

The Political Theology of the Secular State in Hobbes and Böckenförde

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ABSTRACT

Standard accounts of the ideological basis of secularization tend to focus on the emergence of non-religious justifications of the authority of the state in early modernity. This article argues that successful secularization also requires a certain political theology, one that leads religious believers to accept that the rules of their religion cannot justifiably claim the status of public law. This thesis is developed through an in-depth account of Hobbes's political theology in books III and IV of *Leviathan*. It is also argued that Ernst-Wolfgang Böckenförde's reflections on the process of secularization and on the proper relationship between church and state can be read as offering a contemporary version of Hobbes's political-theological argument.

1. BÖCKENFÖRDE ON THE IDEOLOGICAL BASIS OF SECULARIZATION

The secularization of political community is a precarious achievement. It requires at least two different but complementary forms of argumentative grounding. There can be no secular political order unless there is a secular theory of the purpose or end of political society, one that allows us to understand (the right kind of) political society as legitimate without reference to religious ideas and that permits us to reason about constitutional structure in non-religious terms. Less obviously, if the secular state is to be stable, religious believers must come to accept the key consequences of a secular account of the purposes of the state from within their own religious doctrine. In particular, they must abandon the view that the laws of their religion can claim a higher authority than the laws of the state.

Ernst-Wolfgang Böckenförde's seminal portrayal of the process of secularization credits the early modern theorists of the state—the French 'politiques', Jean Bodin, and most importantly Thomas Hobbes—with having developed the first thoroughly secular theory of the purpose and legitimacy of the state, in response to the

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devastating violence of religious civil war.¹ The broad outlines of Böckenförde's account of the ideological origins of the modern, secular state in the religious civil wars of early modernity overlap to a large extent with the standard liberal narrative of the process of secularization.² They can be summed up as follows: Once it had become clear that the religious unity of Christian Europe was irretrievably lost and that religious civil war might continue indefinitely, the early modern state gradually shed its role as the temporal arm of a higher, spiritual power and eventually came to be understood as a mechanism for the provision of earthly security. Hobbes's political philosophy provided the most elaborate theoretical expression of this new theory of the state. In contrast to ancient and medieval theories of law, Hobbes's construction of the state, as Böckenförde has emphasized,³ does not take its start from a transcendent idea of natural or divine justice that is to function as an external standard for the evaluation of the validity or legitimacy of the state's positive law. Rather, Hobbes asks what sort of society would be most conducive to the fulfillment of our temporal desires for self-preservation and a materially contented life. Hobbes's answer is that we must be willing to exhibit absolute obedience to the sovereign's positive law if we want to live in peace and security. All that the law of nature tells us is that we ought to submit to the positive law of the state, regardless of what we might think of its substantive correctness.

Böckenförde describes Hobbes's argument as a paradigm shift in the justification of law.⁴ Religious difference was bracketed and eventually relegated to a non-political sphere. The early modern state, in effect, issued a declaration of neutrality towards claims to religious truth, so as to stop the bloodshed of interminable religious civil war. While early modern states often preserved religious homogeneity—in line with the principle *cuius regio, eius religio*—such homogeneity, according to Böckenförde, was valued only for political, not for religious reasons.⁵ At least in some early modern states, different religious groups agreed to live together peacefully, or were forced to do so, and to practice religious tolerance, even if such tolerance was often limited, at first, to a mere freedom of inner conscience and did not include a right to the free exercise of religion.⁶ The seeds of the liberal state had nevertheless been planted.

1 See Ernst-Wolfgang Böckenförde, 'Die Entstehung des Staates als Vorgang der Säkularisation' in Ernst-Wolfgang Böckenförde (ed), *Der säkularisierte Staat. Sein Charakter, seine Rechtfertigung und seine Probleme im 21. Jahrhundert* (Carl Friedrich von Siemens Stiftung 2007) 43–72, 54–67. An English translation is forthcoming: Ernst-Wolfgang Böckenförde, 'The Rise of the State as a Process of Secularization' in Mirjam Künkler and Tine Stein (eds), *Law, Religion and Democracy. Selected Writings*, vol II (Oxford University Press 2018).

2 Compare for instance John Rawls, *Political Liberalism* (expanded edition, Columbia University Press 2005) xxii–xviii.

3 See Ernst-Wolfgang Böckenförde, 'Security and Self-Preservation before Justice: The Paradigm Shift and Transition from a Natural-Law to a Positive-Law Basis in Thomas Hobbes' System of Law' in Ernst-Wolfgang Böckenförde, *Constitutional and Political Theory. Selected Writings*, vol I, ed Mirjam Künkler and Tine Stein (Oxford University Press 2017) 55–68.

4 See *ibid* 55.

5 Böckenförde (n 1) 59–60.

6 See Ernst-Wolfgang Böckenförde, 'Die Religionsfreiheit im Spannungsfeld zwischen Kirche und Staat' in Ernst-Wolfgang Böckenförde, *Religionsfreiheit. Die Kirche in der modernen Welt* (Herder 1999) 33–58, 33–41. An English translation is forthcoming: Ernst-Wolfgang Böckenförde, 'Religious Freedom Between the Conflicting Demands of Church and State' in Ernst-Wolfgang Böckenförde (n 1).

This standard account of the ideological basis of the historical process of political secularization is correct, as far as it goes. But in its exclusive focus on secular political motives, it is in an important respect incomplete. That a justification of the state can bracket the question of substantive justice and of religious truth, because it appeals to a secular interest in biological survival and material contentment, does not by itself ensure that the state's claims to obedience will prevail over those of religion. A religious believer may recognize, as readily as anyone else, that the state is a useful institution and that it serves important secular purposes; purposes that, under ordinary circumstances, justify the state's claim to obedience. Nevertheless, the religious believer may still hold that the duty to obey the state's law must be conditional on the compatibility of legal and religious obligation. After all, if obedience to the demands of the state would force me to neglect what I take to be my religious duty or to violate a prohibition of divine law, I may stand to lose salvation, even while I gain security in this world.

Hobbes was well aware of the problem that arises if we are called upon to obey 'at once, both God, and Man, then when their Commandements are one contrary to the other'. He took this conflict to be 'the most frequent praetext of Sedition, and Civill Warre'. What made the problem so thorny, in Hobbes's view, was the fact that 'it is manifest enough, that when a man receiveth two contrary Commands, and knows that one of them is Gods, he ought to obey that, and not the other, though it be the command even of his lawfull Sovereign'.⁷ Since the good of the longest possible extension of a commodious earthly life does not outweigh the disvalue of the loss of eternal life, a rational agent clearly ought to choose to obey God rather than man, in case there is a conflict between the state's laws and those of God, even if s/he recognizes the value of an earthly life in security and comfort as well as the indispensable role of the state in securing it.

Given this problem of dual obedience, the availability of a secular justification of political authority, one that appeals to our shared worldly interest in peace, security, and comfort would, by itself, have been insufficient to sustain the process of secularization. Religious believers needed to be given some kind of assurance that the claims of the secular state and those of religion would turn out to be compatible, and not merely coincidentally or contingently. Such an assurance, what is more, could not have been provided by a secular theory of the state as a mechanism that affords earthly security and commodious living, for the simple reason that an appeal to such mundane interests has no bearing on the claims of religion. It is no accident, then, that early-modern political theorists like Hobbes felt compelled to enter the field of political theology. They needed to show, by way of a sincere engagement with the doctrinal reasoning of religious believers, that the authentic claims of religion would not lead into conflict with the demands of the modern sovereign and secular state.

7 Thomas Hobbes, *Leviathan*, ed Richard Tuck (Revised student edition, Cambridge University Press 1996) 402–3. Compare also *ibid* 306–7: 'It is impossible a Common-wealth should stand, where any other than the Sovereign, hath a power of giving greater rewards than Life; and of inflicting greater punishments, than Death.' Hobbes explicitly concedes that 'Eternall Life is a greater reward, than the life present; and Eternall torment a greater punishment than the death of Nature ...'.

This is the project Hobbes pursued in the oft-neglected third and fourth parts of *Leviathan*, as Böckenförde points out.⁸ According to Hobbes, there are compelling theological reasons to hold that any religion that could come to question the supremacy of the law of the secular state must be a false religion, while the claims of true religion—or more precisely: of any religion that is a candidate for truth—will consistently support the authority of the secular state. Hence, we can rest assured that tragic conflicts between our duty to obey God and our duty to obey the law cannot occur. Supposed religious duties that might compel us to disobey the law must be specious from a theological point of view.

Though I will not support Hobbes's specific account of true religion in all particulars, I will argue that a political–theological argument of this general form must form part of the ideological basis of secularization, at least as long as a significant proportion of the citizens of the secular state remain religious believers. Religion(s) must themselves accept a certain kind of political theology for the secular state to be stable in the face of continuing attachment to religious belief. I take it that this claim is perfectly compatible with Böckenförde's political–theological assessment of the process of secularization.⁹ Like Hobbes, Böckenförde argues that the best understanding of Christianity will accept the authority of the secular state.¹⁰ However, Böckenförde's interest in making this point is not quite the same as Hobbes's. Böckenförde's political theology is perhaps best understood as a project of reconciliation between Catholicism and the secular state, one that treats the secular state as a historical reality to which religious believers will, in any event, have to accommodate themselves. Böckenförde does not seem to think that the secular state is under any threat from religion. Rather, he is worried that the stability of a secular polity may come to be endangered by the progressive weakening of religious belief.¹¹ Needless to say, this could not have been Hobbes's perspective, given the fragility of the initial stages of the process of secularization in the 17th century. The attempt to read Böckenförde's political theology through the lens of Hobbes, therefore, provides a helpful antidote against liberal complacency about the achievement of secularization. It can serve to remind us that the ideological basis of the secular state may be more vulnerable, still, than we care to admit.

Hobbes's political theology originates from a certain understanding of Christianity: His true religion, if he had one, was a form of Protestantism.¹² But

8 See Böckenförde (n 1) 59. The tendency to overlook the political–theological dimension of Hobbes's is especially pronounced among authors who champion game-theoretic readings of Hobbes's political thought. See David Gauthier, *The Logic of Leviathan. The Moral and Political Theory of Thomas Hobbes* (Clarendon Press 1969); Gregory Kavka, *Hobbesian Moral and Political Theory* (Princeton University Press 1986); Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge University Press 1988).

9 There are intimations of the thesis I will defend in Ernst-Wolfgang Böckenförde, 'Der säkularisierte Staat. Sein Charakter, seine Rechtfertigung und seine Probleme im 21. Jahrhundert' in Böckenförde, *Der säkularisierte Staat* (n 1) 11–41, 37–41. An English translation is forthcoming: Ernst-Wolfgang Böckenförde, 'The Secularized State: Its Character, Justification and Problems in the 21st Century' in Ernst-Wolfgang Böckenförde (n 1).

10 See Böckenförde (n 6) 46–54.

11 See Böckenförde (n 9) 24–41.

12 For in-depth discussions of Hobbes's theology see AP Martinich, *The Two Gods of Leviathan. Thomas Hobbes on Religion and Politics* (Cambridge University Press 1992); Jeffrey R Collins, *The Allegiance of*

Hobbes's conception of a religion compatible with political secularization can, as we will see, be extended to other Christian and non-Christian religions, provided they are capable of supporting the key elements of Hobbes's argument. Hobbes's political-theological reflections are still valuable, then, insofar as they provide us with a general outline of the form that organized religion must take if it is to be ideologically compatible with political secularization.

2. HOBBS AND THE PROBLEM OF DUAL OBEDIENCE

Hobbes's political-theological reflections take their start from what I have called the problem of dual obedience, ie from the 'difficulty, not yet sufficiently resolved, of obeying at once, both God, and man, then when their commandments are one contrary to the other'.¹³ To get at the structure of the problem, let us assume (i) that obedience to divine law is a necessary condition of salvation, of the attainment of eternal life, and (ii) that eternal life is a greater good than the longest possible extension of earthly life. Hobbes's theory of rationality is committed, moreover, to the view (iii) that a rational agent ought to prefer a greater good to a lesser. It follows from these assumptions that (iv) one ought to obey God more than man. Whenever the laws of the state conflict with the laws of God, it is rational to pay obedience to God and to disregard the command of the sovereign.¹⁴

This line of reasoning appears to undercut Hobbes's well-known argument for absolute sovereignty, according to which we owe unconditional (or almost unconditional) obedience to the laws of a legitimate sovereign. Without recognition of absolute sovereignty there can be no end, according to Hobbes, to the state of nature, but such recognition, it would seem, would require us to reject the view that our duty of obedience to God trumps the duty to obey the state's law. Appearances, though, are somewhat misleading in this case. Let us grant that it is true that a rational agent ought to obey God more than man. To arrive at the further conclusion that it must sometimes be justified to disobey the state's law we need to assume as well that it is possible for a sovereign's law to conflict with the law of God. This, I will argue, is precisely what Hobbes is concerned to deny. If it can be established that a sovereign's laws could never conflict with the laws of God, the principle that we ought to obey God more than man will be rendered politically harmless. It will fail to entail that our religious duties can come to be in conflict with our recognition of absolute sovereignty.

To be sure, many interpreters of the political theology presented in *Leviathan* subscribe to a different account of Hobbes's argumentative strategy. Though Hobbes discusses religious issues at great length, he is often assumed to have been a closeted atheist and it is claimed that a sufficiently careful reading of the text of *Leviathan* will reveal clear signs of his atheism.¹⁵ Under this interpretation, Hobbes's talk about

Thomas Hobbes (Oxford University Press 2005); Agostino Lupoli, 'Hobbes and Religion Without Theology' in AP Martinich and Kinch Hoekstra (eds), *The Oxford Handbook of Hobbes* (Oxford University Press 2016) 545–78.

13 Hobbes (n 7) 402.

14 See *ibid* 260, 306–7 and 403–5.

15 See for example Leo Strauss, 'Die Religionskritik des Hobbes' in Heinrich Meier and Wiebke Meier (eds), *Gesammelte Schriften*, vol III (2nd edn, JB Metzler 2008) 263–369; Edwin Curley, 'I Durst Not

God is only an accommodation to the political situation of the time, a situation in which it would have been dangerous to openly take an atheist position. The problem of double obedience, of course, does not arise for an atheist. An atheist denies that God exists, or at least that there is a law-giving God who is concerned with our actions, and if there is no law-giving God there can be no divine laws obedience to which is necessary for salvation. The religious pretext for the contestation of secular political authority disappears.

However, the claim that Hobbes tried to address the problem of dual obedience by advocating atheism is open to a seemingly decisive objection. Almost all of Hobbes's readers were religious believers and Hobbes, even if he had wanted to, could not, on pain of suffering persecution, have tried to argue them into atheism with any prospect of success. Neither could he retreat to a neutralist-liberalism that counts on an agreement to bracket substantive theological questions.¹⁶ In order to make his project of pacification through political secularization succeed in a society imbued with passionate religiosity, Hobbes had to make an attempt to provide religious believers with theologically respectable reasons for accepting the claim that the sovereign's laws can never conflict with God's commands. The paradigm shift from a religious to a secular justification of positive law that Böckenförde rightly attributes to Hobbes would, by itself, not have been sufficient to solve the problem of dual obedience.

Straussians are likely to reply that this does not rule out that religious argument is employed in *Leviathan* in a manner that is merely tactical and compatible with the assumption that Hobbes was an atheist. As long as an atheist thinks that there is sufficient prudential reason to obey the laws of the sovereign s/he will presumably be willing to exhibit outer conformity to whatever religious observance happens to be mandated by the sovereign, even if s/he does not believe in the religious doctrine that undergirds it. An atheist will not fear that insincere observance of external religious rites is offending the true God, since s/he holds that there is none. At the same time, the atheist may well think that a state-controlled public religion, even if fabricated, is useful as a pillar of social stability, on the condition that it is apt to dispose the uneducated masses of religious believers to legal obedience.

Hobbes's analysis of the origins of religion in chapter 12 of *Leviathan*¹⁷ may seem to provide support for the claim that we should ascribe to Hobbes a mere tactical use of religious argument. The analysis emphasizes that religion arises from our fear of humanly uncontrollable events that may harm us. This fear gives rise to superstition, defined as a belief in the existence of invisible powers that may be influenced to protect us, or to desist from harming us, by the performance of certain rites of worship. This 'natural seed of religion',¹⁸ Hobbes claims, was cultivated by founders of

Write So Boldly' or How to Read Hobbes' Theological-Political Treatise', in Daniela Bostrenghi (ed), *Hobbes e Spinoza. Scienza e politica* (Bibliopolis 1992) 497–593; Hans Kelsen, *Secular Religion. A Polemic Against the Misinterpretation of Modern Social Philosophy, Science, and Politics as 'New Religions'* (Springer 2012) 85–9.

16 See Gerald Gaus, 'Hobbes's Challenge to Public Reason Liberalism: Public Reason and Religious Convictions in *Leviathan*' in SA Lloyd (ed), *Hobbes Today. Insights for the 21st Century* (Cambridge University Press 2013) 155–77.

17 See Hobbes (n 7) 75–86.

18 *ibid* 79.

pagan religious traditions who claimed to be in contact with higher powers. Hobbes argues that these founders were really just statesmen who invented religion to make us 'the more apt to obedience, laws, peace, charity, and civil society'.¹⁹ If such is the origin of religion, it would appear that the justification for the propagation of religious beliefs, from the philosopher's point of view, is to be seen in their social function and not in their truth.

I do not think that Hobbes's musings about the natural origins of religion provide sufficient support to the view that he was endorsing a Straussian approach. First, Hobbes's observations are quite obviously not intended to apply to the Christian faith. Hobbes explicitly rejects the idea that Jesus Christ ought to be interpreted as a statesman who tried to bolster his own power, or the power of the community he founded, by making us more apt to obedience. Christ himself made it clear that his kingdom is not of this world. In Hobbes's interpretation, this does not mean that Christ's kingdom is spiritual. Rather, it means that his kingdom does not presently exist, that it will be established only at Christ's second coming when Christ will start directly to rule on earth.²⁰ Christ died for our sins and made a promise of future eternal life to the faithful. But he did not, for the time being, claim any legislative authority for himself or his successors and he advised Christians to obey their sovereigns in all matters. Consequently, Christ could not have had any interest in inculcating obedience to the laws of a non-existent kingdom, by offering a tall tale supposed to frighten us into some outer form of public worship.

Note that in putting forward this view, as a piece of biblical interpretation, Hobbes can sidestep the question of whether Jesus really is the Christ. To put Hobbes's view pointedly, Christ may or may not be our saviour. If the Bible is true and he is our saviour, we can conclude that faith in Christ is required for salvation. But we can also conclude that Christ did not found a political community constituted by its own binding laws that are valid independently of the authority of the state and that prescribe certain forms of worship which potentially conflict with the demands implied by the laws of the state.²¹ Whatever Hobbes said about the social function of religion in part I of *Leviathan*, I conclude, should not be read as applying to Christianity, as Hobbes understood it.²²

Second, a Straussian political-theological approach is itself liable to give rise to a problem of political stability. Any attempt to portray the ruler to the masses as a representative of the divine will have to rest on the belief that one's duty to obey the sovereign is entailed by a prior duty to obey divine law. Such a belief may of course enhance a sovereign's *de facto* authority. But it will do so only as long as people remain convinced that the sovereign's law accords with the law purportedly issued by God. This conviction, as Hobbes was well aware, is easy to unsettle, by religious

19 *ibid* 79.

20 *ibid* 280–6, 311, 319, 332–8, 341 and 360.

21 Hobbes claims *ibid* 321 that '... a Church, such a one as is capable to Command, to Judge, Absolve, Condemn, or do any other act, is the same thing with a Civil Common-wealth, consisting of Christian men ...'.

22 See Richard Popkin, *The History of Scepticism. From Savonarola to Bayle* (Oxford University Press 2003) 197 and Patricia Springborg, 'Hobbes on Religion', in Tom Sorell (ed), *The Cambridge Companion to Hobbes* (Cambridge University Press 1996) 346–80, 368–9.

enthusiasts, false prophets, or power-hungry challengers for political authority. Those who obey their rulers because they hold them to be executors of the divine are, if things appear to go wrong, prone to jump to the conclusion that the sovereign must have violated divine law and therefore is to be resisted, especially if they are encouraged to do so by a clergy that claims to be the final interpreter of divine law. Thus, any manipulative use of religion to bolster political authority inevitably leaves the state vulnerable to the rabble-rousing of self-appointed interpreters of divine will.²³

Hobbes did not rely on a manipulative use of religion in order to arrive at a solution to the problem of dual obedience. Rather, he made an attempt to take religious believers seriously, by offering an argument that does not presuppose the truth of atheism. Hobbes's real political-theological argument, I will call it the 'epistemic argument', concedes, for the purpose of argument, that God exists, that obedience to his laws is necessary for salvation, and that it would therefore be irrational to risk eternal life only to please the earthly sovereign. The most fundamental assumption of the epistemic argument is that we can never be in a position to *know* that some purported divine law that conflicts with a sovereign's commands is *authentic*. In Hobbes's words, 'the difficulty . . . consisteth in this, that men when they are commanded in the name of God, know not in divers Cases, whether the command be from God'.²⁴ But if a purported divine law cannot be known to be authentic, Hobbes goes on to argue, it cannot be valid or binding, which is the same thing as to say that it does not exist.²⁵

The claim that it is an essential characteristic of law to be knowable is one of the cornerstones of Hobbes's theory of law. Hobbes argues that subjects can only be required to obey a law if the legislator ensures sufficient publication. If it is not possible for us to authenticate a law, ie to find out whether it was, as a matter of fact, enacted by a lawgiver authorized to rule us, we are excused from having to obey it. According to Hobbes, this principle must apply to divine commands as much as to those of our earthly sovereign.²⁶ This insistence on a requirement of publication is of course wholly unoriginal. Thomas Aquinas, for instance, endorsed it as emphatically as Hobbes.²⁷ Once it is granted that laws must be authenticable, there is room to ask whether, and if so how, one could ever come to know that some rule that conflicts

23 Hobbes's concern with this danger is manifest in his criticism of Catholicism and its claim to indirect temporal power. See Hobbes (n 7) 455–7 and 480–2.

24 *ibid* 403. See also *ibid* 260.

25 See Roberto Farneti, 'Hobbes on Salvation' in Patricia Springborg (ed), *The Cambridge Companion to Hobbes's Leviathan* (Cambridge University Press 2007) 291–308, 298–301.

26 Hobbes, *Leviathan* (n 7) 208: 'The want of means to know the Law, totally Excuseth: For the Law whereof a man has no means to informe himself, is not obligatory.' The idea is tied to divine legislation *ibid* 246: 'To rule by Words, requires that such Words be manifestly made known; for else they are no Lawes: For to the nature of Lawes belongeth a sufficient, and clear Promulgation, such as may take away the excuse of Ignorance . . . But God declareth his Lawes three ways; by the Dictates of Naturall Reason, by Revelation, and by the Voyce of some man, to whom by the operation of Miracles he procureth credit with the rest.'

27 See *Summa Theologiae*, IaIIae, qu 90, a 4, in Thomas Aquinas, *Political Writings*, ed RW Dyson (Cambridge University Press 2002) 82–3.

with a sovereign's law is an authentic divine command, and it is in this inquiry that Hobbes parts company with his scholastic predecessors.

The question, in turn, can be narrowed down by invoking the traditional distinction between natural law and positive divine law. Natural law consists of rules of conduct that God made known to all human beings by endowing them all with natural reason. Divine positive law, by contrast, consists of rules of conduct that are not accessible to natural reason but that God specially revealed to some.²⁸ For Hobbes, the problem of dual obedience arises only with respect to positive divine laws. In the context of the discussion of dual obedience in parts III and IV of *Leviathan*, Hobbes assumes that he has already shown, in the second part of *Leviathan*, that the law of nature requires (almost) unconditional obedience to the sovereign.²⁹ The problem of dual obedience, therefore, must concern purported divine positive laws (ie rules of worship or ceremonial laws) that are not already included in the state's positive laws or the laws of nature and that are accessible only through revelation. The question, therefore, boils down to whether one could ever come to know through revelation that there is a divine law that conflicts with the laws of the sovereign.

Hobbes addresses this question through a critique of the epistemic reliability of purported divine revelation that I can present only in very rough outline.³⁰ According to Hobbes, revelation can be either direct or indirect. I receive direct revelation if God, in some way, reveals himself to me personally. I receive indirect revelation if someone else tells me that he has received revelation from God and informs me about its content (=prophecy) or if I am called upon to believe in a written report of revelations purportedly received by others (=bible or other divinely inspired book).³¹

Hobbes does not deny that direct revelation is possible, but he assumes that it is a rare occurrence; a claim shared by most religious believers. What is more, Hobbes casts doubt on our ability to distinguish authentic direct revelation from dreaming, mere plays of the imagination, or hallucinations, which may all have a natural explanation. Most importantly, however, Hobbes holds that it is exceedingly difficult for us to obtain compelling evidence that someone else's claim to have received direct revelation is true, and thus to distinguish between true and false prophets, especially in cases where the revelations in question contradict established doctrine or sovereign law.³² Those who claim to be prophets typically try to authenticate their claims by performing miracles. Hobbes, however, is sceptical of our capacity to reliably

28 That Hobbes acknowledges the distinction is evident in his juxtaposition of the 'naturall Kingdome of God' and the 'prophetique Kingdom of God', as well as in his description of the latter as a kingdom 'wherein having chosen out one peculiar Nation (the Jewes) for his Subjects, he governed them, and none but them, not onely by naturall Reason, but by Positive Lawes, which he gave them by the mouths of Prophets.' (Hobbes (n 7) 246–7. For another use of the distinction see *ibid* 267–8.)

29 It makes no difference for my argument whether we take the binding force of the laws of nature to have a theological basis. See for influential statements of this view Howard Warrender, *The Political Philosophy Hobbes. His Theory of Obligation* (Oxford University Press 1957); Martinich (n 12) 71–135; Luc Foisneau, *Hobbes et la toute-puissance de Dieu* (Presses Universitaires Françaises 2000) 215–55.

30 For a fuller discussion see Lupoli (n 12) 557–61.

31 See Hobbes (n 7) 256–7.

32 See *ibid* 257–9 and 287–306.

distinguish authentic miracles from events that surprise merely because we lack the scientific knowledge to give them a natural explanation.³³

The upshot of Hobbes's discussion is that claims to prophecy made by others are always open to reasonable doubt. If claims to prophecy are always in principle open to reasonable doubt, then no claim to prophecy is ever subject to conclusive public verification. It follows that we can never be under an obligation to believe that a prophet's claim to disclose divine law is true. Hence, we must be excused from refusing to recognize the legality of the rules communicated by a prophet, unless these have been incorporated into the law of the state by the legislative authority of the sovereign.³⁴ In not observing the rules announced by a prophet, Hobbes claims, we cannot be accused of disrespecting God's laws. Rather, we only doubt the veracity of the prophet's claims.³⁵ And God, if he did expect us to obey some law, would surely have taken care to publish that law in a way that is open to clear and unambiguous authentication.

Similar considerations apply to the Bible. The Bible, Hobbes claims, is believed to be the word of God. But I could only know, in a way that leaves no room for reasonable doubt, that it is the word of God if God had personally revealed this fact to me. As long as this condition remains unfulfilled, I lack a rationale to consider the Bible's moral or ceremonial precepts as binding law. Those to whom God has not personally revealed himself as the author of the Bible can therefore be obliged to consider the moral rules and the rules about worship contained in the Bible as binding law only if they are contained in the law of nature or if the sovereign, whose legal commands we are already obliged to obey, has chosen to incorporate them into his positive law.³⁶

A sovereign's laws, Hobbes concludes, can never be known to conflict with positive divine laws, at least not as long as our alleged acquaintance with divine law rests on indirect revelation.³⁷ A law the existence of which is not open to compelling and unambiguous public verification, however, cannot possibly be valid, at least not as a general law that binds a multitude of subjects, since it is of the essence of laws that they be clearly publicized to all those who are expected to obey. Purported positive divine laws that are accessible to us only through indirect revelation, and that have not been legally incorporated by the sovereign, fail this standard. It follows that there

33 See John Whipple, 'Hobbes on Miracles' (2008) 89(1) *Pacific Philosophical Quarterly* 117.

34 Hobbes (n 7) 268: 'He therefore, to whom God hath not supernaturally revealed, that they [divine positive laws] are his, nor that those that published them, were sent by him, is not obliged to obey them, by any other Authority, but his, whose commands have already the force of Laws . . .' Even Moses' legislative authority was based on the consent of the people, not on an indubitable claim to prophecy (see *ibid* 324–5).

35 *ibid* 49: 'If Livy say the Gods made once a Cow speak, and we believe it not; wee distrust not God therein, but Livy. So that it is evident, that whatsoever we believe, upon no other reason, then what is drawn from authority of men onely, and their writings; whether they be sent from God or not, is Faith in men onely.'

36 See *ibid* 267–9.

37 The epistemic argument, admittedly, does not completely rule out the possibility of direct revelation that tells me to disobey my sovereign. But Hobbes can still hold that God would not publish a law that he expects others than the immediate recipient to obey in this way. Strauss's claim that Hobbes's critique of religion fails for not ruling out the possibility of private revelation misses this point. See Strauss (n 15) 334–8.

can be no positive divine laws that conflict with a legitimate sovereign's laws. Hence, it can never be the case that our religious duties will require us to disobey an otherwise legitimate sovereign.

As Böckenförde remarks, Hobbes's famous claim that it is the authority of the sovereign and not the truth that makes law was intended to block 'the claim of theologians and ecclesiastical officials to determine law ... on the basis of religious truth'.³⁸ It would be wrong, though, to hold that Hobbes defended the authority of the sovereign by reference to the secular idea of self-preservation alone and that he meant to encourage his readers not to care about the question of truth. Hobbes's deeper claim, as expressed in the epistemic argument, is that no religious challenge to the legal authority of the sovereign could possibly have the truth on its side.

3. HOBBS ON TRUE AND FALSE RELIGION

Note that Hobbes's epistemic argument does not assume the truth of atheism. The attack on revelation focuses solely on the idea that there are revealed divine positive laws that may conflict with the laws of the sovereign. Hobbes is not concerned to deny the possibility of a revealed faith. The proposition that Jesus is the Christ is not a law, and belief in its truth is therefore not subject to the stringent epistemic demands that govern the validation of laws. As a result, Hobbes's argumentative strategy makes room for those who believe in what he calls the 'doctrine of the Christian religion'.³⁹ From the perspective of the revealed Christian faith, as Hobbes understands it, respect for the laws of nature (as well as respect for the positive laws of the state) is not just counselled by prudence as well as obligatory insofar as we are members of the 'Kingdom of God by Nature', ie insofar as we recognize our subjection, through the employment of natural reason, to an omnipotent God who is the author of the laws of nature.⁴⁰ For the Christian believer, obedience to the law, if coupled with faith, holds out the further promise of salvation, in the form of a future eternal life.⁴¹ The epistemic argument does not question a Christian's belief in that promise. Hence, there is room, in Hobbes's theory, to honour the existential significance of a revealed Christian faith or, for that matter, of any other revealed faith that accepts the epistemic argument.

Note as well that the attribution to Hobbes of the epistemic argument does not require us to take a stand on the hotly disputed question whether Hobbes was an atheist or a believer in (some kind of) Christianity.⁴² Christianity, for Hobbes, is a candidate for a true religion, but acceptance of the epistemic argument does not carry a commitment to the truth of Christianity. According to the epistemic argument, there can be no positive divine laws that are not already contained in the laws of the sovereign. The laws of nature, in turn, mandate unconditional obedience to sovereign law. It cannot, therefore, be an article of any faith that is a candidate for

38 See Böckenförde (n 3) 64.

39 See Hobbes (n 7) 287–8.

40 See *ibid* 245–54.

41 See *ibid* 404.

42 Compare for instance the exchange between AP Martinich, 'On the Proper Interpretation of Hobbes's Philosophy' (1996) 34(2) *Journal of the History of Philosophy* 273 and Edwin Curley, 'Calvin and Hobbes' (1996) 34(2) *Journal of the History of Philosophy* 257.

truth that our salvation depends on engaging in practices of worship that the sovereign has chosen to disallow. All practices of worship governed by such assumptions are superstitious, because the beliefs on which they are based must be false. We know that these beliefs must be false since they involve a manifestly unreasonable account of the nature of law according to which there can be valid laws whose existence cannot be verified by those to whom they allegedly apply.⁴³ This line of reasoning claims that some forms of religion, those that can give rise to a conflict with secular law, must be inauthentic. But it leaves it open whether there is a true religion or not, or whether (some form of) Christianity is that religion.

What Hobbes does argue, in parts III and IV of *Leviathan*, is that the Bible is open to an interpretation that is conformable to the strictures of the epistemic argument. If it was not, then Christianity would not be a candidate for a true religion. If we accept Hobbes's reading of the New Testament, then Christianity, rightly understood, may, for all we know, be a true faith. The New Testament, Hobbes plausibly argues, does not have to be interpreted as teaching that we are subject to binding laws of external conduct the observance of which is necessary for salvation but that are accessible only through revelation. All that is required for salvation, in Hobbes's interpretation, is belief that Jesus is the Christ and obedience to the laws of the sovereign.⁴⁴ Whether Hobbes himself held to that belief, I submit, makes no difference to his political-theological argument.

This is not to say, of course, that the epistemic argument is altogether unproblematic. It might be argued that Hobbes's way of honouring the existential significance of religious belief is rather too shallow to give much comfort to some religious believers. Hobbes's account of salvation, in particular, distinguishes rather sharply between private faith and the public practice of religion. Hobbes sees faith as a matter of inner conviction that need have no immediate implications for outer acts, whereas he understands religion, in line with the ancient Roman use of the term, as a matter of observable outer behaviour in accordance with public rules of worship.⁴⁵ He claims that the latter must always be subject to sovereign control. Hobbes at times comes close to identifying the practice of religion with obedience to the law of the sovereign and declares, consequently, that the state is the true church.⁴⁶

From the point of view of a Hobbesian faith that accepts the conclusions of the epistemic argument, it does not really matter what outer religion or public worship one is expected to participate in, as long as one's practice is accompanied by faith in Christ. Hobbes's biblical exegesis goes so far as to claim that one can adhere to the true doctrine of the Christian religion, and attain salvation, as a law-abiding subject in a state committed to a false and idolatrous religion. According to Hobbes, Christian believers have license to go through the motions of observing an idolatrous

43 Hobbes (n 7) 256: 'For though there be many things in Gods Word above Reason; that is to say, which cannot by naturall reason be either demonstrated, or confuted; yet there is nothing contrary to it . . .'.

44 See *ibid* 402–15.

45 *Ibid* 323: '... they who have no supernaturall Revelation to the contrary, ought to obey the laws of their own Sovereign, in the externall acts and profession of Religion' (*ibid* 323). Hobbes also claims that sovereigns have 'all manner of Power over their subjects that can be given to man, for the government of mens externall actions, both in Policy, and in Religion . . .' (*ibid* 377).

46 See *ibid* 320–2.

religious practice, thus discharging their divinely sanctioned duty of obedience to the sovereign, without thereby endangering their salvation.⁴⁷ Hobbes's political theology ultimately seems to culminate in a form of indifferentism with regard to religious practice, one that can hardly be acceptable for religious believers who take it that a certain form of visible religious practice is essential to their faith. Hobbes's focus on inner faith appears to fail to accord proper significance to the free exercise of religion.

This objection is sound enough in principle, but it detracts from an important dimension of Hobbes's political-theological approach. To get at the point, we need to note that Hobbes explicitly distinguishes between true and false religion. This distinction would be inexplicable from the point of view of a complete indifferentism with regard to external religious practice. It is therefore necessary to explain what we are to make of Hobbes's distinction between true and false religion. In doing so, we will see that there is more to Hobbes's political theology than has met our eye so far.

Hobbes introduces the distinction between true and false religion in his official definition of religion in chapter VI of *Leviathan*. At first glance, this definition of religion is rather confusing and it seems to give rise to a thorny interpretive puzzle.

Feare of power invisible, feigned by the mind, or imagined from tales publicly allowed, RELIGION; not allowed, SUPERSTITION. And when the power imagined, is truly such as we imagine, TRUE RELIGION.⁴⁸

This definition describes religious practices as the result of a fear of invisible powers that, presumably, are to be placated or bent to our will by prayers, sacrifices, or other forms of external behaviour by which we intend to honour them. What seems incomprehensible is that Hobbes's definition claims that such practices qualify as religions, as opposed to superstitions, if and only if they are publicly allowed, i.e. permitted by the state. But surely, whether some body of ritual practice is superstitious or not cannot depend on whether it is permitted by the state. Such a view would entail, as A.P. Martinich has pointed out, that early Christianity was a superstition, but turned into a religion after it had been permitted by Constantine.⁴⁹ To make matters worse, Hobbes goes on to distinguish religions, publicly permitted practices of worship, into true and false. But what could it possibly mean to claim that there religions that are false but not superstitious?

Our discussion of the epistemic argument, I submit, shows that Hobbes's definition of religion does not in fact carry the absurd implications just outlined. If early Christians believed that the Christian faith demanded disobedience to the Roman state, in the form of external religious practices not permitted by the sovereign, then they were wrong, and their legally impermissible religious practices therefore superstitious. The beliefs in question were wrong, I hasten to add, not because the practices to which they gave rise had been outlawed, as though the sovereign was in a position to decide on the truth of religious belief, but rather because an

47 See *ibid* 343–4 and 414.

48 *ibid* 42.

49 See AP Martinich, *Hobbes* (Routledge 2005) 187–91.

understanding of the doctrine of Christianity that is liable to give rise to conflict with the laws of the sovereign cannot be a candidate for truth, for reasons made explicit in the epistemic argument.

More to our purpose, the epistemic argument also provides an explanation of what Hobbes understands by a false religion. A false religion is a system of religious practices that are publicly permitted (or even publicly mandated), that is based on a doctrine which holds that there is a revealed divine law that enjoys supremacy over the positive laws of the state, and that consequently implies that the law of the state could come to conflict with divine law. The true religion (or more precisely: any religion that is a candidate for truth), by contrast, is a system of religious practices that are publicly permitted or mandated and that is based on a doctrine which endorses the epistemic argument, and that consequently denies the very possibility of a conflict between divine and secular law. It is a religion, in other words, that supports the idea of the supremacy of the law of the secular state.

The epistemic argument serves to explain why it would be advantageous for a political society to be committed to true religion rather than false, that is, why complete indifferentism about religion is to be rejected. Admittedly, a false religion may bolster the power of the state, on the condition that the state is recognized as acting in line with the supposed revealed higher law. But false religion, as we have already seen, is nevertheless inherently dangerous to the stability of the state because the state's claim to be the sole representative and authoritative interpreter of the divine will is always in principle open to challenge. The only way to prevent religious challenges to the political authority of the state, then, is to convince religious believers of the conclusions of the epistemic argument or, in other words, to convince them to abandon false religion.

Hobbes also fears that the laws of a state committed to false religion will be unnecessarily onerous. A false religion will likely contain ceremonial laws that require us to worship a non-existing invisible power or to worship an existing invisible power in ways it does not demand to be worshipped. It will typically also require that we sustain a clergy that claims to be the true interpreter of positive divine law.⁵⁰ But the laws of false religion, while we are bound to obey them in outer act if they proceed from sovereign authority, are superfluous from the point of view of Hobbes's secular argument for sovereignty. Every well-ordered commonwealth must contain certain kinds of positive laws, such as laws against assault and laws of property. A state that did not make provision in these areas would fail to lift us out of the state of nature. But such necessity does not attach to ceremonial laws based on false religion. Such laws, clearly, are not necessary for the state to fulfil the state's basic secular purpose, so clearly worked out in Böckenförde's interpretation of Hobbes's legal theory: to give us peace and security.⁵¹ And laws which are unnecessary and burdensome to citizens, Hobbes believes, ought not to be made.⁵²

The proponent of any reasonable faith that is a candidate for truth will agree. Any reasonable faith, in Hobbes's view, must hold that obedience to the laws a legitimate

50 See Hobbes (n 7) 474–82.

51 See Böckenförde (n 3).

52 See Hobbes (n 7) 239–40.

sovereign chooses to enact (whatever they may be) is all the legal obedience, i.e. all the obedience in outer act, that one needs to attain salvation. Legal obedience to even the most parsimonious system of human law that manages to end the state of nature, if accompanied by faith, is therefore sufficient for salvation. Any law that is superfluous to guarantee the attainment of the secular purposes of peace and security, hence, is also superfluous from the perspective of true religion. For Hobbes, the external requirement of the true religion can be nothing more than obedience to the laws that 'the good of the citizens and of the commonwealth essentially require.'⁵³ It follows that a state committed to true religion, in Hobbes's sense of the term, has no compelling reason to try to publicly enforce any particular system of religious rules of worship or moral conduct that goes beyond the laws that are necessary to achieve the state's secular purposes.

Finally, a state committed to a Hobbesian true religion, in contrast to a state committed to false religion, has a compelling reason to grant at least an inner freedom of conscience.⁵⁴ In a state based on a false religion, the rulers must take themselves to be defenders of the belief in a revealed divine law that is inaccessible to reason and valid independently of sovereign enactment. Hence, a state based on false religion will likely take offence at the stance of those who are ready to obey its laws, but only for the secular reason that the laws in question have been enacted by a legitimate sovereign whose governance affords peace and security. A state based on false religion will therefore likely be distrustful of people's inner attitudes and refuse to limit itself to a concern with how they act. It will be prone to persecute its subjects simply for holding inner beliefs that they cannot help holding, even if these beliefs do not in any way dispose them to outer disobedience.

Such a policy would clearly be obnoxious to Hobbes. In *Leviathan*, Hobbes repeatedly points out that we do not have volitional control over our beliefs, a theme that was to become very prominent in later classical defences of religious tolerance in Bayle and Locke.⁵⁵ Faith or belief in a revealed religious doctrine, Hobbes argues, is a gift of God, and those who do not receive it simply do not have the *de facto* power to make themselves believe.⁵⁶ To demand conformity of inner religious belief, in addition to obedience in outer act, is to make a demand that, for many, may be

53 Thomas Hobbes, *On the Citizen*, ed Richard Tuck and Michael Silverthorne (Cambridge University Press 1997) 151.

54 That Hobbes advocated some form of tolerance has been emphasized by several commentators. See Alan Ryan, 'Hobbes, Toleration and the Inner Life' in David Miller and Larry Siedentop (eds), *The Nature of Political Theory* (Oxford University Press 1983) 197–218; Richard Tuck, 'Hobbes and Locke on Toleration' in Mary G Dietz (ed), *Thomas Hobbes and Political Theory* (University Press of Kansas 1990) 153–71; Richard Tuck, 'Scepticism and Toleration in the Seventeenth Century' in Susan Mendus (ed), *Justifying Toleration. Conceptual and Historical Perspectives* (Cambridge University Press 1988) 21–35; Edwin Curley, 'Hobbes and the Cause of Religious Toleration' in Springborg (n 24) 309–34.

55 See Pierre Bayle, *A Philosophical Commentary on These Words of the Gospel, Luke 14:23, 'Compel Them to Come In, That My House May be Full'*, ed John Kilcullen and Chandran Kukathas (Liberty Fund 2005) 76–8; John Locke, 'A Letter Concerning Toleration' in Mark Goldie (ed), *A Letter Concerning Toleration and Other Writings* (Liberty Fund 2010) 1–67, 12–5.

56 Hobbes (n 7) 323: 'As for the inward thought, and beleef of men, which humane Governours can take no notice of, for God onely knoweth the heart, they are not voluntary, nor the effect of the laws, but of the unrevealed will, and of the power of God; and consequently fall not under obligation.' See also *ibid* 256, 306, 342, 360, 389 and 405.

impossible to fulfil and therefore to violate the principle that ought implies can. Hence, Hobbes suggests, it is always wrong for a sovereign to criminalize the mere having or not-having of inner religious beliefs. Everyone who is disposed to obey all laws in outer act is entitled to be left alone.⁵⁷ Böckenförde approvingly points out that this argument for the (inner) freedom of conscience is 'a principled approach that blocks the state order from becoming total'.⁵⁸

A commonwealth the public religion of which is based on a reasonable faith or true religion is unlikely to experience any of the problems that might arise from a state's commitment to false religion. Such a commonwealth does not invite challenge by self-appointed prophets and private interpreters of God's will since all its claims to obedience are defensible without resort to revelation. Its legal system will be much less likely to impose unnecessary burdens, since it will not contain superfluous ceremonial laws that enforce imaginary divine prescriptions. Since it does not contain such laws, it does not have to force anyone to worship in accordance with religious rules that they reject. And finally, a state that is no longer committed to a false religion is a state that will be able to respect all forms of inner religious belief as long as they do not imply that there is a revealed divine law which may oblige us, on pain of losing salvation, to defy the laws of an otherwise legitimate sovereign in outer act. It will also be able to make room for those who, while they recognize a secularly grounded obligation to obey the state's laws, have not been given the gift of faith.⁵⁹

4. HOBBSIAN TOLERANCE AND THE DIALECTIC OF SECULARIZATION

One might argue, admittedly, that Hobbes's concessions to the religious believer are still much too modest to amount to true liberal tolerance. It is quite possible that some religious believers living in a Hobbesian state will hold beliefs that may come to require outer behaviour in violation of the secular laws of even a political community that is committed to true religion. A pre-modern Catholic, for instance, would have held that ultimate obedience to the pope, and religious practice in accordance with rules determined by the pope, not by the sovereign, is what is required for salvation. In a Hobbesian commonwealth, a Catholic could have enjoyed freedom of inner belief, but s/he would not necessarily have had the unrestricted freedom to exercise that religion, or to propagate it, and s/he might thus have come

57 Compare *ibid* 471: 'It is true, that the Civill Magistrate, intending to employ a Minister in the charge of Teaching, may enquire of him, if hee bee content to Preach such, and such Doctrines; and in case of refusal, may deny him employment: But to force him to accuse himself of Opinions, when his Actions are not by Law forbidden, is against the Law of Nature . . .'. See also *ibid* 479–80.

58 Böckenförde (n 3) 65.

59 This may seem to conflict with Hobbes's view that atheists are enemies of God to be excluded from the commonwealth. See Hobbes (n 53) 163–4; Thomas Hobbes, *Leviathan, with Selected Variants from the Latin Edition of 1668*, ed Edwin Curley (Hackett 1994) 528–30. In these passages, Hobbes understands atheism as the denial of the existence of a provident and omnipotent God who is the author of the laws of nature. Since Hobbes appears to argue that the existence such a deity is accessible to natural reason (see Hobbes (n 7) 77 and 245–8), he would seem to allow for the possibility that someone might fail to have faith in any particular revealed religion and yet not be an atheist. Consequently, Hobbes argues that all those who do not publicly deny the existence of God should not be accused of atheism. See Hobbes, *Leviathan*, ed. Curley, 528–9.

to see the behaviour required by the state as conflicting with her religious beliefs. Other religious communities—including some non-Christian groups—would have found themselves in a similar quandary. Hobbesian toleration, one might suspect, is fully satisfactory only for those who adhere to a protestant form of Christianity that is amenable to a sharp distinction between faith as belief and religion as practice and that lends itself to the project of propping up the mystique of sovereign power.⁶⁰

This objection against Hobbes's political-theological conception overlooks the fact that the epistemic argument was apt to serve as the starting point of what might be called the dialectic of secularization (and liberalization).⁶¹ This point has been noted by Böckenförde, who rightly argues that Hobbes's absolutism prepared the ground for 'the differentiation of the unitary, potentially all-encompassing state power into a system of checks and balances' in the work of later, more liberal authors like Kant who nevertheless tried to maintain the power of the state 'as a unitary one'.⁶² The problem of religious freedom was one of the major avenues of this liberalization of Hobbism.

The Hobbesian political-theological conception we outlined does not necessarily stand in the way of a certain degree of freedom of religious practice and exercise. Such freedom can be granted, from a Hobbesian point of view, on the condition that religious believers adopt a certain conception of the status of the religious norms that they believe they are compelled to observe so as to attain salvation. The problem of dual obedience arises only where religious believers regard the revealed rules of worship that they feel bound to follow as laws. It is the attribution of legal status to religious norms that potentially undercuts the authority of the secular laws of the state. This is so, in particular, wherever religious rules are not merely regarded as binding the individual conscience—and, by implication, the individual's behaviour—but are also seen as laws that God expects believers to enforce in their society, by way of coercive imposition on dissenters. In practice, the religious pretext for sedition will tend to arise when a sovereign either forces subjects to worship in accordance with religious rules that some of them reject or when a sovereign fails to impose a ritual and moral conformity, by the use of the law, that some of his subjects perceive to be required by their interest in salvation.

Hobbes's conception of true religion has the resources to resolve the first of these causes of sedition, as we have already seen. A state committed to true religion has no reason to impose contested rules of religious worship on dissenters. A state's commitment to what Hobbes considers as true religion also opens a way to address the second pretext for sedition. If religious communities acknowledge that the rules of their religion lack the force of law, it is hard to see why a Hobbesian state should be concerned with how voluntary congregations of believers who do not claim to have license to disobey the laws of the sovereign on religious grounds, and who do not

60 See Johan Tralau, 'Hobbes contra Liberty of Conscience' (2011) 39(1) *Political Theory* 58; Richard Tuck, 'Hobbes, Conscience, and Christianity' in Martinich and Hoekstra (n 12) 579–601.

61 This is the kernel of truth in Schmitt's infamous interpretation of Hobbes, though Schmitt, in contrast to Böckenförde, laments the fact. See Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes. Meaning and Failure of a Political Symbol*, ed George Schwab and Erna Hilfstein (University of Chicago Press 2008) 53–64.

62 Böckenförde (n 3) 67.

expect the state to favour or to enforce their religion, worship in private. Once the members of a society have come to adopt forms of religious belief that do not conflict with the conclusions of the epistemic argument, there is little reason, it seems, why a Hobbesian state should refuse to permit people to worship as they please in the privacy of their own church (or synagogue, mosque, etc.) and to choose to observe whatever rules of conduct they take to be imposed by their own religion.

Admittedly, there are textual stumbling blocks for this interpretation, in particular Hobbes's insistence on a uniform practice of public worship.⁶³ Some recent discussions take this insistence to imply that Hobbes advised a sovereign to adopt one or another arbitrarily-chosen form of sectarian worship as the state's established or public religion, one that relegates all other forms of religious worship to an inferior position.⁶⁴ Such assessments overlook that Hobbes's statements on public worship ought to be interpreted in relation to Hobbes's theory of law. Hobbes's discussion of public worship occurs in the context of a description of the 'Kingdom of God by Nature'. The God that ought to be publicly and uniformly honoured, then, is not necessarily the God of any particular revealed religion. What is more, Hobbes argues that obedience to the laws of nature is the highest form of public worship of God.⁶⁵ Since the laws of nature mandate unconditional obedience to the positive laws of the sovereign, whatever they may be, it would seem to follow that a society whose members acknowledge their duty to God to pay obedience to the sovereign's positive laws, and thus show uniformity in law-abidingness, already exhibits the best form of public religion. If taken to its logical extreme, Hobbes's argument will collapse public worship into deference to the state's law, and that deference, as should be obvious, need have no sectarian and perhaps not even any specifically religious content. It could be motivated by nothing but the purely secular concern with the enjoyment of security and peace, and it would, at least ideally, be directed towards a maximally parsimonious legal system that limits itself to enforcing rules that are necessary for the attainment of security and peace.

Hobbes's provocative claim that the state is the true church, I conclude, prepares the ground for a Lockean pluralism of religious practices which are sustained by a plurality of voluntary religious associations that have completed the migration from the sphere of the state into the sphere of civil society (in Hegel's sense of those terms).⁶⁶ This consummation of the process of secularization takes us from bare

63 See for instance Hobbes (n 7) 252–3: '... seeing a Common-wealth is but one Person, it ought also to exhibite to God but one Worship; which then it doth, when it commandeth it to be exhibited by Private men, Publiquely. And this is Publique Worship; the property whereof, is to be Uniforme ... where many sorts of Worship be allowed, proceeding from the different Religions of Private men, it cannot be said that there is any Publique Worship, nor that the Commonwealth is of any religion at all.'

64 See Jeremy Waldron, 'Hobbes on Public Worship' in Melissa S Williams and Jeremy Waldron (eds), *Nomos XLVIII: Toleration and its Limits* (New York University Press 2008) 31; Arash Abizadeh, 'Publicity, Privacy, and Religious Toleration in Hobbes's *Leviathan*' (2013) 10(2) *Modern Intellectual History* 261.

65 See Hobbes (n 7) 252 and Hobbes (n 53) 181.

66 See Locke (n 55) 15–9. Hobbes himself famously claimed that Christians in England in 1651 had been reduced 'to the Independency of the primitive Christians to follow Paul, or Cephas, or Apollos, every man as he liketh best: Which if it be without contention ... is perhaps the best ...' (Hobbes (n 7) 479–80). For Hobbes as a proponent of independentism see Collins (n 12).

Hobbesian tolerance for inner faith to a more recognizably liberal arrangement of the relation of the state to religious communities. The functioning of that arrangement, however, presupposes that religious groups refrain from challenging the state's monopoly of legislative authority. The political theology implicit in Hobbes's epistemic argument, to put the point differently, must be 'taken up' in the self-understanding of religious groups if the secular and liberal state is to be sustainable.

5. THE POLITICAL–THEOLOGICAL PRESUPPOSITIONS OF THE LIBERAL STATE

Let us now see whether we can employ the conception of Hobbesian tolerance just outlined to delineate the political-theological presuppositions of the secular state. Recall that Hobbes is compelled to address the problem of dual obedience in order to defend the principle of absolute sovereignty, which he takes to be indispensable for the achievement of social peace. To defend absolute sovereignty, it is necessary to eliminate the possibility of conflict between the demands of God and the demands of man. The process of Hobbesian secularization, as we have just seen, aims to achieve this goal with a two-pronged strategy: The state refrains from prescribing through law a particular form of religious worship, while religious communities accept that the rules of their religious practice lack the status of law. The residual problem that we now face is that some religious groups—groups that we, as liberals, believe ought to be accommodated by the state—may refuse to admit that their rules are altogether devoid of legal quality.

Hobbes's characterization of what is involved in a rule's having the status of law, however, is somewhat ambiguous. On the one hand, Hobbes frequently characterizes laws as categorical commands of legitimate authority that bind or oblige us through their pre-emptive force. Whenever I am given a valid command by a legitimate authority, I am no longer free to decide for myself how to act. Rather, I am committed to executing the authority's command without further deliberation of my own. If the command in question is issued by a supreme authority, I am obliged, moreover, to disregard competing commands issued by subordinate authorities. Call this the authoritative nature of law.⁶⁷ On the other hand, Hobbes's argument assumes that laws typically exhibit what might be referred to as a public nature. A law has a public nature insofar as it is taken to be equally valid for all members of some political community. The public nature of a law entails that the government is responsible for enforcing the law on all and also that subjects of the law have a reciprocal obligation to obey and a responsibility to support the enforcement of the law, though Hobbes is famously conflicted about exactly how far such responsibilities can be said to go.⁶⁸

In Hobbes's political theory both of these natures of law appear in indissoluble fusion: Legitimate legislative authority is based on the authorization, on the part of all the individual members of a political community, of a sovereign who is to decide in their collective name.⁶⁹ All laws that bind me individually, therefore, are also valid,

67 See Hobbes (n 7) 176–84.

68 See *ibid* 145–54 and Susanne Sreedhar, *Hobbes on Resistance. Defying the Leviathan* (Cambridge University Press 2010) 89–131.

69 See Hobbes (n 7) 184.

in the same way, for all other members of the political community to which I belong, for the reason that they have authorized the sovereign to speak in their name just as I have authorized him to speak in mine. Hobbes seems to have thought that this unity of the authoritative and the public nature of the state's law must characterize any rule that deserves to be called a law. And it follows from this, needless to say, that laws of religion, if there are such, must not merely govern the voice of our individual conscience, but also be public. All members of one's community, even the recalcitrant, are bound to obey religious laws, if they are public, and it must then be our responsibility as a community, before God, to make them obey. If all law is understood to have a dual nature, as both authoritative and public, we are left with only two options for conceiving of the relation of political and religious order: One option is for the state to be committed to some religious doctrine or another, and to accept responsibility for enforcing the purported laws of that religion. The other option, and thus the only alternative to implicit or explicit theocracy, is to deny the existence of religious law as a separate category of law, one that might come to challenge the supremacy of the state's positive law. This is what the epistemic argument, in effect, sets out to do. As we have seen, that argument implies that a purported divine command can acquire legal force only by incorporation into the state's law.

I argued above that Hobbes's choice for the second of these two options is less illiberal than is often supposed. It is compatible with respect for an inner freedom of religious conscience as well as with a limited right to the free exercise of religion. Religious groups, in the scheme of Hobbesian tolerance, may be granted a right to free exercise on the condition that they acknowledge that the moral and ritual rules of their religion lack legal force, ie that they lack authoritativeness—at least in cases of conflict with secular law—as well as publicity. But this acknowledgment, needless to say, may not be forthcoming from some religious groups. Hobbes response to this residual problem was unabashedly illiberal: he argued that religious groups that do not acknowledge that their religious rules lack legal force must not be tolerated by the state.⁷⁰ In Hobbes's view, it is essential for the state to wield absolute sovereignty, since absolute sovereignty is necessary to end the state of nature.⁷¹ If any state must claim absolute sovereignty, it trivially follows that the secular state must claim absolute sovereignty. Hence, no religious group that holds its own rules to be either authoritative or public (or both) ought to be allowed to exist in a secular state, since both authoritativeness and publicity must be monopolized by the rules of the state for the state to enjoy absolute sovereignty. A secular state can exist, according to this line of argument, only if it completely displaces all pretensions on the part of any religious group that its own rules participate in any way in the character of law.⁷²

Böckenförde plausibly argues that this Hobbesian understanding of the supremacy of secular positive law over religious rules is far too restrictive. He distinguishes between a distancing and an open form of secular neutrality and expresses a strong preference for the latter. Distancing neutrality (as exemplified by French *laïcité*)

70 See *ibid* 223–4.

71 See *ibid* 128–9.

72 *Ibid* 413: '... for besides the Laws of Nature, and the Laws of the Church, which are part of the Civill Law, (for the Church that can make Laws is the Common-wealth,) there bee no other Laws Divine.'

attempts to restrict religion to the private sphere, as though it was a mere matter of inner belief, whereas open neutrality (as exemplified by German or American constitutional doctrine) affirms that publicly visible practice is essential to religion and therefore entitled to protection.⁷³ As Böckenförde recognizes, the problem of the undue narrowness of Hobbesian tolerance results from Hobbes's claim that the state must enjoy absolute sovereignty, not from the demand that the state be secular. Once we let go of the claim that any state must claim absolute sovereignty, and thus make room for the possibility of a non-absolute secular state, our account of the political-theological presuppositions of the secular state will allow for further refinement. To introduce that refinement, it will be helpful to draw a distinction between two different kinds of religious groups that refuse to accept that their religious rules lack the character of law. This distinction arises for the reason that the authoritative and the public nature of law are, *pace* Hobbes, separable, both conceptually and in practice, at least in the sphere of religion.

On the one hand, there are religious groups that are willing to acknowledge that their religious rules lack the nature of publicity, but that deny that those rules therefore also lack authoritativeness for religious believers. On the other hand, there are religious groups that continue to claim both authoritativeness and publicity for the rules of their religion. Members of a group of the first kind are liable to face an individualist version of the problem of dual obedience. They will not demand that the state impose their religious practice on others—perhaps because they acknowledge the truth of Hobbes's claim that those who lack faith cannot be expected to regard the laws of the religion in question as authentic. But religious believers of this sort might nevertheless feel bound to follow the voice of their own conscience, as governed by what they hold to be divine law, in cases where obedience to secular law would force them to violate fundamental rules of their religion. By contrast, members of a religious group of the second kind, of one that upholds both the authoritativeness and the publicity of its rules, face a collectivist version of the problem of dual obedience. Such believers will not merely hold on to the view that divine law binds them individually, in cases of conflict with secular law, but also to the further claim that the community as a whole ought to be forced to submit the rules of their religion, and that it is the proper task of the state's law to accomplish this end.

It is not difficult to see that the collectivist problem of dual obedience is much more dangerous to the process of secularization, and to the attainment of the secular purposes of the state, than the individualist version. Religious groups that accept the non-publicity of their own religious rules need have no problem to acknowledge the basic legitimacy of a secular, religiously neutral state and to co-exist with other religious groups under the umbrella of the state's secular laws. Such groups will typically be most interested in not being forced to worship in a way they reject as inauthentic and they will want to secure the enjoyment of non-interference in their internal affairs. There is no very profound reason why the laws of a secular state should have to systematically violate these two interests. To the contrary, there is every reason to think that the law of a secular and liberal state will typically afford their best protection. Of course, religious believers who might come to be faced with instances of the

73 See Böckenförde (n 9) 15–6.

individualist version of the problem of dual obedience will reject Hobbes's claim that any true religion imposes a duty of unconditional obedience to the state's law. In other words, they will deny the principle of absolute sovereignty. But their opposition to the state is likely to take the form of conscientious objection rather than that of religiously inspired revolt, and occasion for such objection will be rare in a liberal state. History attests to the fact that conscientious disobedience is not typically threatening to the purposes of peace and security that are to be realized by the secular state. The appropriate response on the part of the state, therefore, is to abandon pretensions to absolute sovereignty, to turn liberal, and to make an attempt to accommodate such groups, as Böckenförde recommends in his discussion of religiously motivated conscientious objection to military service.⁷⁴

Religious groups, on the other hand, which claim that their own rules are authoritative as well as public stand in unavoidable tension with even the non-absolute secular state. Such groups will be prone to deny the very legitimacy of the secular state, since they assess the state's legitimacy in terms of whether it enforces what they hold to be religious law. Consequently, such groups are likely to want to de-secularize the state once they gain a sufficiently robust hold on political power. It is thus a presupposition of the stable existence of a secular and liberal state that no religious group that holds its laws to be both authoritative and public gain untrammelled political power. This presupposition will not be satisfied unless commitments, on the part of citizens, to religious beliefs that claim authoritativeness and publicity are either shallow or quantitatively marginal. The existence of a secular state requires that most religious believers see their own religious duties in terms that eschew the publicity of those duties. For this to be the case, I have argued here, religious believers must be brought to see, on theological grounds, that true religion requires its adherents to accept that the state's law has a monopoly on the characteristic of publicity.

This conception of the presuppositions of stable secularization fits very well with Böckenförde's view on the proper stance of the Catholic Church towards the secular state. Böckenförde celebrates the Catholic Church's recognition of the principle of religious freedom (in the declaration *De libertate religiosa*, issued by the second Vatican Council in 1965) as a major step towards a reconciliation of the Church with the state and an important piece of progress in the purification of Catholic doctrine. In Böckenförde's understanding, the Council discarded the view that the secular state ought to favour or even enforce Catholic doctrine as being incompatible with the conception of human dignity to which the Church is itself committed.⁷⁵ He consequently aims to convince his Catholic readers, in a way that is clearly reminiscent of the argumentative strategy of Hobbes's political theology, that this abandonment of any claim to the publicity of the Church's doctrine should be regarded as a move towards a more authentic expression of Christian religion.⁷⁶

74 See Ernst-Wolfgang Böckenförde, 'Das Grundrecht der Gewissensfreiheit' in Ernst-Wolfgang Böckenförde, *Staat, Verfassung, Demokratie. Studien zur Verfassungstheorie und zum Verfassungsrecht* (Suhrkamp 1991) 200–63, 246–57. See also Martha C Nussbaum, *Liberty of Conscience. In Defense of America's Tradition of Religious Equality* (Basic Books 2008) 115–74.

75 See Böckenförde (n 6).

76 See Böckenförde (n 9) 20–23. For a comparable perspective in an Islamic context see Mustafa Akyol, *Islam Without Extremes. A Muslim Case for Liberty* (W.W. Norton 2013).

Though Böckenförde's political theology can thus be seen as a development of Hobbes's approach, in its conception of the proper relationship between church and state, the two discussions are animated by slightly different concerns. While Hobbes aimed to ward off religious threats to the nascent secular state, the emphasis in many of Böckenförde's writings on political theology is on the worry that the process of secularization, if taken too far, might threaten the survival of religion. Böckenförde appears to assume that the ascendancy of the liberal and secular state, in the Western world, may eventually bring forth a completely a-religious society.⁷⁷ In his view, such an outcome of the process of secularization would threaten to undercut the viability of the secular state—for the reason that religious practice is needed to prevent a deficit of *Sittlichkeit* that might come to endanger the cohesion of a liberal society whose state must refrain from enforcing an official morality and religion.⁷⁸

Böckenförde's political theology acknowledges, then, that there are theological preconditions of successful secularization, though from an angle that differs somewhat from Hobbes's. What Hobbes brings to the table, apart from an extremely sophisticated political-theological argument for the supremacy of secular public law, is a much keener sense of the threat that religion can come to pose to the stability of the secular state. Let me close by suggesting that this concern is as relevant today as it was in the 17th century and that it should receive as much attention as Böckenförde's worries about the ethical basis of a secular state. It can hardly be denied that the legitimacy of the secular, liberal-democratic state is now under much stronger pressure, as a result of renewed religious (and ideological) challenges, than Böckenförde would have had reason to expect when he developed his political theology, in the relative calm of the postwar *Bundesrepublik*. It is therefore helpful to read Böckenförde with Hobbes—to be reminded not merely of the possibility and importance of authentic religious life in a secular and liberal state, but also of the fact that a certain political theology, one that eschews claims to the publicity of religious law, is itself necessary to sustain political secularization.

77 See Böckenförde (n 9) 24–36.

78 See Böckenförde (n 1) 67–72.