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What Do Religious Corporations Owe for Burdening Individual Civil Rights

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ABSTRACT

In the name of religious liberty, recent legislative initiatives by Christian nationalists seek broad legal exemptions from general law. This reflects an abiding antipathy to and a fear of the power of the state, the ultimate aim of which may be sovereignty for religious institutions. But, the claims of Christian nationalists are vulnerable to a series of critical objections. First, the rhetoric of religious liberty used by Christian nationalists plays on confusion between two senses of religious liberty – that of institutional religious freedom and that of individual freedom of religious conscience. These two senses need to be distinguished, since they are sometimes in fundamental conflict with one another, arguably to the extent of institutional religious freedom burdening individual religious conscience. Further, legal exemptions to general law that benefit particular religious institutions should also be recognized as gifts. They are not fundamental or inalienable rights. Therefore, granting such accommodations requires that religious communities benefitting from them should somehow reciprocate for their being exempted from common obligations under general law.

KEYWORDS

exit rights, accommodation, Mauss, gift, individual rights, compensation

The Sovereignty Blitz

In the United States, a consistent complaint argued on the part of self-appointed defenders of so-called “freedom of religion” and/or “religious freedom” is the vulnerability of religions over against an essentially Erastian state. For them,

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what is, in effect, the predatory image of Hobbes' *Leviathan*, casts a shadow of an all-powerful nation-state holding an absolute monopoly on the use of power across its entire territory, including the territory of religion. It is against such an imagined threat to their presumed liberty that corporate religious bodies are featured in a front-page story in *The New York Times* reported on May 27, 2018 "A Christian Nationalist Blitz" (Stewart, 2018). This "blitz" of nationwide "Christian nationalist" legislative initiatives aims to promote "religious freedom", that *The NY Times* report identifies as "the latest attempt by religious extremists to use the coercive power of government to secure a privileged position in society for their version of Christianity" (Stewart, 2018). When exposed to light of day, the Christian nationalist Blitz seeks, in truth, to limit the exercise of civil liberty in the public domain by leveraging the power of religious forces. In seeking exemptions from civic responsibility, I shall argue first that corporate religious bodies seek nothing less than the liberty that only sovereignty can insure.

The Power of Religion

In this light, it is worth recalling the nature of a kind of historical *démarche* between corporate religious bodies and the state. The existence of sovereign corporate religion threatens Leviathan in ways that other members of civil society do not, or perhaps cannot. Religious institutions speak with an authority (*auctoritas*) that can compete with, if not transcend, that of the State's. One might even argue that all religions need in order to become polities themselves is territory and a capacity to exercise power (*potestas*) – those "divisions" that Stalin reminded Pope Pius XII he lacked. Thus, the need to control, manage, suppress, or even eliminate religion and so on may weigh more heavily upon Leviathan than the need to keep the rest of Leviathan's domain in order. Leviathan's determined and effective control over religious bodies speaks volumes about Leviathan's conviction that the religions will never acquire those "divisions", the lack of which Stalin chided the Roman pontiff (Sarkissian, 2016).

For certain religious devotees, the craven collapse of religious resistance to Leviathan is one of the least edifying spectacles of modern political and religious history. The domestication of the eastern churches, the established Lutheran churches of Scandinavia, the Church of England, or the Protestant and Jewish communities of France, or until recently, at least, the Islam of Turkey, for example, serve as exemplary contemporary examples of religious bodies effectively neutered by their respective governments. All may be well-fed, but they are likewise firmly leashed.

But, by the same token, it would be reasonable to be suspicious about the ultimate intentions of the religions regarding their own liberty from state control. Some may seek to build upon incremental gains in legal "accommodation", to seek fuller freedom in a sovereignty, not unlike those enjoyed by the Native American nations. In this, the churches would, in effect, seek to become laws unto themselves, states-within-states, thus presenting, as it were, the prospect of pockets of theocracy. Symptoms of this seizure of sovereignty from the nation-state, can be found in governments like those hostage to the Roman Catholic Church, such as today's Poland, or those submitting to the Guardian Council in Iran, or like Israel's, governments that typically defer to

broadly unpopular decisions about Jewish identity, conversion and marriage made by the Orthodox Chief Rabbinate of the state. But, in principle, Leviathan still holds the hammer. The modern state monopolizes the use of force and as such, compels the religions to behave as it wishes. In this vein, it is worth observing that most, if not all, recent insurgent or revolutionary attempts to replace the Westphalian system, where Leviathan rules, have been made in behalf of religious social formations. Al Qaeda, ISIL, the Islamic Republic of Iran or Christian Identity nationalists come readily to mind.

About such possible threats to the sovereignty of the state, recently deceased Supreme Court Judge Antonin Scalia lined up smartly on the side of Leviathan. So committed was Scalia to the modern secular order he felt that if religious accommodations were not reined in, chaos would ensue. Writing in 1990 for the majority in the so-called peyote religion case – *Oregon Employment Division v Smith* (Employment Div., 1990) – Scalia dismissed the claim by members of the Native American Church for religious exemption from Oregon’s controlled substances laws for using peyote in a sacramental setting. Then, citing the landmark Supreme Court decision on the Mormon practice of polygamy, *Reynolds v. United States* (1879), Scalia quoted *Reynolds* to the effect that “To permit this” (polygamy) “would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself” (*Reynolds v. United States*, 1879). Scholars have pointed out that Scalia is far from consistent in resisting the expansion of religious accommodations. But, this does not weaken the force of his decision as an example of significant judicial fears about the risks of the chaos caused by creeping sovereignty issuing from unrestricted religious accommodations (Stolzenberg, 2016).

How Freedom of Religion May Burden Religious Freedom

Thus far, I have not distinguished between two senses of religious liberty that Christian nationalists of the so-called “Christian Blitz” use interchangeably, perhaps for strategic purposes. These terms, “religious freedom” and “freedom of religion”, when confused with one another, play havoc with our ability to think clearly about issues provoked by Christian nationalists and others of their ilk who seek greater corporate religious liberty. “Religious freedom” refers to freedom of belief, freedom of the individual conscience. “Freedom of religion” denotes quite another thing. It refers to the relative state of the sovereignty or autonomy of corporate religion or religious institutions – what the recent literature refers to as “corporate religious liberty” or “religious sovereignty” (Schwartzman, Flanders & Robinson, 2016). On the side of individual “religious freedom”, Roger Williams exemplifies the iconic alternative, while Thomas à Becket models corporate sovereignty or “freedom of religion”. No matter how much our modern media culture – T. S. Eliot’s “Murder in the Cathedral” included – has cast Becket, in effect, as a Roger Williams of his day, the two men stand for two different notions of religious liberty. The difference? Williams conscientiously dissented from the orthodoxy of the church institution of his New England coreligionists, and was thus forced to leave Massachusetts Bay Colony in order to enjoy his own personal religious freedom – to believe as he chose.

By contrast, as formal agent of the corporate Church, Thomas à Becket asserted the freedom of the Church of Rome against the kingly authority of Henry II in 1170. Becket was no model of the free conscience, but rather stood in for the authority of the Roman magisterium. Becket, in effect, asserted the autonomy of Papal corporate ecclesiastical authority against the competing institution of the political authority of the English Crown. Four decades later, in 1215, one will seek in vain in the *Magna Carta* for any charter for individual freedom of religious conscience. Instead, the *Magna Carta* finds a duly chastened King John affirming that very same corporate religious freedom for which Becket died in the following words: “First, that we have granted to God, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired”. So exemplary was this conception of the “freedom of religion” – corporate freedom of the Church – that, the justices cited this exact clause from the *Magna Carta* in the Hosanna-Tabor decision (Green, 2017).

Controversy between church and state over religious offices is hardly new. In 1215, the issue was addressed in the very first clause of *Magna Carta*. There, King John agreed that “the English Church shall be free, and shall have its rights undiminished and its liberties unimpaired”. The King in particular accepted the “freedom of elections”, a right “thought to be of the greatest necessity and importance to the English Church” (“Hosanna-Tabor”, 2012).

In the Hosanna-Tabor v. EEOC (2012) ruling, SCOTUS, therefore, forbade the government from applying equal opportunity employment law to the case of an individual worker fired from her job with the church. The worker, Cheryl Perich, had fallen ill, and after recovering, wanted to reclaim her *non-ministerial* job to which she was arguably entitled by her civil rights to fair treatment under the law. But, the firing was upheld, and the sovereignty of the church – its freedom of religion – to do so was accommodated at the expense of the civil rights of the employee on the basis of the “ministerial exception”. In effect, the Court granted the Hosanna-Tabor Church an “exit right” from having to abide by certain civil rights on the basis of the “ministerial exemption” – even though Cheryl Perich had not been employed within the ministry.

On the face of it, supporting the Church’s right to exit its civic obligations to a non-ministerial employee, based as it was on the “ministerial exception”, seems an egregious misapplication of legal principle. While one might maintain in this way that the state should not presume to rule on ecclesiastical matters, church employee sickness and subsequent absence from work are hardly issues in which theological considerations apply. The state was not, for instance, asked to reinstate an employee who had advocated allegedly heretical views during the course of her employment. Surely a person’s health is a matter lying well outside the realm of the “ministerial”, and squarely within that of general welfare. Recent literature on the Hosanna-Tabor decision, in particular, Ira C. Lupu and Robert W. Tuttle, raises some similar issues as I have raised here. Yet, even they overlook the obvious fact that theological issues or religious judgments do not apply in the Hosanna-Tabor case. Nor, are “ministerial”

functions relevant to the case of Perich's termination. She had no sacerdotal functions (Lupu & Tuttle, 2017). Cheryl Perich's failing was one of common health. Her illness had simply made it impossible for her to fulfill her duties as an employee.

Critically, neither the *Magna Carta* itself nor the Hosanna-Tabor case affirm individual freedom of conscience, or what I have called "religious freedom". From the Alito-Kagan decision ("Hosanna-Tabor", 2012), it should be clear about what (or whose) freedom is being affirmed, both by the *Magna Carta* and SCOTUS. Plainly, it is corporate or institutional sovereignty, not personal liberty that both documents affirm. It is not, therefore, the right to believe according to the dictates of conscience against the authority of one's religious community. It is, rather, the freedom (or sovereignty) of religious corporations that is advanced – indeed, often to rein in individual believers merely for exercising constitutionally protected religious and other freedoms.

The different genealogies of these two notions – (corporate) freedom of religion and religious freedom (of individual conscience) – have been noted by historians of the early 20th century, like John Neville Figgis (1997), extending even into our own day by Harold Berman (1983), Martha Nussbaum (2008) and others. Pope Gregory VII's so-called 12th century "Papal Revolution" asserts the freedom of the Church, of religion, while the value of religious freedom (of conscience) arises in the liberality of the 17th century Dutch Republic and the colonial experiments of Roger Williams. It has become commonplace, however in the West, to regard the religious liberty as identified exclusively with sacrality of conscience, the right to believe whatever one chooses. Historically speaking, this conception of religious liberty ignores that sense of religious liberty understood as the freedom of an institution, people, nation and such, recently recognized in the Hosanna-Tabor decision. Worst of all, such confused usages falsely collapse the notions of corporate freedom and freedom of belief or conscience into each other. This eventuates, as I have observed, in the irony of Becket being held up as a paragon of *individual* religious freedom or independent conscience when, in fact, he was serving as a corporate, institutional factotum of the Roman Church against the English state of Henry III!

These two notions of religious liberty, then, differ deeply from one another. A fair measure of the profundity of this difference can better be appreciated by the frequency with which the rights of individual religious conscience are asserted against the authority or freedom of corporate religious institutions, rather than in their behalf. I submit that while corporate freedom of religion may indeed "protect the individual" from a predatory State, it may also disadvantage the individual with respect to their general civil rights, all in order to affirm the corporate institutional freedom of the church. In the Hosanna-Tabor case, the State's siding with the church over against the rights of an individual demonstrates just such conflict within the notion of religious liberty. Sometimes freedom of religion, freedom of a church, for instance, demands compromising of the freedom – religious or otherwise – an individual's freedom or well-being. For instance, any number of critical Roman Catholic theologians, trying to assert theological *Lehrfreiheit* at Catholic institutions, as well as Roger Williams, William Robertson Smith, Galileo Galilei, Ridley and Latimer, Michael Servetus, Thomas Moore, Hans Küng, or the Network's "Nuns on the Bus" might complain of

being oppressed by the ambitions of their churches to assert corporate sovereignty. In these cases, the State has stood by, exposing individuals and their sacred consciences to the predations of their corporate religious bodies. In such cases, I think we can fairly say that freedom of religion (FR) militates against religious freedoms (RF).

Burdening Civil Rights in the Name of Religion's Rights

Distinctly worrying are the increasing number of cases where the freedom of religion – that is corporate freedom of religion – disadvantages the individual enjoyment of civil goods. Two recent and quite different cases, *Burwell v. Hobby Lobby* (2014) and compounded case of *Zubic v. Burwell* (2016) exemplify rulings in which judicial exemptions granted to religious corporations disadvantage individual enjoyment of legitimate civic goods. In order to appreciate the harm done to civil rights, one can entertain the view that the federal mandate to offer contraceptive support to women employees of Hobby Lobby, the Little Sisters of the Poor, and so on, put these organizations into moral straits. Indeed, governmental officials tried to accommodate the scruples of the religious plaintiffs by providing their women with contraceptive services from non-religious, public sources. Still, despite such attempts of honor the claims of all concerned, the women entitled to contraceptive services were, in fact, “burdened” by being kept waiting through periods of uncertainty and deprivation of their legitimate civic goods, while this matter was being litigated. Guarantees to them under general law paid little actual heed to their civil rights.

While these are not cases where the interests of (corporate) freedom of religion conflict directly with religious freedom (of conscience), they are cases where (corporate) freedom of religion does “burden” the enjoyment of legitimate civic goods. Here, it is not freedom of conscience that suffers, but simply the enjoyment of common civic goods ensured by general law. An individual citizen’s legitimate enjoyment of civic goods has, thus, been “burdened” by the claim of a religious institution to have been “burdened”, in turn, by general law. I should immediately note, however, that the courts have commonly tried to balance these burdens upon the general citizenry over against those of religious plaintiffs. In the Little Sisters of the Poor case, for instance, the Federal government provided the contraceptive services from which the nuns sought exemption. The “burdening” of the general citizenry seems to be the social cost of freeing religious institutions from “burdens”. In light of such asymmetrical outcomes, I suggest that the equity of such civic burdening might be given further scrutiny.

Legal “Accommodation”, a Prelude to Sovereignty?

The history of legal exemption or accommodation for the purpose of insuring free exercise of religion is long. But, long as it is, it is equally well understood that the history of freedom of conscience is equally long as well. Martha Nussbaum locates the American origins of such an individual, interior sense of religious freedom in the struggles of Roger Williams, who held that “the capability of conscience requires

protection of the widest possible space that is compatible with the safety and survival of the state.” Only the extremes of ultimate “safety and survival, could possibly justify any diminution of the space within which conscience exercises itself” (Nussbaum, 2007, p. 44). Nussbaum argues that it was Williams’ spirit of the freedom of individual conscience that most deeply touched the Founders.

But, what if accommodations principally result in empowering religious institutions, at the expense of individuals, and even individual religious freedom? What if corporate accommodations turn out to be more consequential, especially in terms of influencing the outcomes of political contestation? What, as well, if corporate accommodations weaken conceptions fundamental to the values of national integrity, such as the value of the individual conscience? While individual accommodations may threaten conformity, or at best, induce pluralism into the body politic, corporate exemptions that seek exceptions from general law, in fact, challenge the integrity of the polity at large. At what point do these institutions exemptions or accommodations begin enabling the establishment of a state within a state? At what point, do these exceptions to the rule accumulate enough substance to become the foundations of a new rule, that is to say, the grounds of sovereignty, that is to say, virtual secession?

While skeptics of that congeries of notions passing under the label, “religious liberty”, sometimes focus upon possible violations of the establishment clause of the constitution, I am not doing so. Rather, a warning might instead be issued for the use of the free exercise clause to enable movements of religious sovereignty or secession. Should this be true, the accommodations sought on behalf of the freedom of religious institutions pose arguably greater threats to national public order because they tend to secession from, at least, the support of civil rights. In so far as they constitute efforts to opt out of acknowledging certain civil rights, legal accommodations made to institutions, such as in Hosanna-Tabor may constitute the first steps on a journey, whose final destination may itself be sovereignty. In *Smith*, Justice Scalia feared that permitting the kind of individual liberty from prevailing law that the plaintiffs sought would “permit every citizen to become a law unto himself” (*Reynolds v. United States*, 1879). By extension, I am saying that legal accommodations to religious institutions may be hastening their achievement of being such “laws unto themselves”.

If we take seriously Scalia’s fears in *Smith* of the potential anarchy should “every citizen” become a “law unto themselves”, how much greater the risk to the nation and to the individual conscience, posed by the gradually expanding accommodations made to religious bodies? Professor B. Jessie Hill of Case-Western Reserve Law School, reminds us that “religious sovereignty is a claim to the same people and the same geographical space that the political sovereign controls” (Hill, 2017, p. 1196). She further argues that there are, *in principle*, no limits to the increase expansion of religious claims to sovereignty (Hill, 2017, p. 1196). Indeed, Hill argues that the movement pushing for these exemptions is “problematic because it has no logical stopping point, and that the lack of limitation is inherent to sovereignty claims” (Hill, 2017, p. 1179). To boot, Hill claims that these corporate religious “claims of entitlement [are] not just to deference, but to almost complete non-interference with certain aspects of institutional life” (Hill, 2017, p. 1191).

Legal “Accommodations” to the Religions Are Gifts Rather than Inalienable Rights

I raise this prospect of the potentially limitless expansion of claims to corporate freedom of religion because I believe it forces us to take a more critical look at freedom of religious corporations. This is true whether or not religious institutions actually do seek the sovereignty their critics, like Hill, believe they seek. I am arguing that even if Hill and her ilk overstate the self-seeking of religious institutions, there is, nonetheless, reason to re-examine the relation of religious institutions and the State.

Consider the case where religious institutions, despite their pursuit of accommodations to, and exemptions from, general law, desire to remain good citizens of the commonwealth, contributing appropriately to the general welfare. What might be appropriate reactions to these grants of exit rights from general law? Further, what, indeed, could one argue, should their response be to the granting of such exemptions and accommodations? Assuming that accommodations for individual conscience have not been seen as enabling secession or separation, to what extent do plaintiffs recognize that granting accommodations puts them in debt to society at large?

While accommodations to general laws in behalf of religious institutions may be relatively common, we are not justified in regarding such exemptions as “natural” or as marking “fundamental human rights.” They are instead derived from or extrapolated out of more fundamental rights. Accommodations or exemptions are, therefore, concessions “granted”. And, like all *grants*, they are *gifts*. Like all gifts, they may be accepted, circulated, reciprocated, rejected, returned, and so on. Cheryl Perich, the unfortunate church employee dismissed because of the accommodation – “gift” – to do so *granted* to Hosanna-Tabor church could be “given” back her job should that ruling be reversed at a later date. Similarly, the decision makes it clear that *granting* such an exemption is not fundamental in the sense of being “required”, or constitutionally demanded, and, significantly not “recognized” (Employment Div., 1990). It is further important to distinguish exemptions and accommodations from so called “natural” or “God-given” rights in other ways. Thus, while it is true that statutory or judicial accommodations may be recognized as flowing from or inhering in such pre-contractual rights, their determination depends upon legislative or judicial action. As the precise logic of “granting” implies, these accommodations or exemptions are, instead, gifts, grants, awards, bestowals, concessions, and so on. Again, while “inalienable” or “natural” rights may be seen as “God-given”, as having divine origins, accommodations to general law depend upon specific human agency by courts or legislatures. If we, thus, pay heed to the language of a recent Supreme Court ruling involving religious liberty, such as *Employment Division v. Smith*, the notorious peyote religion case, “accommodation” is always modified by language like “allow”, “permit”, “provide”, “confer”, “grant”. The court speaks always of “granting” an exemption or not. This is the language of *gift*, not of “inalienable” right. There is no “right,” strictly speaking, for members of the Native American Church to ingest a legally proscribed drug – peyote – in the sacramental setting of their devising. No such status is “recognized”; it is, rather, either “granted” or not. Were the court to allow such a practice, it would, in effect, be granting – giving – the Church an exemption from the general rule against

the use of a controlled substance, such as peyote. Thus, because the language of accommodation and exemption is so important to many recent cases of legislation or judicial determination, it is even more important to take stock of the logic of gift or social exchange. This logic is freighted with the language of obligation.

Honoring the Gift of Accommodation by Paying It Forward

One of the better-known obligations recognized by those granted gifts is the obligation to repay the gift. Following the logic of gift and obligation, in the case of exemptions from general laws *granted* to religious corporations, there comes an obligation to repay the gift of accommodation. One way such an obligation could be fulfilled might be with some sort of good will public or patriotic service. Individual citizens, for example, granted conscientious objector's exemption from military service commonly perform public service either in civilian life or in non-combatant roles in the military. Religious institutions granted ministerial exception to military service of their clergy typically provide chaplains to the military in implicit recognition, typically uncoerced, of their obligation to the nation, and in recognition of the gift nature of accommodations.

At the same time, such recognition of the obligation to repay counts as a pledge of patriotism. Such a gesture, such a gift to the whole, would create a virtuous symmetry with respect to the State for granting its special accommodations to the religions. For example, Hobby Lobby might make a noble patriotic gesture of gratitude for its exemption from offering birth control benefits to its employees with a program to provide free day care to employees. Or, the Little Sisters of the Poor might reciprocate the grant of being exempted from providing birth control coverage for their employees by, say, funding adoptions of children otherwise hard to place. One can trust the creativity of our public sector and NGOs to come up with similarly healing ways to acknowledge the gift of religious accommodations and the concomitant great social debt owing to the society that makes such accommodations possible at all.

But, if legal accommodations are gifts, are there other implications? In his classic anthropological treatise, *The Gift* Marcel Mauss (1967) argued that there was no such thing as a so-called "free" gift. Instead, "obligation" ruled: gifts are given out of a sense of obligation; we are similarly obliged to accept the gift, and finally obliged to repay it in some manner (Mauss, 1967). A common misunderstanding of what the obligation to repay the gift means is "reciprocation" in one-for-one correspondence from the receiver of the gift to the original giver of the gift. While reciprocation, in the sense of a one-for-one correspondent return of the gift, is one-way repayment can be understood, Mauss and later exchange theorists did not feel that a proper response to the gift was limited to strict reciprocity. The gift maybe repaid by "paying it forward", as we commonly say. If I give you the gift of a dollar, this may mean that you, in return, reciprocate by giving me a dollar at a later date. On the other hand, you may instead "pay my gift forward" by collecting my mail while I am out of town, or do some other service to yet another party because of my initial gift. The labor of school teachers, for instance, can be understood in this way as an act of "paying forward" to their students

the devoted service their own teachers gave them. In acknowledgment of an original act of generosity, the receiver of the gift might be moved to acts of charity to others, rather than to direct repayment. This is the familiar pattern set up in the Gospels of responding to divine acts of generosity by going forth and being generous to fellow creatures, for instance.

On this view, legal accommodation to religious corporations might, therefore, to be seen as a gift that creates obligations laid upon religious bodies to “repay” or “pay forward” the very gift of such legal accommodation. Since these accommodations consist in gifts to particular ecclesiastical communities an appropriate repayment for such specialized gifts might preferably be something that enhances civic virtue. Put otherwise, since these accommodations benefit the self-interest of *particular* members of the overall American community, an appropriate repayment of this exemption from common rules would be something that itself would celebrate the blessings of *common civic life*, chief among them our civic virtues.

Within the confines of this space, I cannot hope to tell the whole story of the all-too-common Christian nationalist assumption of the unrelieved malevolence of the state. Their sadly, too familiar, vision of the state as predatory Leviathan only excites them to greater efforts to execute what Robin West has called the “rights to exit” from, or “opt out of”, general civil rights typical of the Christian nationalist drive for corporate religious liberty, that is to say, sovereignty (West, 2016, p. 404). West further notes that these “exit rights” do not enhance individual liberty – religious or not – by enabling citizens more deeply to participate in civil society, but rather they aim to enable an exit from “our society’s legally constructed social contract. In each case in which an exit right is recognized, the individual or corporate entity is given a right to refuse to participate, rather than rights to participate, in some legally constructed and shared project of civil society” (West, 2016, p. 405).

Civic virtues are the values that enhance our common life together, that increase the general good. These should not be confused with the goods desired by particular communities. Roger Williams had the occasion to address his Massachusetts Bay Colony opponents on this subject. They insisted that the chief criterion for choosing a political leader was that person’s Christian convictions. Williams, however, declared that what was relevant to political office was, indeed, a particular set of moral virtues, but that these virtues are separable from religious convictions. “Good moral principles are routinely found”, he says, “in people who have a religion that one may take to be in error”. Our politics should be conducted within that shared moral space, “making sure that it does not get hijacked by any particular doctrine, in such a way as to jeopardize both liberty and equality” (Nussbaum, 2007, p. 44).

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