

Mehmet Ruhi Demiray

Public Religion & Secular State: A Kantian Approach

Diametros nr 54, 30-55

2017

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

PUBLIC RELIGION & SECULAR STATE: A KANTIAN APPROACH

– Mehmet Ruhi Demiray –

Abstract. This paper argues that Kant’s distinction between “civil union” (i.e., the state) and “ethical community” can be of great value in dealing with a problem that causes considerable trouble in contemporary political and social philosophy, namely the question of the normative significance and role of religion in political and social life. The first part dwells upon the third part of Kant’s *Religion within the Boundaries of Mere Reason* with the intention of exposing the general features of ethical community. It highlights the fact that Kant considers publicity, and indeed public authority, to be constitutive of the ethical community. The second part discusses his argument that we have a unique ethical duty to enter into an ethical community. This discussion clarifies the constitutive purpose of ethical community and sets forth why Kant thought that the ethical community should have a religious form. The third part presents an account of the constitutive purpose of the state (i.e. the political-legal community) in light of the *Doctrine of Right*. Throughout these steps, as is concluded, the essentials of a model for the relations between law, ethics, and religion emerge, which shows the way in which both religious and secularist worries can be met on a principled basis.

Keywords: Kant, religion, ethical community, the state, publicity, secularism.

Introduction

It is beyond doubt that the question concerning the normative significance and the legitimate place of religion in political and social life has recently been one of the hottest topics in contemporary political and legal philosophy. There has already emerged huge literature concerning different facets and instantiations of this problem in which many political theorists take sides. Although many authors have already worked out intermediate positions under labels such as “accommodationist separation,” “multi-faith establishment,”¹ “open secularism”² or “liberal-pluralist secularism,”³ two diametrical positions are *austere secularism*,

¹ Laborde (2013): 76.

² Chambers (2010): 16; Maclure, Taylor (2011): 34.

³ *Ibidem*.

represented by authors like Robert Audi,⁴ Stephen Macedo,⁵ and Richard Rorty,⁶ on the one hand, and *integrationism*, represented by authors like Paul Weithman⁷ and Nicholas Wolterstorff,⁸ on the other. In this controversy, it is interesting to note, both parties think that the crux of the issue lies in the question of whether or not religion can be a source for public reasons from which we should derive political-legal norms.

Following a path set by John Rawls,⁹ austere secularists tend to give an epistemological twist to the concept of public reason. They consider it a criterion testing whether a norm could be *acceptable* to all relevant persons. Since religious beliefs reflect deep commitments springing up from a person's comprehensive worldview, the austere secularists conclude, they are private states of mind that should be left at the doors of the political-legal sphere, no matter how widespread particular religious beliefs might be in a particular society or period. This suggests that "secular" is a necessary criterion of "public," if not completely identical to it. In line with this, Audi concludes: "Citizens in a democracy have a *prima facie* obligation not to advocate or support any law or public policy that restricts human conduct, unless they have, and are willing to offer, adequate secular reason for this advocacy or support (e.g. for a vote)."¹⁰

On the other hand, the authors I call integrationists suggest either that the distinction between public and private reasons does not make much sense,¹¹ or that "public" should be understood in the sense of "actually shared," or "commonly accepted," rather than in the idealised or epistemologically-loaded sense suggested by Rawlsians. They appeal to values like sincerity, honesty and integrity as supporting their integrationist position. For instance, Weithman argues that "citizens of a liberal democracy may base their votes on reasons drawn from their

⁴ Audi, Wolterstorff (1997); Audi (2011).

⁵ Macedo (1995): 468-496.

⁶ Rorty (1994): 1-6.

⁷ Weithman (2001).

⁸ Audi, Wolterstorff (1997).

⁹ After Rawls's *Political Liberalism*, the concept of public reason turns out to be pivotal for contemporary political philosophy. Interestingly, however, Rawls needed to revise his conception of public reason, particularly with regard to its relation to religiously motivated arguments, with the intention of making it more inclusive. See Rawls (1997).

¹⁰ Audi (2011): 65-66.

¹¹ For a moderate argument that there are formidable difficulties in drawing the distinction between public and private reasons, see Greenawalt (2007). Let me add that Greenawalt does not suggest that we should dismiss the distinction altogether. In addition, his position in the debate between austere secularism and integrationism seems to me an intermediary one leaning more towards the latter than the former.

comprehensive moral views, including their religious views, without having other reasons which are sufficient for their vote – provided they sincerely believe that their government would be justified in adopting the measures they vote for.”¹² Similarly, Wolterstorff argues:

It belongs to the religious convictions of a good many religious people in our society that they ought to base their decisions concerning fundamental issues of justice on their religious convictions. They do not view it as an option whether or not to do it. It is their conviction that they ought to strive for wholeness, integrity, integration in their lives: that they ought to allow the Word of God, the teachings of the Torah, the command and example of Jesus, or whatever, to shape their existence as a whole, including, then, their social and political existence. Their religion is not, for them, about something other than their social and political existence.¹³

In my view, both of these positions reflect normative concerns to which we cannot be indifferent. It is then not surprising that many scholars, including Simone Chambers, Kent Greenawalt,¹⁴ Cécile Laborde, Martha Nussbaum,¹⁵ and Charles Taylor, seem to be striving for an intermediate path relieving both sets of concerns. I absolutely agree with these authors on the point that a social context capable of removing both the concern for equal rights and freedoms (i.e. neutrality and impartiality) and the concern for the pursuit of an authentic way of life in community with others should be the most desirable objective. However, I think that they tend to pass over an important point: the controversy stems not from a conflict between competing normative values of the same nature, but a confusion of two different levels of normativity to which these concerns appertain. These levels are political-legal normativity, on the one hand, and ethical normativity, on the other. In Kant’s words, they are, respectively, the domain of right that “civil union” (i.e. the political-legal community or the state) should substantiate, and the domain of ethics associated with the “ethical community,” at least as far as *Religion within the Boundaries of Mere Reason* is concerned.

This paper is designed to make a contribution to the debates concerning the role and significance of religion in political and social life in light of Kant’s distinc-

¹² Weithman (2001): 3.

¹³ Audi, Wolterstorff (1997): 205.

¹⁴ Greenawalt (1995).

¹⁵ Nussbaum (2010).

tion between “civil union” and “ethical community.”¹⁶ I will argue that Kant assigns public significance and role to religion, finding in religious faith the pillar of an ethical community. In this way, he would oppose the austere secularist argument that religion is merely a private matter. On the other hand, however, I think Kant would also strictly oppose the integrationists and even some arguments from those striving for an intermediate path.¹⁷ For he holds that the publicity of an ethical-religious community does not mean that we can legitimately transpose ethical-religious norms to the political-juridical level. He thinks that any attempt to integrate the state and the ethical community, or to infuse the former with the latter, leads to abominable consequences for both of them. This is because both the problems that they are designed to resolve and the means they employ are quite different. While the ethical-religious community is designed to contribute to the creation of a moral world and must rely on the actual consent of its members, the political-legal community is designed to solve the “political problem,” namely, to find a normative resolution of the conflict between persons and/or groups that do

¹⁶ I should state that my paper will not be the first attempt to discuss the relevance of Kant’s arguments on ethical community to the contemporary debates on the public role and significance of religion. To my knowledge, there is, at least, an impressive article by Pablo Muchnik (2014). Muchnik argues that “the conflict between advocates of religious privatization [Rorty] and proponents of open religious entrance into the public square [Wolterstorff]” can be read as presenting the “features of an antinomy of [...] religious reason”, which Kant’s critical account of religion in *Religion within the Boundaries of Mere Reason* resolves. Muchnik (2014): 196–197. Muchnik’s work differs from mine in the following respect: it is much more concerned with Kant’s critical account of the nature of religion and its ethical significance rather than the relation between law, ethics, and religion. In addition, I intend to present what I see as the Kantian model of the relation between law, ethics, and religion showing its plausibility, even for those who would not completely subscribe to Kantian ethics based on the ideal of autonomy or the value of moral-rational nature. Beside such differences, though, I think that what Muchnik tangentially argues concerning the relation between politics and religion is quite in line with the model I try to present. See, particularly, Muchnik (2014): 204.

¹⁷ For it is not unusual for contemporary authors striving for an intermediate position to suggest that ethical-religious norms can be transposed to the political-juridical level, under certain conditions at least. For instance, Kent Greenawalt proposes the following principle for the role religious commitments might play in legislative processes of liberal democracies: “Legislation must be justified in terms of secular objectives, but when people reasonably think that shared premises of justice and criteria for determining truth cannot resolve critical questions of fact, fundamental questions of value, or the weighting of competing benefits and harms, they do properly rely on religious convictions that help them answer these questions.” Greenawalt (1988): 12. Another example is Maclure and Taylor who suggest that the restriction on transposing ethical-religious norms to the political-juridical level applies only under the condition that there is disagreement about ethical-religious beliefs and commitments in a society: “In a society where there is no consensus about religious and philosophical outlooks, however, the state must avoid hierarchizing the conceptions of the good life that form the basis of citizens’ adherence to the basic principles of their political association. In the realm of core beliefs and commitments, the state, to be truly everyone’s state, must remain ‘neutral’.” Maclure, Taylor (2011): 13.

not share deep ethical commitments. For the sake of this, a political-legal community is permitted to use external coercion with the qualification that such use should be necessary or appropriate for enabling the conditions that ensure the freedom of choice of every member (and hence their equality as persons). From a Kantian standpoint, a rightful state and a decent ethical community complement and mutually support each other's purpose, but must remain separate if we are to avoid the tyrannical imposition of a particular conception of the good.

Thus, what follows is an attempt to figure out a viable approach to relations between law, ethics, and religion along Kantian lines. I should note beforehand that my treatment of Kant's works will be selective and oriented to the specific aim I have in this paper. In addition, I do not claim that my interpretation will be the only or the best interpretation of Kant's position on law, ethics, and religion, if this is understood in the sense of exegetical accuracy. Rather, my moderate claim is that the texts and passages I will be dwelling upon give some plausibility to my reading, and such a reading provides us with a model promising to bring forth a principled resolution to an urgent contemporary problem.

In the first part, I will examine the third part of Kant's *Religion within the Boundaries of Mere Reason* with the intention of exposing the general features of the ethical community. I will argue that Kant considers publicity, and indeed public authority, as constitutive of the ethical community. In the second part, I will discuss Kant's argument that we have a unique ethical duty to enter into an ethical community. Dealing with this argument will set forth not only the constitutive purpose of the ethical community, but also explain why Kant gave it a religious form. In the third part, I turn to the constitutive purpose of the state as Kant describes it in the *Doctrine of Right*. In the end, I will conclude that we find in Kant the general contours of a model for the relations between law, ethics, and religion, which can be of great use in principled resolution of the problems we experience in the contemporary world.

The General Features of the Ethical Community

As is evidenced by the literature it stimulated, Kant's *Religion within the Boundaries of Mere Reason* is certainly a difficult work, in the sense of being elusive about both the questions it deals with and the responses it provides to them.¹⁸ Whatever one thinks of the nature of this text, one thing seems certain: this is a work pertaining no less to political and social philosophy than to theology and

¹⁸ For different problems or different aspects of the general topics dealt with in *Religion within the Boundaries of Mere Reason*, see the essays collected in Michalson et al. (2014).

epistemology. One important aspect of its contribution to political and social philosophy is the account of the ethical community, its linkage to religious faith, and its separation from the political-legal community. Particularly in “Division One” of Part Three, Kant provides an elaborate account of the ethical community that his major works on moral and political-legal philosophy, such as the *Groundwork*, the *Critique of Practical Reason*, and the *Metaphysics of Morals*, lack.¹⁹ He develops his account, interestingly, through a comparison between the ethical community and the state. One can argue that his comparison begins with a point of commonality, and continues through four points of distinction, which will provide us with the general features of the ethical community.²⁰

Common point: public character. Kant argues that “a *juridico-civil* (political) state is the relation of human beings to each other inasmuch as they stand jointly under *public juridical laws* (which are all coercive laws),” while “an *ethico-civil* state is one in which they are united under laws without being coerced, i.e. under *laws of virtue* alone.”²¹ Both of these states are contrasted with their distinctive counterparts: the “*juridical state of nature*,” and the “*ethical state of nature*.” A state of nature as such is the condition wherein “each individual is his own judge, and there is no effective *public* authority with the power to determine legitimately, according to laws, what is in given cases the duty of each individual, and to bring

¹⁹ Although I will be using the English translations of Kant’s texts, I will cite them with the page numbers in the German Academy Edition as well as those in the translations. The numbers after slash will be indicating the German pagination.

²⁰ I make haste to state that, in the following account of the general features of an ethical community, I will have some reservations regarding a certain facet of Kant’s view. Undeniably, a fundamental aspect, if not the entire meaning, of Kant’s project in *Religion* is to work on a conception of religion in line with an ethics based on a robust ideal of autonomy. As a result, Kant feels free to speak of the substantial ethical content and the inner structural form a genuine ethical-religious community should take (for instance, see Kant (1996): 136/RGV, AA 6:101–102, where he enumerates the requirements and marks of the true invisible church). In addition, he is not shy to speak critically of certain religious traditions, not only when they are theocratic, but also when they are exclusivist (and thus incompatible with the universal value of humanity as an end in itself), or based on a heteronomous conception of ethics (for instance, see *ibidem*: 153–156/RGV, AA 6:125–128, where Kant speaks dismissively of the Jewish conception of community, not only on the ground that it is organised as a political authority, i.e. as a theocracy, but also on the grounds that it is exclusivist, i.e. not open to all members of humanity.) I think that, to the extent that such arguments are made from the standpoint of Kantian autonomy, they should be bracketed when considering the more general model of the relation between law, ethics, and religion. For what is not acceptable from Kant’s ethical standpoint should be tolerated from the standpoint of law, insofar as laws are compatible with the much thinner principle of right, i.e. the principle of free-choice. Otherwise, Kant’s entire distinction between ethics and right would collapse. Hence, I will completely skip this aspect of Kant’s arguments in this paper, as I think Kant would (or should) fully agree with this, insofar as the issue is restricted to a consideration of the relations between law, ethics, and religion.

²¹ Kant (1996): 130/RGV, AA 6:95.

about the universal execution of those laws.”²² What distinguishes one state from another, then, is its characteristic kind of legislation and publicity it gives rise to.

Indeed, Kant indicates that public authority is essential to the concept of ethical community already in the paragraph preceding the one in which the foregoing distinctions are made: “an association of human beings merely under the laws of virtue, ruled by this idea, can be called an *ethical* and, so far as these are public, an *ethico-civil* (in contrast to a *juridico-civil*) society, or an *ethical community*.”²³ It deserves emphasis that by the public character of the laws of virtue in an ethical community Kant must mean something more than the commonality of ethical commitments among individuals. For a mere ethical association, which is different from an ethical community precisely because it lacks publicity, does feature such commonality. A mere ethical association may then be conceived of as an ethical state of nature with the qualification that there is incidentally a commitment to common laws of virtue. It is quite analogical to the juridical state of nature with the qualification that it is incidentally a peaceful one. This suggests that the public nature of the laws of virtue in an ethical community should mean the existence of a public authority. That is, there is a genuine ethical community only if individuals have put themselves under a public authority.

That Kant means the public authority by the public nature of the laws of virtue in an ethical community becomes clear also in a later passage, where he speaks of the church as the actual form an ethical community should take:

So far as every society under public laws entails a subordination of its members (in the relation of those who obey the society’s laws with respect to those who oversee their observance), the mass of people united into that whole (of the church) is a congregation under superiors who (under the name of teachers or shepherds of souls) only administer the affairs of the church’s invisible supreme head, and, in this respect, are called servants of the church, just as, in a political community, the visible head occasionally calls himself the supreme servant of the state, even though he does not acknowledge any other human being above himself (and, as a rule, not even the people as a whole).²⁴

²² Ibidem: 131/RGV, AA 6:95.

²³ Ibidem: 130/RGV, AA 6:94.

²⁴ Ibidem: 135/RGV, AA 6:101. One could argue that there is still an ambiguity concerning whether the ethical community indicates the “church invisible” (“the mere idea of the union of all upright human beings under direct yet moral divine world-governance, as serves for the archetype of any such governance founded by human beings”) or the “church visible” (“the actual union of human beings into a whole that accords with this ideal”) (ibidem: 135/ RGV, AA 6:101). If he meant the

Kant's argument that an effective public authority is inherent in the concept of ethical community seems puzzling, for he is crystal clear that the duties of virtue should be self-imposed, and that an ethical community is all about duties of virtue. Is Kant here defying his principle of autonomy as the ground of ethics, since he is now suggesting that in an ethical community each individual will not be his own judge, but there will be an effective public authority determining duties and bringing about a general execution of them? Was not the public authority the distinguishing element for duties of right, and thus pertaining to the juridico-civil (political) society exclusively? If Kant is not contradicting his own ethics, the public authority he is now attributing to an ethical community should be of a different nature from the one a political society has. This is indeed so, as the points of distinction between a political community and an ethical community make clear.

The 1st point of distinction: the distinction in the mode of operation. With regard to political communities, Kant argues, "all the political citizens are, as such, still in the *ethical state of nature*, and have the right to remain in it."²⁵ In this context, he first articulates the reason from the side of ethics: the ethical community is a concept in which "freedom from coercion" is inherent; hence, a political community coercing its members in the direction of their submission to an ethical community would be a contradiction in terms. Even though "a dominion over minds according to the laws of virtue" might be considered desirable on the part of legal-political authority, coercion used for this purpose is disastrous. Then he adds that this is so not only with regard to the ethical character of citizens, but also with regard to the purposes for the sake of which the juridical-civil community is established: "But woe to the legislator who would want to bring about through coercion a polity directed to ethical ends! For he would thereby not only achieve the very opposite of the ethical ends, but also undermine his political ends and

former, it would then follow that the person obeying the moral law already demonstrates her commitment to the ethical community and requires nothing else to do. For the reason I will immediately express in the main text, I think this would be a line of argument that would much better square with Kant's ethics of autonomy in general. However, it would lead to significant difficulties in making sense of Kant's arguments in *Religion*. Kant employs the distinction in the context of his discussion of the realization of the ethical community, and this suggests that the visible church (i.e., an actual ethical community) is the locus of this realization, for the invisible church (i.e., the ideal of a universal ethical community of pure moral faith) is "not the object of a *possible* experience" (ibidem: 135/RGV, AA 6:101). Besides, as we will see below, Kant thinks that we should enter into an ethical community so as to assure our fellows that we commit ourselves to striving to counter the radical evil in the human nature and following the moral maxims. However, such a moral commitment cannot be adduced from our actions, because the moral worth of our actions concerns our *underlying* intentions. Hence, I think that, in the context of the *Religion*, the ethical community into which we should enter should mean an *actual* ethical community.

²⁵ Ibidem: 131/RGV, AA 6:95.

render them insecure.”²⁶ Indeed, Nicholas Tampio very nicely reformulates Kant’s argument in this regard: “The principle of right precludes the state from enforcing any ecclesiastical faith because that imposition seems a contradiction in terms (or a gross violation of piety) and the state fails to fulfill its duty if it stirs up religious strife rather than adheres to its duty of guaranteeing external right.”²⁷

The 2nd point of distinction: the distinction in the purpose. The question is then what are the ethical and political purposes to which Kant refers in the passage just quoted. In a political community, Kant says, “legislation proceeds from the principle of *limiting the freedom of each to the conditions under which it can coexist with the freedom of everyone else, in conformity with universal law,*” i.e. the principle of external right.²⁸ In other words, the entire purpose of political community lies in ensuring individuals’ external freedom. In an ethical community, on the other hand, “all the laws are exclusively designed to promote the *morality* of actions (which is something *internal*, and hence cannot be subject to public human laws).”²⁹ As we will later see in more detail, this purpose is connected with the ideal of the highest good, or the Realm of Ends in the world.

The 3rd point of distinction: the distinction in the character of laws. This distinction is closely connected with the previous one. Juridical laws are human laws (i.e. rules posited by human beings), although their principle, i.e. the principle of external right can never be considered as a posited rule.³⁰ Hence, in the case of juridical (positive) laws, there is always a supreme legislator, a lawgiver, whose will constitutes the grounds these laws stem from. If juridical (positive) laws are really in conformity with the principle of external right, the ensuring of which is the sole purpose of political community, this means that the lawgiver is indeed “the mass of the people joining in a union.”³¹ On the other hand, ethical laws cannot be conceived of “as proceeding *originally* merely from the will of [any] superior [...] for then they would not be ethical laws, and the duty commensurate to them would not be a free virtue but an externally enforceable legal duty.”³² Since they should be considered a priori and thus non-posited norms by definition, we can conceive

²⁶ Ibidem: 131/RGV, AA 6:96.

²⁷ Tampio (2014): 181.

²⁸ Kant (1996): 133/RGV, AA 6:98. The italics are Kant’s own.

²⁹ Ibidem: 133/RGV, AA 6:98–99.

³⁰ As we will see below, the principle of external freedom is rather the necessary (constitutive) principle of political-legal relation.

³¹ Kant (1996): 133/RGV, AA 6:98.

³² Ibidem: 133–134/RGV, AA 6:99.

only a *notional* legislator for ethical laws. This is the idea of God, whose will is in perfect harmony with goodness and, thus, commands nothing but goodness.

The 4th point of distinction: the distinction in constitution. From the distinction between the character of ethical and juridical laws we can proceed to the distinction between their forms of constitution. Although Kant uses, in certain instances, a political ideal, namely the ideal of republic, to designate the constitution of the ethical community,³³ he makes clear, in one passage, that it has nothing to do with a political constitution: “an ethical community really has nothing in its principles that resembles a political constitution.”³⁴ Hence, any reference to a political idea or concept, including the ideal of republic, to designate the form of ethical community, may have only a metaphorical value at most. As he further argues,

Its constitution is neither *monarchical* (under a pope or patriarch), nor *aristocratic* (under bishops and prelates), nor *democratic* (as of sectarian *illuminati*). It could best of all be likened to the constitution of a household (a family) under a common though invisible moral father.³⁵

Unlike a political community that provides the rightful context of interaction among individuals setting and pursuing their own ends, a family is a union of a plurality of individuals associating and collaborating on the basis of common ends.

In light of these four distinctions, we can now understand what Kant means by the non-political public authority in an ethical community. Like a political public authority, the ethical public authority indicates a hierarchy among the members: “every society under public laws entails a subordination of its members (in the relation of those who obey the society’s laws with respect to those who oversee their observance).”³⁶ Yet, the superiors of an ethical community, which Kant thinks should be designated as “teachers” or “shepherds of soul,” are, by definition, incompetent to use any means of external coercion except conviction. Naturally, this kind of authority (i.e. an authority that is devoid of any means of external enforcement) is conceivable only on the basis of the actual consent of the members. Hence, I think, the crux of the distinction between the public political authority and the public ethical authority may be formulated as follows: while the former can only be linked to a modal conception of consent, the latter requires ac-

³³ Ibidem: 133/RGV, AA 6:98.

³⁴ Ibidem: 136/RGV, AA 6:102.

³⁵ Ibidem.

³⁶ Ibidem: 135/RGV, AA 6:101.

tual consent.³⁷ More precisely, Kant suggests, while a political authority will still be legitimate when its norms are not actually consented to by those subjected to them, an ethical public authority binds only those who actually consent to it.

Here may lie the answer to the question concerning the contradiction between the ethical ideal of autonomy and the idea of a public ethical authority. To the extent that an actual consent on the part of an individual is necessary and that by consenting the individual submits to ethical ends for the realisation of which, s/he thinks, the instruction provided by the authorities of his/her ethical community will be necessary or adequate, the foregoing contradiction may be mitigated.

However, I have to underline, this is only a palliative solution. For there are two alternative ways to understand the situation of an individual who has subscribed to an ethical community, and both of them are problematic. First, we can think that the member of the ethical community actually consents to abiding by what the authority tells him/her to do in order to realise the ethical ends s/he has consented to. If so, the person is no longer autonomous, because s/he would have given up the use of his/her capacity to free judgement, which is essential for autonomy. Alternatively, we can think that s/he consents to abiding by what the authority says only insofar as it is in line with what s/he thinks is right. In this case, however, it is not clear s/he really recognises an authority at all. One could think that this problem is solvable if the ethical community to which an individual subscribes is guided by (i.e., constantly oriented towards) the idea of universal moral community of all human beings. For the latter, which is called “the invisible church,” has a form in which there is only a *notional* commander, i.e. God, and the authority is indeed un-disposable (*nicht verfügbar*) on the part of any individual or group of individuals. This means that the contradiction between the ethical ideal of autonomy and the idea of a public ethical authority disappears only if the community at hand is an uncompromisingly open, inclusive and consensually structured community. In this case, however, there also remains the question of what genuine authority any concrete-historical instantiation of such a community would genuinely hold, since individuals would be preserving their rights to appeal to the invisible church, i.e., the ideal of the true church, the insight to which comes from their own capacity to judge. Since the focus of the present paper is the relation between ethical community and political society, rather than the compatibility of Kantian ethics and the ethical community, I leave the complete solution of this problem for another paper.

³⁷ For distinctions between actual, hypothetical, and modal conceptions of consent, see O’Neill (2012).

In *Religion*, Kant's argument concerning the ethical community goes far beyond the assertion that the ethical ideal of autonomy and the idea of a public ethical community are compatible. He argues that, even though there can be no legal (externally enforceable) obligation to enter into an ethical community,³⁸ human beings have an ethical duty to leave the ethical state of nature in order to become members of an ethical community. Now we have to understand the nature of this duty.

The Constitutive Purpose of Ethical-Religious Community

This is how Kant accounts for the grounds of the ethical duty to enter into an ethical community:

Just as the juridical state of nature is a state of war of every human being against every other, so too is the ethical state of nature one in which the good principle, which resides in every human being, is incessantly aggressed by the evil which is found in him and in every other as well [...] Further, just as the state of a lawless external (brutish) freedom and independence from coercive laws is a state of injustice and of war, each against each, which a human being ought to leave behind in order to enter into a politico-ethical state, so is the ethical state of nature a *public* feuding between the principles of virtue and a state of inner immorality which the natural human being ought to endeavour to leave behind as soon as possible.³⁹

This argument presupposes Kant's arguments for the highest good and the radical evil in human nature. Hence, to understand his point, we have to deal with them very briefly and selectively, avoiding the dimensions of Kant's discussion that are not essential for our purposes here.

As Kant recalls at the very beginning of *Religion*, the account of morality he provided has a ground free of any ends (purposes) human beings might have: "since its laws bind through the mere form of universal lawfulness as the highest condition (itself unconditional) of all ends, morality needs absolutely no material determining ground of the free power of choice, that is no end, either in order to recognize what duty is or to impel its performance."⁴⁰ However, this does not

³⁸ "The citizen of the political community therefore remains, so far as the latter's lawgiving authority is concerned, totally free: he may wish to enter with his fellow citizens into an ethical union over and above the political one, or rather remain in a natural state of this sort." Kant (1996): 131/RGV, AA 6:96.

³⁹ Ibidem: 132/ RGV, AA 6:97.

⁴⁰ Ibidem: 57/ RGV, AA 6:3-4.

mean that morality has nothing to do with ends. Indeed, in his *Metaphysics of Morals*, Kant argues that the recognition of the moral law leads us to the recognition of certain ends which constitute the subject matter of ethics as a particular realm of morality.⁴¹ He thinks that all ethical duties, i.e. duties of ends, stem from two general duties: “one’s own perfection” and “happiness of others.”⁴² Moreover, in the *Critique of Practical Reason*, he already elaborated on the idea of the “highest good” as the end brought about by our recognition of the moral law. Very briefly, the highest good is “the whole” a moral person shall make her end, which amounts to a world in which morality will not only prevail but also pay off, or, as Kant himself put it, a world wherein “happiness [is] distributed in exact proportion to morality (as the worth of a person and his worthiness to be happy).”⁴³ Two postulates of practical reason or articles of rational practical faith, namely the idea of the immortality of the soul and the existence of God, rise out of this ideal as the conditions of the possibility of its realisation.⁴⁴ However, *Religion’s* argument that systematically connects ethics, ethical community, and religion involves new aspects, which we lack in the *Critique of Practical Reason*, as well as in the *Metaphysics of Morals*.⁴⁵

In *Religion*, Kant restates the core of the position he defended in the *Critique of Practical Reason*. He argues that a person recognising the moral law cannot remain indifferent to the result of her actions done out of her respect for this law. She must also will this result as the object of her action. This object is a kind of existence in which reality and morality are in harmony. For the moral-rational but also sentient beings we are, this means a condition in which happiness is proportional to virtue.⁴⁶ In its most complete form, this condition is the “idea of a highest good in the world,” i.e. the idea that the final end of all things (i.e. of all existence) lies in the attainment of a condition whereby happiness is proportional to virtue. It is then our moral duty to take the “idea of a highest good in the world” as our object and strive for it. However, bringing about a complete harmony between “what

⁴¹ For Kant’s pivotal division of morality into *ethics* and *right*, see particularly Kant (2009): 145–147/MS, AA 6:379–382. Ethics is the system of ends a moral person should set out and pursue, while right is the system of externally coercible rules that should be respected in interacting with individuals *qua* persons entitled to set out and pursue their ends.

⁴² Ibidem: 150–152/MS, AA 6:386–388. Kant recalls these general ethical duties in a footnote to the passage of *Religion* just quoted. Kant (1996): 57/ RGV, AA 6:4.

⁴³ Kant (2015): 90/KpV, AA 5:110.

⁴⁴ Ibidem: 98–106/KpV, AA 5:122–132.

⁴⁵ Tampio (2009) and Muchnik (2009) have already pointed out the significance of Kant’s *Religion* in this regard.

⁴⁶ Kant (1996): 58/ RGV, AA 6:5.

is” and “what ought to be” is evidently beyond our limited capacities as moral agents. Here emerges the idea of a moral and also omnipotent agent, “who alone can unite the two elements of this good.”⁴⁷ This is, of course, the idea of God. Hence, Kant concludes, “morality [...] inevitably leads to religion, and through religion it extends itself to the idea of a mighty moral lawgiver outside human being.”⁴⁸ As he states in the last part of the *Religion*,

Since by himself the human being cannot realize the idea of the supreme good inseparably bound up with the pure moral disposition, either with respect to happiness which is part of that good or with respect to the union of the human beings necessary to the fulfillment of the end, and yet there is also in him the duty to promote the idea, he finds himself driven to believe in the cooperation or the management of a moral ruler of the world, through which alone this end is possible.⁴⁹

We can now understand why ethics evokes religion through the idea of the highest good. However, it still needs to be explained why Kant thinks that ethics evokes an “ethical community” in which religion has public significance. The novelty of the argument in *Religion* lies precisely in providing an answer to this question in Part 3. Kant argues that the duty to leave the ethical state of nature in order to become a member of an ethical community is a duty of a unique kind:

⁴⁷ Ibidem.

⁴⁸ Ibidem: 59-60/RGV, AA 6:6. At this point, I have to make the second reservation against Kant’s argument in *Religion* (see footnote 20). Kant’s argument hinges on the idea that there is an essential/irreplaceable link between the ethical community and religion, for the faith we need in our engagement in the project of the creation of a moral world can only be articulated in religious terms. I simply do not agree with this. If what is essential for an ethical community is some cognitive standpoint that makes conceivable the possibility of our capacity to mutually edify ourselves and to insert morality into the world, this can be articulated in secular terms along the lines of a metaphysical account of history culminating in human emancipation, as well as in religious terms. This is indeed the contention Onora O’Neill raises, taking her inspiration from Kant’s own writings on politics and history: the question of rational faith and hope “leaves open not only various ways in which identifiably religious hopes for human destiny may be articulated, but also the possibility that hopes for human destiny may be articulated in social, political, and historical, this-worldly terms rather than in other-worldly terms.” O’Neill (1996): 303. Indeed, far too numerous civic associations and non-governmental organizations in the contemporary world seem based on such this-worldly articulations of the hope for a future of the edified humanity. Insofar as their members consider such associations and organizations the essential locus of their conceptions of the good life or their striving for a better human life, I can see no good reason why they should not be considered ethical communities. Hence, I side with O’Neill in this respect. However, this is not Kant’s own argument as far as *Religion* is concerned, as is emphasised by many Kantian scholars. For a forceful account of Kant’s original view that rational faith and hope can only be articulated within a religious framework, see Muchnik (2014).

⁴⁹ Kant (1996): 165/RGV, AA 6:139.

Now, here we have a duty *sui generis*, not of human beings toward human beings but of the human race toward itself. For every species of rational beings is objectively – in the idea of reason – destined to a common end, namely the promotion of the highest good as a good common to all. But, since the highest moral good will not be brought about solely through the striving of one individual person for his own moral perfection but requires rather a union of such persons into a whole toward that very end, [i.e.] toward a system of well-disposed human beings in which, and through the unity of which alone, the highest moral good can come to pass.⁵⁰

Here Kant stresses that the idea of the highest good in the world is indeed the ideal of a moral world (the Realm of Ends), not simply the ideal of a virtuous individual achieving happiness appropriate to herself. To the extent that the object designated as the highest good is itself a public object, its pursuit should be more than a private endeavour. It requires engagement with other human beings, i.e. public collaboration.⁵¹ However, why should we take the idea of the highest good in this public sense, rather than the individualistic ideal of an inner citadel suggested by the Stoics?

To deal with this deeper question, Kant introduces the doctrine of the “radical evil in human nature” and the conception of “virtue as the struggle of the Good with the Evil,” which he subsequently developed in Part 1 and Part 2. Very briefly, Kant thinks that there is in human nature a propensity to transgress the moral law when its commands come at odds with our inclinations. What is evil are not the inclinations themselves, but a maxim chosen to privilege inclinations when the pursuit of them would contradict the moral law. Hence, the doctrine of the radical evil in human nature is that we are prone to use our capacity of choice to make inclinations, rather than the moral law, the determining basis of our actions.

⁵⁰ Ibidem: 132-133/RGV, AA 6:97-98.

⁵¹ This point is emphasised also by Pablo Muchnik. He argues that while in the *Critique of Practical Reason* “Kant conceived of the highest good as a goal every virtuous agent is devoted to bringing about in isolation,” *Religion* brings about the idea of “a common goal” binding the wills of the separate agents “in a moral undertaking whose success requires *mutuality of pursuit*.” Muchnik (2014): 210. One might object that since the Formula of the Realm of Ends and the happiness of others as one of the two general ethical duties are present from the beginning in Kant, it is not clear whether there is really anything quite new in the account of the ideal of the moral world in *Religion*. As for the Formula of the Realm of Ends, it seems to me that there is an important difference between the duty to act as if legislating in the Realm of Ends and the duty to contribute to the creation of (or the approximation towards) a moral world in which virtue and happiness will coincide. As for the happiness of others as an ethical duty, it is still an individualistic duty, in the sense that an ethical person might fulfil this duty without any need to collaborate with others, in order to create a moral world.

This is the evil principle, and Kant thinks that the ethical ideal (i.e. the ideal of virtuous life) consists in combatting our propensity to this principle, rather than mistakenly combatting our natural inclinations. In Part 3, Kant attaches to these ideas a new twist along the lines of what may be called a Rousseauian critique of social life: the cause of evil springs “not from his own raw nature, so far as he exists in isolation, but rather from the human beings to whom he stands in relation or association.”⁵² The source of the problem are not our natural needs, but passions aroused by the instigation of social life rather than our own nature: “envy, addiction to power, avarice, and the malignant inclinations associated with these, assail his nature [...] *as soon as he is among human beings* [...] they will mutually corrupt each other’s moral disposition and make one another evil.”⁵³ Hence, social life, in so far as it remains an ethical state of nature, is a state in which the human being striving for virtue is under incessant attack. Hence, the conclusion is that the ethical end should be the creation of a public union of ethical individuals, i.e. of an ethical community, rather than merely striving after the perfection of one’s own personality, because only in this way can individuals progress towards extirpating the source of the evil principle in themselves.

Honestly, I find the above argument for the ethical community too loaded by the metaphysical assumptions of the traditions Kant appropriated, albeit critically and originally, namely, a metaphysical perspective integrating the notion of the original sin in Christianity with Rousseau’s critique of civilization.⁵⁴ Perhaps a more promising argument for the creation of an ethical community could be derived from the idea of a fundamental ethical end, i.e. an end that comes even before “self-perfection” and “happiness of others” and combines them within itself. The end I mean is the moral-rational nature as an end in itself. Then, Kant could plausibly argue that since it is the moral-rational nature *per se*, not only my own moral-rational nature, that ought to matter to me, the ethical ideal should be a public union of all moral-rational beings, rather than the individual pursuit of a virtuous life. This kind of argument connecting the idea of moral-rational nature as the fundamental ethical end and the idea of ethical community as the highest good in the world would be much simpler and more in line with the spirit of Kantian philosophy that tries to tame controversies sparked by strong metaphysical propositions, rather than resting upon them. However, this would still be an ar-

⁵² Kant (1996): 129/RGV, AA 6:93.

⁵³ Ibidem: 129/RGV, AA 6:93–94.

⁵⁴ For a defense that such appropriations do indeed fit well with the credentials of the critical philosophy, see Wood (2009).

gument from a Kantian ethical standpoint; hence, it would appeal only to those who subscribe to his ethics.

There is yet a more general⁵⁵ argument for the duty to unite under an ethical community. Although the “ethical life as such” presupposes that human beings have the capacity to set and pursue their ends, it requires that human beings both commit themselves to ends they see obligatory and permissible, and engage in practices for the realisation (instantiation or promotion) of these ends. In any case, the “ethical life as such” is a pursuit of “inserting morality into *the world*.”⁵⁶ In other words, it is about moulding the world, particularly the *human* world, in light of these ends. Hence, it is inherent to the concept of the ethical life that it strives after its own objective realisation, which we can also designate as the desire for gaining “publicity.” However, as we saw above, the public character of ethical norms marks the distinction between an ethical community and an ethical state of nature. Hence, a conception of ethical community, or a duty to subscribe to an ethical community, should be an essential element in any salient ethical vision.

In light of all the above, we can conclude that Kant thinks that an ethical community should have a religious basis and even a religious form, to the extent that the ethical pursuit of a public world of morality, i.e. the pursuit underlying an ethical community, requires rational faith in God. In other words, for Kant, it is precisely religious faith that provides the public characteristics needed for the establishment of an ethical community, since it is the cognitive pillar on which we assume the capacity to mutually edify ourselves and to insert morality into the world, i.e., to mould the world in accordance with the idea of the Realm of Ends. Hence, from the Kantian standpoint, it would be nonsensical to take religion merely as a private affair, or to call for a conception of religion deprived of its public aspect. In this vein, he sees religion or religious faith as the buttress of our striving for a public form of ethical life.

Kant’s recognition of the public significance of religion in the context of ethical community goes hand in hand with his strict opposition to transpose this public significance into the juridical domain. In *Religion*, Kant defines theocracy as a “juridical community,” more particularly, as “an aristocratic government” ruling in the name of God.⁵⁷ Although Kant’s dismissive tone is clear enough, the deep impact of his argument may not be so. For what bothers Kant is not merely that

⁵⁵ By the term “general” here, I mean meta-ethical, in the sense of not referring to any substantive ethical argument, such as the argument from moral-rational nature.

⁵⁶ I borrow this phrase from Onora O’Neill (1997): 282.

⁵⁷ Kant (1996): 134/RGV, AA 6:99–100.

theocracy is an aristocratic form, but that it is the paradigm case of the incongruous merging of the political-legal with the ethical-religious. More precisely, it is vain and calamitous to try to forge an ethical community through the political means of external coercion. The merging of the political-legal with the ethical-religious is condemnable, even when the transposition of the ethical-religious into the juridical sphere is done on a democratic-contractual basis, rather than on an aristocratic-dictatorial basis.⁵⁸ It is so for two main reasons. First, any venture to back up ethical norms with political-juridical power, i.e., external coercion beyond the force of ethical conviction, gravely endangers the ethical life. Second, a political-juridical community is no less important to a decent human life than an ethical community, and it is essential to the idea of a political-juridical community that juridical norms should be kept apart from the ethical-religious norms and rest solely on the much thinner layer of juridical normativity.⁵⁹ I think that the first reason has already become clear in this paper. In the next part, I will try to explain the second reason, taking my inspiration from Kant's account of law and his separation of the political-juridical domain from the ethical domain in his *Doctrine of Right*.

The Political-Legal Community

Now, I hope that the reader will tolerate it if I try to articulate Kant's conception of ethical community by using contemporary terminology. It is arguable that by ethical community he meant a social union based on a thick and robust normativity, comprising shared ethical values besides common needs and mutually recognised interests. It is thus the medium, the associational context, within which fellows cooperate for the realisation of the same, similar or overlapping ideals of the good life. Such a medium or context is of the utmost importance for

⁵⁸ I think that the following passage from *Theory and Practice* evidences this: "If we wish to discover whether a law which declares permanently valid an ecclesiastical constitution (itself formulated at some time in the past) can be regarded as emanating from the actual will or intention of the legislator, we must first ask whether a people is *authorized* to make a law for itself whereby certain accepted doctrines and outward forms of religion are declared permanent, and whether the people may thus prevent its own descendants from making further progress in religious understanding or from correcting past mistakes. It is clear that any original contract of the people which established such a law would in itself be null and void, for it would conflict with the appointed aim and purpose of mankind." Kant (1991): 85/TP, AA 8:305.

⁵⁹ By the "thinner layer of normativity," I mean the kind of normativity that should guide individuals when they encounter each other *simply as persons*, and thus *not as associates* sharing a specific thick conception of life or a common project beyond that of rightful/peaceful regulation of their casual interactions. Conversely, the "thick layer of normativity" among a plurality of human beings is built upon a common conception of the good life or a common life-project on the basis of which they consider each other associates rather than (merely) independent persons.

human beings, because ethical normativity makes the lives of individuals integral and meaningful.

However, Kant's major point in the *Doctrine of Right* – the first part of the *Metaphysics of Morals* dealing with the principles of law and civil (politico-juridical) union – seems to be that ethical normativity, in general, and ethical community, in particular, are not all that matters to human beings. For although the ethical normativity is the layer through which human life is made meaningful in the deepest sense, it is unable to bring about a normative solution to a certain facet of human interactions, which I will call the “political problem.” To make sense of this, think of what happens when an ethical person or an ethical community has to come to terms with a “divergent” person who is not in line with the shared ethical ideals or values. If the ethical normativity is the sole point of reference, there are two ways of coping with such a situation. First, you might take the divergent person as an unsteady insider and then try to exert moral education or other forms of social discipline on her, so as to turn her into a decent fellow. Hereby, the divergent person is not recognised as a fully-fledged fellow, and there is no true community between you and her, precisely because there is no symmetrical recognition of ethical agency. From your standpoint, she is exposed to a propaedeutic to the ethical life, rather than the ethical life in the strict sense. From her own standpoint, she is exposed to an arbitrary enforcement of a set of ideals, which defies her personal agency. Second, and probably worse, you might take her as an outsider, in which case you would be evoking the image of ethical community as a battleship fighting against the evil-chaotic forces at work outside the ship, in the cause of goodness. In both cases, what we find is not a normative (i.e., reciprocally agreeable) resolution, but an apology for employing techniques of power over those who, as you think, should be converted into your conception of the moral good, or whose detrimental influence on your pursuit of the good should be avoided.

In a nutshell, the truly political problem is the one that arises between parties that disagree on ethical norms or ethical ideals relevant to the case in question. Were you to try to resolve the problem on the basis of your own set of ideals, this would lead nowhere but to the exertion of power, which would seem arbitrary from the standpoint of the other party. Hence, insisting on an ethical solution to a truly political problem does not mean working out a normative solution, but the reverse: it means relying upon the “judgement” by the play of power.

On the other hand, there is still a normative alternative that can be worked out. It is the path of law founding a civil union, rather than an ethical community. It is based on the reciprocal recognition of the fundamental quality of human be-

ings as persons, i.e., as beings setting and pursuing their own ends, *whatever these ends are*. As we saw above, the normativity pertinent to ethics and the ethical community presupposes the quality of human beings as persons setting and pursuing their ends. However, ethical normativity concerns the way we should shape ourselves and the social world we live in. In other words, as is evident from the categorical imperative as the supreme principle of ethics, ethical normativity is a structure of *norms imposing duties* on individuals from the very beginning. On the other hand, Kant distinguishes the universal principle of right from the universal law of right, giving priority to the former.⁶⁰ The universal principle of right reads 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.”⁶¹ This principle is quite different from the categorical imperative. Although the universal principle of right is the ground on which all duties of right are conceivable, it is in itself not primarily a principle that imposes duty, but a principle that confers power on individuals. More precisely, it puts forward freedom as the default status of individuals in law, as was clear when Kant defined freedom in the sense of “independence from being constrained by another’s choice” as “the original right belonging to every man by virtue of his humanity.”⁶² Then, all duties of right, and thus the entire sphere of the legal normativity, are grounded upon a principle conferring power on individuals, which consists in the recognition of them as their own masters, in the sense that they will set and pursue their own ends, *whatever those ends might be*, insofar as they do not infringe on others’ freedom.

Hence, in the case of law, we are not talking about the discipline of human character in any sense; and we are not talking about an ethical good that would be considered the ground of legal obligations. Instead, we suspend any appeal to the ethical good and to the obligations derived from it. What comes out is an ethically-detached principle that prescribes the conditions necessary for the personal independence of each member, namely the universal principle of right. This principle is ethically detached, in the sense that it does not concern itself with the way personal independence is deployed, insofar as it does not contradict the others’ freedom. Furthermore, this principle is justified, because freedom as personal independence is the essential presupposition that all parties involved in a political problem hold with regard to themselves, insofar as they stand as parties in the

⁶⁰ Kant (2009): 24/MS, AA 6:230–31.

⁶¹ Ibidem: 24/MS, AA 6:230.

⁶² Ibidem: 30/MS, AA 6:237.

political problem. The reason for the political problem is that there are parties setting and pursuing divergent or contradicting ends. The normative dimension among the parties in a political problem can be constructed merely by the recognition of the same quality they propose in themselves. Such reciprocal recognition designates the normative structure of a political-judicial community, which Kant called a “civil union.”⁶³ The end of this community is nothing but peace⁶⁴; and the means it employs is law, based on the principle of justice as the reciprocal recognition of personality. So a political-legal order is not an entity institutionalising a particular ethical ideal, but a neutral and impartial entity under the aegis of which every individual and ethical community have trusted their independence, in the sense of setting and pursuing their ends individually and associatively, whatever value these ends have from an ethical standpoint.

In this way, law can provide a thinner form of normativity among those who either durably or casually might fail to share a thicker (ethical) form of normativity.⁶⁵ This thinner form is fundamental for a decent human life, though never adequate for a meaningful life. After all, from a Kantian standpoint, political-legal relations are not the sphere wherein human life is to be made meaningful.⁶⁶ What

⁶³ Ibidem: 85/MS, AA 6:306.

⁶⁴ “It can be said that establishing universal and lasting peace constitutes not merely a part of the doctrine of right but rather the entire final end of the doctrine of right within the limits of reason alone.” Ibidem: 123/MS, AA 6:355.

⁶⁵ I should note that my claim does not entail that the political-legal normativity is conditional in the sense that it turns out to be obligating only when a peaceful resolution of the problems of interaction on the basis of the ethical normativity turns out to be impossible. It is one thing to say that there would never be an occasion of practical controversy requiring a resolution on the basis of externally-coercive legal norms among morally perfected persons; it is another thing to say that the political-legal normativity would be cancelled out by the ethical normativity in their case. I think it is crystal clear that from a Kantian standpoint even a nation of angels would need the political-legal normativity. The ethical normativity binding them would not cancel out the political-legal normativity, but fulfil it *ex mero motu*, for the true ethical normativity should already be embracing the duties of right as a part of its own. In the case of human beings, the significance of the political-legal normativity and the state aggravates not simply because we are limited rational beings tending to act upon the maxim of self-love, but also our physiological constitution requires that we possess external objects as means to our ends, which causes normative problems that can be ultimately resolved only within the framework of a rightful state.

⁶⁶ In contemporary literature, Leslie C. Griffin is one of the rare authors who deliver an insight similar to the one I found in Kant. In the context of a discussion of fundamentalism and liberal tolerance, she argues, by drawing on the work of John Rawls, as follows: “The desire for respect, honor and love runs deep in human nature, as does the quest for meaning. Religions address those needs. In recent years, resurgent religious fundamentalism has met them most effectively by supplying a comprehensive system that governs all aspects of life, including law and politics. Liberal tolerance offers much less, and much more. It *cannot* cure ‘spiritual emptiness.’ ‘Spiritual well-being [...] is not guaranteed’ in a liberal state because the political conception of justice is political, not theological, religious or philosophical. Liberal tolerance *can* provide the ‘very great value’ of

we should expect from them is, at most, to provide the background circumstances within which human beings themselves are to make their lives meaningful. Hence, although political-juridical community is fundamental, it is far from designating an ideal. Human beings should work their freedom as personal independence up to something more robust, i.e., to an ethically justified or guided course of life, in order to make their lives complete and meaningful. However, they have to do this on their own through their private, associational and public commitments and engagements. The legal-political order cannot embrace an ethical ideal and then take initiative related to their ethical commitments and engagements. It is there only to secure the individuals' entitlement to set and pursue these commitments.

One may think that such an account of the relation between political society and ethical community resembles Rawls' political-liberal model based on a distinction between comprehensive worldviews and a political-liberal conception of justice. Hence, the question arises: Why should we go back to Kant if we already have Rawls? Although it would far exceed the scope of this paper, if I pretended to provide a comparison between Kant and Rawls, I can underline certain points concerning which Kant's own texts are still most insightful for contemporary political liberals. Above all, as I hope my paper has made explicit, Kant had a much clearer and better-grounded distinction between law and ethics.⁶⁷ He made clear that the law is a normative structure based on a principle conferring power on individuals, while ethics is a set of norms imposing duties upon them. He also made clear that "a political-legal question" can never be the same as "an ethical question." That is, the political-legal form of public reason can never be the same as the ethical form of public reason. To give some examples, we deliberate on whether euthanasia, abortion, one's wasteful use of one's private property to the detriment of poor people, divorce, and blasphemy are ethically approvable. However, the

a stable society in which religious freedom is exercised publicly and privately, but not politically." Griffin (2003): 1644.

⁶⁷ In passing, let me note that, in my view, Rawls' failure to draw a clear (not-shifting) distinction between law and ethics stems from his equation of "the comprehensive" with "the private." This equation suggests that a doctrine that was merely an element of a comprehensive (private) worldview at the beginning can turn out to be public if it acquires overlapping consensus throughout time. Hence, "the ethical" can turn out to be "the juridical" in Rawls. It is crystal clear that Kant would not hold to such an equation. For him, anything is public if it is universally communicable to all rational beings. In line with this, the true ethical doctrine, the ethics of autonomy, is both a comprehensive worldview but also public in the sense of universal communicability. One could even say that any claim to truth is a claim to publicity, public validity in Kant. Hence, the distinction between law and ethics has nothing to do with the distinction between "the private" and "the public." Rather, law specifies a particular sphere within the broader sphere of the public: the domain of the externally coercible rules, which is impermeable to any ethical vision, no matter how widespread it might be.

question ceases to be merely ethical when we discuss whether or not the persons committing the foregoing actions should be hindered by the external coercion of state power. The latter is the political-legal problem that should be resolved solely on the grounds of the fundamental principle conferring power of being their own masters on individuals (and, thus, without regard to whether or not one would or should ethically approve the action or the course of action in question). In this way, Kant does not only draw the distinction between ethics and law in a more impermeable way than Rawls does, but also shows that claims for public recognition by religious or ethical communities are compatible with the claim of the secular law, if there is no trespass by either.

Conclusion

In conclusion, I think that, with two basic reservations,⁶⁸ we find in Kant's writings a model of the relations between law, ethics, and religion which can be of great use in the resolution of the contemporary controversy between austere secularism and integrationism. For Kant shows that religious faith provides the cognitive pillar for individuals' ethically required identification with an ethical community conceived as a collective undertaking to mutually edify ourselves and to insert morality into the world, i.e., to mould the world in accordance with the idea of the Realm of Ends. Hence, religion not only has a public role and significance; it is inconceivable without its public aspect. In line with this, the austere secularist argument that religion should merely be a private affair should be rejected. On the other hand, the publicity of ethical-religious community has a nature quite different from the publicity we have in the case of the state as the political-juridical union. This is because both the purposes and the means these two forms of human associations have are of a very different nature. The constitutive purpose of an ethical-religious community is the creation of a moral or morally better world, for the sake of which there is no legitimate means but gaining the consent of people through conviction. However, the constitutive purpose of the state is to enable a normative co-existence among persons and/or groups that might durably or casually fail to reach consensus on their deep ethical-religious commitments. For this purpose, the state is permitted to use external coercion over its members, and the political-juridical norms as externally coercible norms have their public justifi-

⁶⁸ As stated in footnotes 20 and 48 above, my two basic reservations concern Kant's arguments on the substantial ethical content and the inner structural form of the ethical-religious community, on the one hand, and his argument concerning the *essentially/irreplaceably* religious character the reasonable faith grounding the commitment to an ethical community should take, on the other.

cation, insofar as they enable conditions in which every member of the state enjoys their freedom of choice (i.e. their independent personality).

In light of the Kantian model, we are not obliged to choose justice over virtue, or vice versa. Rather, it will be the situation, or the context of the problem we are faced with, that will decide on the normative basis through which the problem will be resolved. In a context where we are dealing with persons of the same mind, in terms of ethical-religious commitments and orientations, there can be no justified interference from the outside, including interference by the state, insofar as none of us appeals to civil law and state authority. With regard to such matters on the ethical-religious basis, the only role the state and the law have is to protect them. On the other hand, no one who rejected the commonly accepted ethical-religious basis and thus appealed to civil law and the state authority to protect her rights as an independent person can be forced to a resolution on ethical-religious grounds. Indeed, such a guarantee to appeal to the ethically-religiously detached authority in cases of need is not detrimental, but supportive of freedom of conscience and religion that constitutes the core of any decent life of virtue. Also, the existence of vivid ethical communities, in the context of which individuals pursue their lives in community with their fellows, on the basis of the public authorities they actually consented to, is not detrimental, but supportive of the state. Hence, the constitutive purposes of the state and the ethical-religious community, namely justice and the life of virtue and integrity respectively, are realisable not at the price of each other, but only concordantly and under the condition that the state and the ethical community are kept separate. The conflict arises only in the cases in which either the actual state or the actual ethical community is essentially degenerate, i.e., where either the state presumes an authority to impose or champion what it assumes to be the true ethical conviction, or the ethical community presumes an authority to enact externally-coercive civil laws. Otherwise, it is the just state which provides a free and open public sphere as the most suitable context for individuals' searches of the true ethical conviction and the form of life in accordance with it; and it is the ethical community with the true ethical conviction which is most respectful of the condition of civic freedom and equality enabled by the just state, since it should be confident that it will prove its truth under this condition.⁶⁹

⁶⁹ Let me note that Gotthold Ephraim Lessing, another outstanding representative of the Enlightenment, gave voice to this insight in a metaphorical and most eloquent way in the "Ring Parable" narrated in his famous play *Nathan the Wise*.

Let me end with putting in a nutshell what contribution the Kantian model of the relations between law, ethics, and religion might make, as far as contemporary debates are concerned. As I mentioned above, there have already emerged approaches that are based on the insight that both conflicting parties, namely austere secularists and integrationists, frame normative concerns to which we cannot remain unresponsive. Such approaches suggest that the task should be that of figuring out a political-social framework within which both the liberal concern for equal rights and liberties and the communitarian concern for the authentic way of life are to be relieved. The Kantian model I propose shares this sound aspiration. However, it differs from much of contemporary intermediating approaches in the path it offers for its actualisation. While the contemporary approaches tend to suggest more porous models of the state-and-religion relations in the spirit of deepening the democratic zeal, the Kantian model offers a sober path in which the state and ethical communities (including, of course, religious-ethical communities) should work in tandem, but impenetrably, so as to actualise their congruous but distinctive constitutive purposes. In other words, the Kantian model provides a secularism that both recognises and encourages the public function of religion. Hence, I think, it stands as a promising ground for normatively dealing with the contemporary concrete difficulties we face in relieving religious concerns in political and social life. This is yet a task for another paper.⁷⁰

References

- Audi R. (2011), *Democratic Authority and the Separation of Church and State*, Oxford University Press, Oxford.
- Audi R., Wolterstorff N. (1997), *Religion in the Public Square*, Rowman and Littlefield, Lanham (MD).
- Chambers S. (2011), "Secularism minus Exclusion," *Good Society Journal* 19 (2): 16–21.
- Greenawalt K. (1995), *Private Consciences and Public Reasons*, Oxford University Press, Oxford.
- Greenawalt K. (2007), "What are Public Reasons?," *Journal of Law, Philosophy and Culture* 1 (1): 79–105.

⁷⁰ Acknowledgment: This essay is part of the Marie Curie Research project titled *A Kantian Approach to Current Tensions between Modern Law and Religious Commitments*. I am indebted to the European Commission that provided me with such a fantastic research grant. I am grateful to Sorin Baiasu, the scholar in charge in the said project, and Pablo Muchnik who have read the initial drafts of this paper and provided me with their rightful criticisms and invaluable suggestions. I also thank the School of Politics, International Relations, and Philosophy (SPIRE) at Keele University for being a wonderful host during my research stay.

- Griffin L.C. (2003), "Fundamentalism from the Perspective of Liberal Tolerance," *Cardozo Law Review* 24 (4): 1631–1644.
- Kant I. (1991), *On the Common Saying: 'This May Be True in Theory, But It Does Not Apply in Practice'*, trans. H.B. Nisbet, [in:] I. Kant, *Political Writings*, H.S. Reiss (ed.), Cambridge University Press, Cambridge: 61–92.
- Kant I. (1996), *Religion within the Boundaries of Mere Reason*, trans. G. di Giovanni, [in:] I. Kant, *Religion and Rational Theology*, A.W. Wood (ed.), Cambridge University Press, Cambridge: 39–215.
- Kant I. (2009), *Metaphysics of Morals*, trans. M.J. Gregor, Cambridge University Press, Cambridge.
- Kant I. (2015), *Critique of Practical Reason*, trans. M. J. Gregor, Cambridge University Press, Cambridge.
- Laborde C. (2013), "Political Liberalism and Religion: On Separation and Establishment," *Journal of Political Philosophy* 21 (1): 67–86.
- Macedo S. (1995), "Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls," *Ethics* 105: 468–496.
- Maclure J., C. Taylor (2011), *Secularism and Freedom of Conscience*, trans. J.M. Todd, Harvard University Press, Cambridge (MA).
- Michalson G.E. et al. (2014), *Kant's Religion within the Boundaries of Mere Reason: A Critical Guide*, Cambridge University Press, Cambridge.
- Muchnik P. (2014), "Kant's Religious Constructivism," [in:] *Kant's Religion within the Boundaries of Mere Reason: A Critical Guide*, G. Michalson (ed.), Cambridge University Press, Cambridge: 193–213.
- Nussbaum M. (2010), *Liberty of Conscience: In Defense of America's Tradition of Religious Equality*, Basic Books, New York.
- O'Neill O. (1997), *Kant on Reason and Religion*, [in:] *Tanner Lectures on Human Values* 18, G.B. Peterson (ed.), Utah University Press, Utah: 267–308.
- O'Neill O. (2012), "Kant and the Social Contract Tradition," [in:] *Kant's Political Theory: Interpretations and Applications*, E. Ellis (ed.), The Pennsylvania Press, Pennsylvania: 25–41.
- Rawls J. (2011), *Political Liberalism*, Columbia University Press, New York.
- Rawls J. (1997), "The Idea of Public Reason Revisited," *The University of Chicago Law Review* 64 (3): 765–807.
- Rorty R. (1994), "Religion as Conversation-Stopper," *Common Knowledge* 3 (1): 1–6.
- Tampio N. (2014), "Pluralism in the Ethical Community," [in:] *Kant's Religion within the Boundaries of Mere Reason: A Critical Guide*, Cambridge University Press, Cambridge: 175–192.
- Weithman P. (2001), *Religion and the Obligations of Citizenship*, Cambridge University Press, Cambridge.
- Wood A. (2009), *Kant's Rational Theology*, Cornell University Press, London.