced because that does less harm to the public good—the happiness of all—than allowing their violation would, while imperfect rights are those that may not be coercively enforced because such enforcement would do more harm to the public good than their violation would. Hutcheson’s first list of perfect rights includes the rights to our own lives, to the “Fruits of our Labours,” to the performance of contracts, and to “direct our own Actions either for publick, or innocent private Good, before we have submitted them to the Direction of others in any measure,”³³ by which he seems actually to mean without our ever having

²⁹ Francis HUTCHESON, *An Inquiry into the Original of Our Ideas of Beauty and Virtue*, rev. ed., ed. Wolfgang Leidhold (Indianapolis: Liberty Fund, 2008).

³⁰ Francis HUTCHESON, *Philosophiae Moralis Institutio Compendiaria, with A Short Introduction to Moral Philosophy*, ed. Luigi Turco (Indianapolis: Liberty Fund, 2007).

³¹ Francis HUTCHESON, *A System of Moral Philosophy*, 2 vols. (London: A. Millar and T. Longman, 1755).

³² HUTCHESON, *Inquiry*, Treatise II, sect. 7, subsect. 6, 183–84.

³³ *Ibid.*, sect. 7, subsect. 6, 184.

to submit them to the direction of others. The last of these is obviously very general, and could include any action that one thinks would be good either for others or for oneself as long as it would not hurt others, in which case it could be coercively prevented. In the *Enquiry*, Hutcheson then adds a further category of right, namely inalienable right, right that it would neither be possible nor “serve some valuable purpose” to transfer to others, in the way in which the right to enjoy some fruit of our labor or performance of some contract to which we are entitled can of course be transferred or assigned to another; and his illustration of this category of inalienable right is precisely freedom of both belief in and practice of religion:

By the first Mark it appears, “That the Right of private Judgment, or of our inward Sentiments, is unalienable;” since we cannot command ourselves to think what either we our selves, or any other Person pleases. So are also our internal Affections, which necessarily arise according to our Opinions of their Objects. By the second Mark it appears, “That our Right of serving God, in the manner which we think acceptable, is not alienable;” because it can never serve any valuable purpose, to make Men worship him in a way which seems to them displeasing to him.³⁴

Hutcheson does not say so in the *Enquiry*, but it would seem that this right, here expressly including both the right to inward judgment and sentiments and the right to external worship, is a perfect right, because since its violation can do no good to anyone its coercive enforcement must always be preferable to its violation. In the later³⁵ *System of Moral Philosophy* Hutcheson does explicitly include the right to freedom in one’s religious beliefs and practices (worship) among the perfect, “natural” rights that each human being has “from the constitution of nature itself, without the intervention of any human contrivance.”³⁶ The perfect natural rights of human beings there include a number not included in Hutcheson’s earlier list, including the right to use objects, the right to a good reputation, the right to enter into marriage with a consenting partner (although Hutcheson surely did not have same-sex marriage in mind), and then, what concerns us here, both a general right to “natural liberty” and a specific “like natural right [that] every intelligent be-

³⁴ *Ibid.*, subsect. 7, p. 186.

³⁵ Perhaps not that much later; Hutcheson had apparently completed the draft of the *System* by the late 1730s, although he had not published it by the time of his death in 1746, and it was left to his son to see to that in 1755.

³⁶ HUTCHESON, *A System of Moral Philosophy*, Book II, chap. 5, subsect. 1, vol. 1, p. 293.

ing has about his own opinions, speculative or practical, to judge according to the evidence that appears to him,” and further to “profess” or worship as seems to one best in light of these opinions. This right is inalienable according to Hutcheson because it follows from “the very constitution of the rational mind which can assent or dissent solely according to the evidence presented,” and it is perfect because to compel people “to profess contrary to their opinions, or to act what they believe to be vicious, or impious in religion, must always be unjust, as no interest of society can require it, and such profession or action must be sinful to those who believe it to be so.”³⁷ The only exception, as usual, is the case in which “false opinions of a religious or moral nature tend to disturb the peace or safety of a society,” although what Hutcheson seems particularly worried about is the case in which such beliefs “render men incapable of such duties as are requisite for the publick safety.” Perhaps he has sects such as the Quakers in mind; if so, his recommendation is not that they be imprisoned, as they were in the previous century, but that they pay for substitutes to perform the purportedly necessary public service, e.g., military duty, that they are not willing to perform themselves. But the general principle is that as long as religious belief and practice do not harm public safety then there is no good to constraining it at all, and people have a perfect right to completely freedom of religion.³⁸

An even more striking natural-law account of freedom of religion is found in Georg Friedrich Meier’s 1767 textbook *Recht der Natur*.³⁹ Meier, a student and friend of Baumgarten, wrote the textbook that Kant used for his logic classes; Kant did not use his textbook on natural right for his class on

³⁷ Ibid., subsect. 4, vol. 1, p. 296.

³⁸ Knud Haakonssen has argued that Hutcheson is ambivalent between founding the right to freedom of religion in “natural right” or “political prudence,” and that his account of this right ultimately fails because in the end he does make it merely a matter of political prudence, to be overridden when such prudence requires. See HAAKONSSSEN, “Natural Rights or Political Prudence? Francis Hutcheson on Toleration,” in PARKIN and STANTON, *Natural Law and Toleration in the Early Enlightenment*, 183–200. I think that this misconstrues the character of Hutcheson’s consequentialist, or specifically utilitarian justification of rights in general and perfect rights in particular: he does think that the justification of rights is their contribution to public good or the greatest happiness for the greatest number (to use his preferred formula), but he also holds that perfect rights are those the violation of which *always* produces more harm than their coercive enforcement does, and that the right to freedom of religion falls into this category except in the clear-cut case where the exercise of this right would injure “public safety.” In his own view, at least, this specific exception would not open a general door to judgments of mere political prudence.

³⁹ Georg Friedrich MEIER, *Recht der Natur* (Halle: Carl Hermann Hemmerde, 1767), facsimile with an introduction by Dominik Recknagel (Hildesheim: Georg Olms, 2014).

that subject, but it would be surprising if he had not read it. Be that as it may, the book presents a lengthy and detailed account of innate right. Meier's 670-page book is divided into three main parts: after an introduction on the concept of offenses in the state of nature in general, two chapters on offenses against innate rights in the state of nature and against acquired rights in the state of nature follow. There is no discussion of the civil condition, or of further rights within the civil condition; the book is concerned solely with the natural rights that the state may or must make secure. Meier's list of innate rights, right that everyone should have without any special action on their part, takes the form of a list of the injuries that everyone has a natural right *not* to suffer. The list includes the right not to suffer homicide, the right not to suffer other sorts of bodily injuries, the right not to suffer sexual assault or violence (*Nothzüchtigung*), and the right not to suffer injury to an honorable name or reputation, but at the heart of the list is the right to be free of injuries to "natural freedom and equality." In the typical fashion of natural law theorists, Meier infers the "ought" of obligation from the "is" of human nature "since the natural condition of individual humans is a condition of the most perfect equality and freedom," every human "is independent of the commands of others, so that in the natural condition no free action is possible through which one should first have acquired his equality and freedom."⁴⁰ One can surrender one's freedom, no doubt, but one does not have to depend on the consent of anyone else to claim it in the first place, because no one naturally has some special status that would allow him to deny it or grant it to others. This right yields a corresponding obligation: "Every human in the natural condition is accordingly obligated to allow every other his natural equality and freedom, and to undertake nothing against another who does not deprive himself of the same," i.e., sacrifice his equal freedom by some voluntary act of his own.⁴¹ Meier then follows this general right to equal freedom with the right to all virtues and even "internal sins," that is, beliefs or attitudes that others may find sinful but that do not injure them in any way: "Every human has a natural right to all virtues, to all rightful actions, and to all internal sins, that is, to all sins through which no other person is externally injured." This means that everyone has a right not to be hindered in their own pursuit of virtue, duty, or ordinary need—here Meier includes the right to beg for alms—but also, and here he makes explicit what no one else does, the right to every internal sin, and dishonorable vice," a

⁴⁰ MEIER, *Recht der Natur*, §128, p. 259.

⁴¹ *Ibid.*, §129, p. 261.

right to “true religion and piety” but also to “atheism [*Atheisterey*] and all sins against God” and all “false religion,” as long as no one else is injured by any of this, that is, deprived of anything that is rightly “his own.”⁴² In other words, when it comes to other people’s religion or lack of religion, mind your own business: they have as much right to “the most perfect freedom and equality”—that is, not just to equal freedom, but to the greatest possible equal freedom—in that regard as in any other. It might be objected that Meier opens the door to subjective interpretations of what counts as injury to “one’s own,” but the structure of his account of right averts such an objection. For what is “one’s own” is precisely that to which one has the other specified innate and, subsequently, acquired rights: the right to one’s own life, to freedom from bodily assault generally and sexual assault in particular, the right to a legally good name, and then the rights to acquire property, enter into contracts, etc. As long as one person’s religious beliefs and practices, their manner of worship, does not interfere with those enumerated rights of others, then no one else has any claim to interfere with their natural freedom and equality. No one has any right to interfere with it because no one gave them that right in the first place; everyone has it.

Meier’s approach might remind us of John Stuart Mill’s “harm” principle a century later, and of his own defense of “liberty” as freedom to do anything one likes as long as it does not harm others. But Meier’s long-forgotten text has the merit of being quite specific about what would constitute a harm. His insistence on the freedom to be even an atheist free from interference from others takes up the theme of atheism from early authors, such as Bayle and Christian Wolff, who had argued that even atheists could be moral—a position that cost Wolff his job in Halle in 1723, but did not seem to have cost Meier anything similar half a century later—but goes further in conceding an explicit right to be an atheist in the first place. Even Kant does not make such a right explicit, while he goes further than Meier in insisting that freedom of religious expression is just one example of the innate right to freedom in general, not one right on a list of similar but somehow independent rights.

Kant’s version of a natural law juridical philosophy is generated from his conception of the sole innate right of every human being in virtue of his or her humanity, to “*Freedom* (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law” (*MM*, DR, Introduction, 6:237). The “insofar” means that the *only* rightful constraint on anyone’s exercise of their

⁴²MEIER, *Recht der Natur*, §134, 271–72.

freedom is compatibility with the freedom of others to do the same, and since there is no other limit on the rightful exercise of freedom this is a formula calling for the *greatest* possible freedom of each compatible with the equal freedom of all. Kant's statement that this is the "only original right belonging to every human by virtue of his humanity" comes after his statement earlier in the Introduction to the Doctrine of Right of the "Universal Principle of Right," that "Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (*MM*, DR, Introduction, section C, 6:230), but this fact should not be taken to mean that the innate right to freedom *follows* from, that is, has to be *derived* from, the Universal Principle of Right. On the contrary, the order of Kant's exposition should be understood in analogy to Kant's order of exposition in Section II of the *Groundwork for the Metaphysics of Morals*: there Kant first formulates the categorical imperative as the Formula of Universal Law, the requirement that we act only on maxims that we could at the same time will be universal laws (*G*, 4:421), but then says that a possible categorical imperative needs a "ground," and adduces that ground by means of the claim that humanity is by its very nature an end that is never to be treated merely as a means (4:428–29); so here too the innate right to freedom is the ground of the Universal Principle of Right, that is, acting in accordance with the Universal Principle of Right is the way to realize the innate right to freedom. And that right itself flows from the humanity of every human being because humanity *is* or essentially includes the capacity to set one's own ends (*MM*, DV, Introduction, sections V, VIII, 6:387, 392)—and that is what freedom is, or where freedom begins. Thus it is freedom itself that must always be treated as an end and never merely as a means; this fundamental obligation is the ground of the innate right to freedom. The innate right to freedom is in turn the foundation of Kant's entire juridical system because it will include—as every other natural law theorist had already made so clear that Kant does not even need to state it—the right to acquire further rights (property rights, contract rights, etc.) when so doing is compatible with the freedom of others to do the same, and the right to be part of a civil condition to make both innate right and further rights acquired on the basis of innate right determinate and secure. But those consequences of innate right are beyond our purview here.⁴³

⁴³I expound the argument of this paragraph in more detail in "Innate Right and the Natural Law Tradition," in *Kant's Naturrecht* Feyerabend: *Critical Essays*, ed. Frederick Rauscher (Cambridge: CUP, forthcoming).

Here our focus is on what is contained in the innate right to freedom according to Kant. I say “contained in,” because Kant maintains that “the principle of innate freedom already involves the following authorizations [*Befugnisse*], which are not really distinct from it (as if they were members of the division of some higher concept of a right)” (6:237). In other words, the rights that he is about to enumerate should not be thought of as if they might have various different foundations but can all be subsumed under a more abstract concept of freedom, rather they are just different aspects of what the greatest possible equal freedom for all means, or what freedom means in different contexts.⁴⁴ The three authorizations that Kant lists are “innate *equality*, that is, independence from being bound to others to more than one can in turn bind them[,] hence a human being’s quality of being *his own master*”; being “*beyond reproach*,” that is being in the right in any legal context as long as one has not oneself done anything to wrong anyone else;⁴⁵ and finally and most importantly for our purposes, “being authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it.” That is, one is free to use one’s own freedom in any way that does not itself limit the freedom of others. The similarity between this and Meier’s statement of the right to natural liberty is striking. Kant then provides what is clearly intended to be a non-exhaustive list of examples of this last authorization: “such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere (*veriloquium aut falsiloquium*); for it is entirely up to them whether they want to believe him or not” (6:237–38). Perhaps Kant’s “for” should be “as long as”: as long as others are left free to believe and do what they want, one can say anything at all to them, or, presumably, anything at all one wants in their presence whether it is directly

⁴⁴ In his account of Kant, Forst does not appeal to Kant’s discussion of innate right in the Doctrine of Virtue, but to Kant’s discussion of republican government in the 1793 essay on “Theory and Practice,” where as he presents it Kant distinguishes between ethical, legal, and political conceptions of freedom or of the “autonomous person” (FORST, *Toleration in Conflict*, 326). Whether this is a plausible interpretation of “Theory and Practice,” which may be argued, it should not be applied to Kant’s three authorizations in the Doctrine of Right: because these come in the Doctrine of Right, they are *all* legally enforceable authorizations, and are neither merely ethical nor merely political ideals.

⁴⁵ This is not a matter of burden of proof, that is, being *presumed* innocent unless proven guilty; it is a matter of *being* innocent unless actually guilty of something. That the presumption of innocence is the correct assignment of the burden of proof in a legal proceeding should be thought of as an epistemological consequence of the right to be beyond reproach.

addressed to them or not.⁴⁶ Without any special reference to the case of religion, this right to freedom of expression obviously includes the right to freedom of religious expression. There is nothing special about the expression of religious beliefs or thoughts, but their expression is protected as much as the expression of any other views: as long as one's expression of one's religious views does not "of itself" limit the freedom of others, one has an innate right to it, or one's freedom to the expression of one's religious views is limited only to the extent necessary to ensure the equal freedom of others. (An innate right is not absolute precisely because everyone has the same innate right, thus the right of each must be limited by the right of all. Kant's textbook author Achenwall did call what Kant calls innate right "absolute right," but that was a mistake on his part).⁴⁷

In his statement of the right to freedom of *expression* as simply part of the right to freedom in general, Kant does not mention the traditional inference that there should be no attempt to constrain the *beliefs* of others from the premise that it is in any case not possible to change people's beliefs by coercive means. Nor does he make any appeal to different goals for church and state, as Locke and others had. Both of these matters do come up in Kant's explicit discussion of the relation between church and state later in a "General Remark" in the section on the state, or "Public Right," later in the Doctrine of Right. The single but lengthy paragraph that Kant devotes to the matter needs to be quoted at length; I will break it up into three parts making three main points, and a fourth stating one practical conclusion that Kant draws:

[1] As for *churches*, they must be carefully distinguished from religion, which is an inner disposition lying wholly beyond the civil power's sphere of influence. (As institutions for public *divine worship* on the part of the people, to whose opinion or conviction they owe their origin) churches become a true need of a state, the need for people to regard themselves as subjects of a supreme *invisible* power to which they must pay homage and which can often come into very unequal conflict with the civil power. So a state does have a right with regard to churches. It does not have the right to legislate the internal constitutions of

⁴⁶ Kant of course thinks that lying to others is an *ethical* violation, in fact a violation of an ethical duty to *oneself* to use one's natural capacity for communicating well (*MM*, *DV*, §9, 6:429–31), but it is not in and of itself a *legal* violation of anyone's supposed *right* to the truth. It is only if manipulation is involved, that is, if the other is coerced into accepting a lie, that there is a violation of right, namely, a violation of the other's right to freedom.

⁴⁷ See ACHENWALL, *Natural Law*, Book II, sect. 1, pp. 27–39.

churches or to organize them in accordance with its own views, in ways it deems advantageous to itself, that is, to prescribe to the people or command beliefs and forms of divine worship (*ritus*) (for this must be left entirely to the teachers and directors the people itself has chosen). A state has only a *negative* right to prevent public teachers from exercising an influence on the *visible* political commonwealth that might be prejudicial to public peace. Its right is therefore that of policing, of not letting a dispute arising within a church or among different churches endanger civil harmony. [2] For the supreme authority to say that a church should have a certain belief, or to say which it should have or that it must maintain it inalterably and may not reform itself, are interferences by it which are *beneath its dignity*; for in doing this, as in meddling in the quarrels of the schools, it puts itself on a level of equality with its subjects (the monarch makes himself a priest), and they can straightaway tell him that he understands nothing about it. [3] The supreme authority especially has no right to prohibit internal reform of the churches, for what the whole people cannot decide upon for itself the legislator also cannot decide for the people. But no people can decide never to make further progress in its insight (enlightenment) regarding beliefs, and so never to reform its churches, since this would be opposed to the humanity in their own persons and so to the highest right of the people. So no supreme authority can decide on this for the people.—[4] But as for the expenses of maintaining churches: for the very same reason these cannot be charged to the state but must rather be charged to the part of the people who profess one or another belief, that is, only to the congregation. (*MM*, DR, General Remark following §49, sect. C, 6:327–28)

There is much going on in this long paragraph, and much of the debate over freedom of religion in the previous century and more lies behind it. Obviously Kant is addressing himself to freedom of belief as well as of worship, thus external action, throughout. In [1], he starts with the traditional assumption that “inner disposition,” that is, belief, cannot be altered by the coercive mechanisms of the state, but seems for a moment to flirt with the position of Hooker and Hobbes that since that is all that really matters for religion, the state should be free to control outward worship however it thinks best for its own needs. However, Kant’s use of the plural in “churches become a true need of the state” shows immediately that he is not about to countenance a single state-established church as those authors did; but, more explicitly, Kant quickly makes it clear that his position is the Lockean one: whatever need *individuals* may have for churches as public institutions for worship, Kant does *not* argue that the *state* has a positive interest in establishing one or more churches for any of its own ends, but argues it has only

the “*negative right*” to prevent churches, led by their teachers, from endangering “public peace” and “civil harmony.” Kant is not flirting with any possible positive right of the state to establish and/or regulate one or more churches with an eye to any end except that; and the permissibility of that negative right follows from Kant’s conception of the role of the state as making the innate right to freedom determinate and secure: public peace or civil harmony is just the condition in which each may exercise their innate right to freedom equally with others. So in [1] Kant draws the traditional constraint on the state’s right with regard to religion from his conception of the innate right to freedom of all individuals, his version of the foundation of natural law.

[2] and [3] add what seem to be novel points to this argument. [2] warns civil authorities to stay out of religious controversies, beyond ensuring that they do not spill over into civil unrest, because they would thereby lower the state to the level of one more squabbling controversialist and reduce its own authority. This point might be thought of as presupposing the point made by Wieland, for example, that religion is incurably a matter of diverse opinion, and the last thing the state wants to do is to make the authority of its own proper laws, those necessary to make determinate and secure innate right, acquired rights, and its own proper procedures, seem like a matter of mere opinion. [3], by contrast, makes a positive point, one that combines the central assumption of his theory of “public right” or political philosophy with a central feature of his account of ethical duty in the Doctrine of Virtue. Kant’s general claim in [3] is that all powers of the state must derive from the proper powers of individuals, so the state can have no rights that individuals could not have in a state of nature; then he argues that the state could have no right to limit enlightenment or improvement of belief in matters of religion because individuals have no such right; but the reason why individuals could have no such right is because they actually have a contrary duty, namely the duty to perfect their cognition in general and their moral cognition in particular as part of their general duty to themselves of self-perfection, the duty to perfect their natural and moral capacities (see *MM*, *DV*, §§19–22). Cutting off the possibility of improvement in our religious beliefs, but for that matter any beliefs, “would be opposed to the humanity in [our] own persons and so to the highest right of the people” because our humanity demands our efforts at self-perfection. So we must have the right to the means to this self-perfection—Kant presupposes the general natural law principle that we must have the right to the necessary means to the fulfill-

ment of our duties⁴⁸—and the state cannot take this right away from us, let alone derive by delegation from us a right that we do not have, namely the right to limit the right to self-improvement including in matters of belief.

Finally, in [4] Kant makes a simple point, but one that no one in the debate we have been examining apart from James Madison seems to have made: since the state should not be in the business of establishing or regulating religious institutions, neither should it be in the business of financing them. This might seem like an obvious point, perhaps one so obvious that others felt no need to bother making it. Yet it could benefit from a Kantian analysis also, namely, that state support necessarily comes from taxation, taxation is an inherently coercive enterprise, and therefore there should be no taxation except for the sake of ends that the state has a right to pursue even when necessary by coercive means. No taxation without representation, perhaps, but that is because there can be no successful taxation without the possibility of coercive enforcement, and there should be no possibility of coercive enforcement except where that could be endorsed by the united will of the people expressed through their legislature. But this argument cannot be pursued further here.

A few remarks by way of conclusion may be in order. It may certainly be a rhetorically effective strategy to argue for freedom of religion on the basis of a premise that religious people, in particular members of a politically powerful and dominant religious faction, share, and which a writer himself may well share; that religion itself requires freely arrived at belief and thus cannot be made a matter for the coercive mechanisms of the state is one such premise, historically associated with at least some forms of Protestantism. Some of the rhetorically most effective proponents of freedom of religion from Locke to Madison pursued this strategy. At the same time, such an approach is inevitably exposed to the danger that it will call for freedom for a religion that is not itself committed to freedom for all religions or none at all, and thereby undermine itself. A more purely philosophical approach that argues from a premise that is not itself a matter of religious commitment will not be exposed to this danger. One version of this approach begins from a premise *about* religion, namely that religion is a matter of belief, therefore inevitably controversial, therefore it is always a mistake to try to enforce uniformity in matters of religion. The other version of this approach begins not from a fact about religion at all, but from a claim to a right to freedom, an innate right as Kant calls it, in all sorts of matters, *a fortiori* in matters of

⁴⁸ E.g., ACHENWALL, *Natural Law*, part 1, §24, 11.

religion but not because of anything special about religion. Of course this approach is appealing to the philosophical cast of mind. Perhaps it would also become necessary if either of the other approaches to freedom of religion actually took sufficient hold, because then no other universally shareable foundation would be left—not a foundation based on any particular religious belief, nor a foundation based on the general premise of the uncertainty of all religious beliefs. But that would be a bigger argument than can be made here.

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ARGUING FOR FREEDOM OF RELIGION

Summary

My title is "Arguing for Freedom of Religion," not for "Toleration," because I follow the eighteenth-century writer Christoph Martin Wieland in taking "toleration" to connote a gift or indulgence from a majority to a minority, whereas true freedom of religion would put everybody on the same plane to believe and practice religion as they see fit, or not at all. I consider three historically distinct ways of arguing for freedom of religion: from a premise held by one religion that requires freedom from others (the strategy of Locke, Madison, and Mendelssohn); from a premise about the uncertainty of all religious beliefs which calls for equal freedom (Bayle and Wieland); or from a fundamental requirement of equal freedom for all, with no premise about religion although it entails freedom in religious matters as in other things (Hutcheson, Meier, Kant). The latter approach may be most appealing from a purely philosophical point of view, but the former styles of argument have obviously had much to recommend them in historical contexts, and may still be useful.

Keywords: religion; freedom; toleration; natural law; Locke; Kant; Madison; Mendelssohn, Bayle; Wieland; Hutcheson; Meier.

ARGUMENTACJA ZA WOLNOŚCIĄ RELIGII

Streszczenie

W tytule tekstu mowa o „wolności religii”, a nie o „tolerancji”, ponieważ za wzorem XVIII-wiecznego pisarza Christopha Martina Wielanda, traktuję „tolerancję” jako oznaczającą dar czy pobłażliwość okazaną mniejszości przez większość, podczas gdy prawdziwa wolność religii pozwoliłaby każdemu w równym stopniu – lub w równym stopniu zabroniła – wyznawać i praktykować religię wedle własnego upodobania. Autor omawia trzy różne, znane z historii sposoby argumentacji za wolnością religii: na podstawie przesłanki przyjmowanej w ramach jednej z religii i postulującej wolność od innych religii (strategia Locke’a, Madisona i Mendelssohna); na podstawie przesłanki o niepewności wszystkich przekonań religijnych, która przemawia za równą wolnością (Bayle i Wieland); na podstawie elementarnego wymogu jednakowej wolności dla wszystkich, bez odwoływania się do wolności religii, choć z pociągającego w konsekwencji wolność w kwestiach religijnych, podobnie jak w innych (Hutcheson, Meier, Kant). To ostatnie

podejście może być najatrakcyjniejsze z filozoficznego punktu widzenia, choć ze zrozumiałych względów dwa pierwsze style argumentacji miały wiele zalet w kontekście historycznym, i wciąż mogą się okazać przydatne.

Słowa kluczowe: religia; wolność; tolerancja; prawo naturalne; Locke; Kant; Madison; Mendelssohn; Bayle; Wieland; Hutcheson; Meier.