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Derek H. Davis

THE ENDURING LEGACY OF ROGER WILLIAMS

Applying his Principles to Today's Pressing Church-State Controversies.

This chapter honors Dr. Erich Geldbach's distinguished work in the free church tradition and indeed his devotion to those everywhere who struggle for freedom. In the spirit of this passion for freedom, we turn to a study of Roger Williams, the American pioneer of religious liberty. In order to do justice to Dr. Geldbach's enduring legacy, however, we may not leave the struggle for religious liberty in the dusty annals of history. We must bring these principles forward to the modern world. To that end, this chapter will review Williams' historic struggle for religious liberty, and then will attempt to bring the spirit of Williams' beliefs into conversation with key issues of church-state relations today, especially in the United States.

I. Roger Williams ranks as one of America's most distinguished thinkers. Curiously, he is also among the least known. Most American history texts, if they mention him at all, note merely that he was a Puritan preacher who came to Massachusetts from England in 1631, only to be banished four years later for his "rebellious" and "unorthodox" religious views. Some texts go on to identify him as the founder of the Rhode Island colony, where he lived until he died in 1683, but little else is mentioned.

Williams was indeed a prominent, if somewhat controversial, Puritan preacher, but he is best known for being the first American to advance the view that religion and government are separate institutions whose purposes should not be mixed.¹ He was, in other words, America's first church-state "separationist." In fact, the "wall of separation" metaphor, usually attributed to Thomas Jefferson in an 1802 letter to the Danbury Baptist Association,² was first used by Williams. In 1644, he wrote that the Bible taught there to be a "hedge or wall of separation between the
1 D. Skaggs, *Roger Williams' Dream for America* (American University Studies IX/129), New York 1993, 13-14. Cf. H. Spurgin, *Roger Williams and Puritan Radicalism in the English Separatist Tradition* (Studies in American Religion, 34), New York 1989, 42; J. P. Byrd, Jr., *The Challenges of Roger Williams. Religious Liberty, Violent Persecution, and the Bible*, Macon GA 2002, 22.
2 I. Kramnick and R. L. Moore, *The Godless Constitution. The Case Against Religious Correctness*, New York 1996, 97.

garden of the church and the wilderness of the world."³ Scholars are fond of stressing that Williams was concerned with protecting the church from the state, whereas Jefferson felt the "wall" was necessary to protect the state from the church.⁴ While this worn-out distinction is generally accurate, there were far more likenesses than differences in Williams' and Jefferson's views on church-state relations. Clearly, both believed that a boundary between the institutions of religion and government preserved the health and integrity of both.

In its interpretations of the religion clauses of the First Amendment, the U. S. Supreme Court frequently looks to history to ascertain meaning. The Court has looked to colonial practices; the writings of key founding fathers such as Jefferson, James Madison, Benjamin Franklin, and John Adams; the proceedings of the Continental

Congress; the proceedings of the Constitutional Convention (1787); the practices of the early Congress and state legislatures; and the writings of key thinkers throughout the nineteenth and twentieth centuries to determine the role that religion should play in American public life. Their investigations into history are ongoing. In two relatively recent U.S. Supreme Court cases, for example, *Rosenberger v. University of Virginia* (1995) and *Boerne v. Flores* (1997), many of the justices entered into heated exchanges over the original meanings of the Establishment and Free Exercise **Clauses. 5** These exchanges highlight the fact that some of the justices (the “separationists”) clearly favor broad constructions of the clauses, whereby government should stringently avoid advancing any kind of religion while vigorously protecting the free exercise rights of all citizens. Other justices (the “accommodationists”) would permit government advancements of religion, provided it is done nondiscriminatorily and without endorsement or coercion, and generally would defer to state and local governments in protecting free exercise rights. This **separationist-accommodationist** debate engages not only judges, but lawyers, politicians, theologians, philosophers, historians, and generally the entire public on such issues as prayer in the public schools, religious symbols on public property, government funding of religious institutions, religious advocacy in courtrooms, and the criminal prosecution of those exercising controversial religious practices such as ingesting peyote and refusing medical treatment. Neither side questions the vital role that religion plays in American society; the real differences center on whether government’s role as facilitator for religion’s participation in public life vitalizes or hinders religion and its moral and social benefits. Both sides claim to articulate the religion clauses’ “original” meaning.

Clearly, the most authoritative early American sources on the meaning of the religion clauses are Thomas Jefferson and James Madison, mainly because they wrote more than anyone else on the subject. In fact, it was Jefferson’s “wall of separation” metaphor that was embraced by the Court in *Everson v. Board of Education* 3 R. Williams, Mr. Cotton’s Letter Lately Printed, Examined and Answered, in: R.A. Guild, ed., *The Complete Writings of Roger Williams*, New York 1963), 1:392. **(remove parenthesis after 1963)** 4 L.W. Levy, *The Establishment Clause. Religion and the First Amendment*, New York 1986, 183-84. See also M. DeWolfe Howe, *The Garden and the Wilderness. Religion and Government in American Constitutional History*, Chicago 1965. 5 See *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U. S. 819 (1995) and *City of Boerne v. Flores*, 521 U. S. 507 (1997).

(1947)⁶ to explain the founders’ basic goal of separating church and state. Nevertheless, the separationist framework, and Jefferson’s metaphor as its enduring symbol, have since been vigorously criticized by some members of the Supreme Court. Chief Justice William Rehnquist, for example, has suggested that the metaphor is “based on bad history . . . , has proved useless as a guide to judging,” and “should be frankly and explicitly abandoned.”⁷ Rehnquist, joined by Justices Antonin Scalia and Clarence Thomas,⁸ has also been a vocal critic of the church-state views of James Madison.⁹ For all three justices, the voluminous writings of both Jefferson and Madison had more to do with adopting a separationist policy in their home state of Virginia than erecting a “wall” between religion and the national government.

The Supreme Court has also recognized the significant role played by the seventeenth-century New England Puritan, Roger Williams, in the development of American church-state relations. In *Abington v. Schempp* (1963), the Court bracketed him with Jefferson and Madison as a significant contributor to the uniquely

American concept of the separation of church and state. The Court stated: “Nothing but the most telling of personal experiences in religious persecution suffered by our forbears ... could have planted our belief in liberty of religious opinion any more deeply in our heritage. It is true that this liberty frequently was not realized by the colonists, but this is readily accountable by their close ties to the Mother Country. However, the views of Madison and Jefferson, *preceded by Roger Williams*, came to be incorporated not only in the Federal Constitution but likewise in those of most of our states.”¹⁰ Unfortunately, while frequently having explained the significant contributions of Jefferson and Madison in *Schempp* and other cases, the Supreme Court has never elucidated the important contributions of Roger Williams. The subject of this essay, then, is a review of **Williams’** positions and their significance to American church-state relations. Perhaps greater attention to the logic and insight of Williams **will** give us the edge on historical insight that we need to resolve the separationist-accommodationist debate, and in turn, many of the vexing issues of our own day.

II. Williams came from England to Massachusetts in 1631 to serve as a Puritan pastor.

Although he first received a warm welcome, Williams was banished in 1635 due to his criticism of the Massachusetts Bay colony elites who had constructed a theo-

6 *Everson v. Board of Education*, 330 U. S. 1 (1947) at 16.

7 *Wallace v. Jaffree*, 472 U. S. 38 (1985) at 108.

8 For example, see *Lee v. Weisman*, 505 U. S. 577 (1992). For the views of Justice Clarence Thomas, see D. H. Davis, *The Fraternity of Original Intent. Clarence Thomas the Newest Inductee*, in: *Liberty* 91 (March-April 1996) 16-20.

9 For example, see *Wallace v. Jaffree*, 472 U. S. 38 (1985) at 107. For a discussion of Rehnquist’s views on Madison, as well as more generally, see D. Davis, *Original Intent. Chief Justice Rehnquist and the Course of American Church-State Relations*, Buffalo NY 1991, esp. 137-39 re Madison.

10 *Abington School District v. Schempp*, 374 U. S. 203 (1963) at 215. Author’s italics.

cratic political order.¹¹ He thought the colony had confounded the teaching of the Bible on the matter of the distinctive roles of church and state in society. He strenuously objected to mandatory church attendance¹² being enforced upon all citizens, believing that it was an intrusion on personal conscience. He further objected to religious tests for holding civil office, and to an oath to God as a mandatory requirement for citizenship.¹³ He fled to Providence in 1636 and founded the first Baptist church in America.¹⁴ He later secured, provisionally in 1644,¹⁵ and permanently (with the able assistance of John Clarke) in 1663, the charter for the colony of Rhode Island.¹⁶ There he established America’s first democracy, permitting persons of all religious persuasions to settle within Rhode Island’s boundaries.¹⁷

Williams had the opportunity in Rhode Island to work out his views on human government. Government, as Williams saw it, had very little to do with religion.¹⁸ In repudiating the religious purposes of the state, he overthrew the Puritan effort to sanctify politics and recognized government as an art, approved by God in a general way but human in origin and operation.¹⁹ The purpose of government, said Williams, was to protect persons and their property.²⁰ Whether pagan or Christian, so long as a government protected the people who created it, in their persons and their belongings, it did what a government ought to do. But when it witnessed to spiritual truths, it succeeded only in injuring persons;²¹ when it tried to protect the true church, it succeeded only in transforming the true into the false. Any union

between church and state is “impugned by scripture and by the blood of the martyrs.”

22 In Williams’ opinion, God saw all governments as equal, and God did not favor one people or one kind of government over another. He believed that changes in government were brought about by “contingency, not conviction.”²³

11 W. C. Gilpin, *The Millenarian Piety of Roger Williams*, Chicago 1979, 16.

12 L. R. Camp, *Roger Williams. God’s Apostle of Advocacy* (Studies in American Religion 36), New York 1989, 113.

13 E. S. Gaustad, *Roger Williams. Prophet of Liberty*, New York 2001, 18-19.

14 J. Winthrop, *Winthrop’s Journal*, in: J. K. Hosmer (ed.), *History of New England 1630-1349*, New York 1908, 1/297. Williams’ tie to Baptists was not through the denomination itself (he was only a member of a Baptist church for three months), but through the unflagging passion for religious liberty which he shared with Baptists. See C. J. Diemer Jr., *Roger Williams. Testing the Fruits of Religious Freedom*, in: W. R. Estep (ed.), *The Lord’s Free People in a Free Land*, Fort Worth TX 1976, 9, 13. For the opinion that instead Dr. J. Clarke founded and pastored the first Baptist church in America in Newport, RI, see S. Adlam, *The First Baptist Church in America. Not Founded by Roger Williams*, Texarkana TX 1939, 153.

15 R. Williams, *The Correspondence of Roger Williams*, G.W. LaFantasie (ed.), 2 vols. Hanover NJ 1988, 2/612.

16 Diemer, *Roger Williams* (see fn. 14) 14.

17 Gaustad, *Roger Williams* (see fn. 13) 111.

18 Spurgin, *Roger Williams* (see fn. 1) 43.

19 R. Williams, *Bloudy Tenent of Persecution*, in: Samuel L. Caldwell (ed.), *The Complete Writings of Roger Williams*, New York 1963, 3/364. Cf. E. S. Morgan, *Roger Williams. The Church and the State* New York, Harcourt 1967, 115-20.

20 Williams, *Correspondence* (see fn. 15) 1/n. 206.

21 Byrd, *Challenges* (see fn. 1) 78-79.

22 Spurgin, *Roger Williams* (see fn. 1) 41.

23 M.W. Kaufman, *Institutional Individualism. Conversion, Exile and Nostalgia in Puritan New England*, Hanover NH 1998, 70.

It was this attitude that lent success to Williams’ dealings with the Native Americans. He despised their religion and found many of their customs barbarous, but he was ready to live with them and deal with them on equal terms. Significantly, he was careful to purchase, not simply claim, ownership of land from the Naragansetts. He had earlier criticized the Massachusetts Puritans for stealing the land of the Indians upon their arrival from England beginning in 1620. The Puritans claimed to be the New Israel, and just as God had granted to biblical Israel the promised land of the pagan Canaanites, so now, they believed, God granted to the New Israel the pagan lands of the Indians.²⁴ Thus, they never paid for the land they settled. The Naragansetts actually signed a deed conveying to Williams the property at Providence for a small sum of cash and “the many kindnesses he [Williams] had continually done.”²⁵ Interestingly, the Seal of the State of Rhode Island today bears the likeness of Roger Williams crossing the Seekonk River, being welcomed by Chief Wampanoag of the Narragansetts with the greeting “What Cheer,” an English transliteration of the sound of the word “welcome” in the native tongue of that tribe.

Williams maintained friendly relations with the various Native American tribes in the region for his lifetime. Moreover, he helped to avert several wars between them and the neighboring Puritans.²⁶ He consistently acknowledged each tribe as a people, respected their religious views, and felt it was wrong for Rhode Island to attempt to use its civil power to persuade them that their religious views were erroneous.

²⁷ Williams, in other words, was quite serious in the belief that human government

has principally a secular rather than a religious **foundation and** that diversity in religion, ethnicity, and race must be respected.

It was also from Rhode Island that Williams engaged in a pamphlet war with John Cotton of the Massachusetts Bay Colony on the proper relation between church and state.²⁸ Williams' best known work, *The Bloudy Tenent of Persecution*, authored in 1644, contains all of the essential elements of his church-state theory.

Two paragraphs from this important work offer the core of his thought:

God needeth not the helpe of a materiall sword of steele to assist the sword of the Spirit in the affaires of conscience, so those men, those Magistrates, yea that Commonwealth which [to the contrary] makes such Magistrates, must needs have power and authority from Christ Jesus to sit [in judgment] and to determine in all the great controversies concerning doctrine, discipline, government, etc.

And then I aske, whether on this ground it must not evidently follow that [a] Either there is no lawful commonwealth nor civill state of men in the world, which is not qualified

24 Although the "stealing" of the land was based on a grant from the king, Williams argued that the grant "did not give legal title to the land," even if the true owners, the Indians, were not Christians. Gilpin, *Millenarian Piety* (see fn. 11) 40.

25 O. S. Stause, Roger Williams. *The Pioneer of Religious Liberty*, New York 1894, 78.

26 Williams, *Correspondence* (see fn. 15) 2/611-612. Cf. Winthrop, *Winthrop's Journal* (see fn. 14) 183-190; Gilpin, *Millenarian Piety* (see fn. 11) 118; O. K. Armstrong and M. M. Armstrong, *The Indomitable Baptists. A Narrative of their Role in Shaping American History*, Garden City NY 1967, 56.

27 Gilpin, *Millenarian Piety* (see fn. 11) 123-124.

28 Williams, *Correspondence* (see fn. 15) 1/32-33. Cf. L. Ratner (ed.), *Roger Williams, John Cotton and Religious Freedom. A Controversy in New and Old England*, Englewood Cliffs NJ 1967, 19-35.

with this spiritual discerning: (and then also that the very Commonwealth hath more light concerning the Church of Christ, then the Church itself). Or, [b] that the Commonweale and Magistrates thereof must judge and punish as they are persuaded in their owne beleeve and conscience (be their conscience Paganish, Turkish, or Antichristian) what is but to confound Heaven and Earth together, and not onely to take away the being of Christianity out of the World, but to take away all civility, and [to take] the world out of the world, and to lay all upon heapes of confusion?²⁹

These convictions result in an important view of the liberty of conscience. Since the conscience is, as Williams defined it, "persuasion fixed in the mind and heart of man, which enforces him to judge ... and to do so with respect to God, His worship, etc."³⁰ it constituted for Williams the seat of spiritual authority in each human being. Conscience is fundamentally something between God and an individual, and it must therefore be left free of interference by human authorities. Moreover, because the conscience binds an individual's basic beliefs and requires him to judge in respect to them, it cannot be subject to civil influence. Conscientious convictions are not things a person has ready control over, nor are they things that are normally reconstituted under civil pressure. For these reasons, thought Williams, one should be left free to be ruled by conscience, unless the compelling interests of the state required otherwise. "This conscience," Williams wrote, "is found in all mankind, more or less in Jews, Turks, Papists, Protestants, pagans, etc."³¹ The consciences of all these persons should be protected against the great majority of forms of civil interference. The "bloudy tenent," according to Williams, is precisely the failure of human governments to properly limit their authority in matters of religious conscience.³²

III. It is impossible to know precisely the positions that Roger Williams would have taken on many of today's church-state issues. But we can speculate. What follows, then, is a discussion of Williams' possible views on several current issues, some of which depend upon the Establishment Clause for their resolution, some the Free Exercise Clause.

We might first consider an important Establishment Clause issue: judges' religious activities in their courtrooms. In recent years a number of judges in the United States have aggressively sought to bring a religious presence to their courtrooms.³³ By allowing courtroom prayer, posting of the Ten Commandments, and displaying religious art, these judges look past the **consciences** of jurors, parties, and others in the interest of promoting their own understanding of religious truth. Mandated by law, in

²⁹ Williams, *Bloudy Tenent* (see fn. 19) 3/201.

³⁰ Williams, *Bloudy Tenent* (see fn. 19) 4/508.

³¹ Williams, *Bloudy Tenent* (see fn. 19) 4/508.

³² Williams, *Bloudy Tenent* (see fn. 19) 3/204. Generally, see D. Little, *Roger Williams and the Separation of Church and State*, in: J. E. Wood Jr. (ed.), *Religion and the State. Essays in Honor of Leo Pfeffer*, Waco TX, 13.

³³ For example, see W. C. Singleton, III, *Ten Commandments Judge Praised and Panned*, in: *Christianity Today* 45/15 (December 2001) 22.

most instances, to participate in the proceedings of those courtrooms, many persons are subjected to views represented in various forms of religious activity that contravene their own religious views and subtly coerce them to violate their consciences. Williams almost certainly would have held these practices to be wrong—clear violations of the consciences of American citizens. The temptation of any religious person, in this case a judge representing the civil authority of the state, to mistake his or her own voice for the voice of God is indeed keen. Williams' solution would likely have been to prohibit state authorities from imposing their religion on anyone else. Consequently, the conscience of every citizen, no matter his or her religious persuasion, would be respected. The Establishment Clause, which has shaped so much of the American tradition of the separation of church and state, contemplates nothing less.

We might also think about the role that religion plays in inculcating virtue in the American people, specifically whether government, rather than churches and other private institutions, should promote religion as a means of building virtue in the lives of the citizens it serves. Consider the 1998 announcement by the federal government to make available \$2.2 million in grants to churches and community groups to create before- and after-school programs, summer school programs, and other community offerings to "help churches and community groups join police in fighting ... crime."³⁴ Then president Bill Clinton supported the initiative on the view that "religion and morality could both play a key role in crime prevention." According to Clinton, "When young people learn to turn to values, then they turn away from gangs."³⁵ On its face, this grant program hardly seems objectionable. Few would argue with the strategy of building character in youth to steer them away from a life of crime. And few would argue that organized religion can play a key role in achieving this goal. But are these federal grants constitutional, insofar as they go to churches and other houses of worship? Are there good reasons for restricting churches' access to these monies? Do not federal grants to churches advance religion, contrary to what the Supreme Court has repeatedly held the Establishment Clause prohibits? An ongoing political battle is currently being waged across America on just these sorts of questions. The same questions surround the welfare reform legislation passed by Congress and signed by President Clinton in 1996 and supported by current

President George W. Bush. The “Charitable Choice” provision in this legislation permits churches and other **houses of worship to act as outlets to administer government welfare programs**. Certainly litigation of both the anticrime program and “Charitable Choice” will continue in order to determine their constitutionality under the Establishment Clause.³⁶

34 S. E. Brier, Crime Fight Gets Religion, (22 July 1998). Available online at: <http://www.brierassociates.com/news/abc/clintonjuve980722.html>. Accessed 27 May 2003.

35 Brier, Crime (see fn. 34).

36 For examples of reports of recent litigation on the Charitable Choice issue, see Faith ruling gives both sides hope; This won’t end funding for religious charities, some say, in: Milwaukee Journal Sentinel (10 Jan 2002) Final Edition; Warning to states on funding faith-based charities, in: Christian Science Monitor (17 Jan 2002); and Faith program challenged over use of taxpayer funds, in: The Houston Chronicle (21 May 2002) Star Edition. More generally, see D. Davis and B. Hankins, eds., Welfare Reform and Faith-based Organizations, Waco Tx 2001.

Separationists would generally object to the crime-fighting program because it uses taxpayers’ money to further a religious mission. Church workers, they would argue, would be free to proselytize, the nature and scope of which the youngsters being ministered to or their parents might not be comfortable **with—all** at government expense.³⁷ Moreover, they would contend, the federal government would be permitted to monitor and regulate the use of the grant money, a violation of traditional church autonomy. Church participation in the program would foster church dependency on the government, rather than relying on the voluntary contributions of its constituents, thus threatening the long-term health and vibrancy of religion in America. Their position would be that if the church wants to receive the grant, it should set up a separate Sec. 501 (c)(3) charitable organization to separate the grant funds from the church’s other funds and agree not to advance religion in carrying out the program, an option which is now available to all churches and other houses of worship that wish to administer social programs with government money.

Accommodationists, on the other hand, would generally favor the ability of churches to receive the crime-fighting grants. They would argue that as long as the government does not discriminate among the churches that are eligible to receive the benefits, the Constitution is satisfied. They would encourage the church-state partnership as something that is sorely needed to revitalize an America that finds itself in an unprecedented moral slide. What would Roger Williams say? Again, we can only speculate, but Williams likely would have been guided by the fundamental principle that no state, no nation, indeed no governmental authority of any kind has a role in making **one religion or God’s ultimate aim, redeeming any person**. The accommodationist, of course, might take the position that a **church’s** social program is just performing a secular service, not trying to lead one to personal salvation. But to deny the restorative, sanctifying, indeed redemptive motive of a church in any of its social outreach efforts is to deny the fundamentally religious mission of the church. For Williams, religious projects were spiritual in nature, the oversight of which was assigned to the body of Christ’s redeemed, the church.³⁸ Government’s role was to provide for the peaceful and orderly lives of those under its jurisdiction, not to participate in religious projects.³⁹ Many argued in **Williams’** day, as many argue today, that only religion can supply the virtue in human beings that leads to real social peace and order.⁴⁰ Williams would not have denied this; certainly he believed that a religious citizenry might produce a more orderly society than could a nonreligious citizenry. But religion’s positive influence on society, he thought, was indirect.⁴¹ Genuine virtue was nothing that government

could generate itself, nor should it try; **nevertheless**, government did receive collateral benefits from religion, i. e., peace and order engendered by a virtuous people.

37 On this point of separation, Williams would have agreed at least in part with his long-time opponent John Cotton. See Morgan, Roger Williams (see fn. 19) 75-76.

38 Spurgin, Roger Williams (see fn. 1) 133.

39 Williams, Correspondence (see fn. 15) 1/n. 206.

40 L. Ziff, Puritanism in America. New Culture in a New World, New York 1973, 107.

41 Morgan, Roger Williams (see fn. 19) 127-129.

According to Williams, government efforts to advance religion would inevitably clash with the religious outlooks of those who held views contrary to those being advanced by the government.⁴² Such attempts would cross over into the domain of one's conscience, which was God's territory.⁴³ If everyone respected this basic principle, thought Williams, government would operate much more efficiently and receive the respect from all citizens that it deserved.⁴⁴ For Williams, this meant that government should not collect taxes for the support or advancement of religion. This was not just a matter of being nondiscriminatory in the support of religion.

Religion-at-large, the domain of God, something over which civil government had no competence, was off limits. Civil involvement in religion was a perversion, an invasion of the divine province, a sure way to corrupt that which is pure.⁴⁵

What about prayer in the public schools? Where would Roger Williams have come down on this important issue? Williams lived before the popularization of public schools, of course, but in their book, *The Godless Constitution: The Case Against Religious Correctness*, Isaac Kramnick and Laurence Moore speculate on what Williams would have said about prayer in the public schools. After noting that legislators' advocacy of school prayer is often motivated by little more than a desire to curry favor with voters, they suggest that school prayer would have been considered by Williams a wrong-headed effort by government to prescribe proper religious practices.⁴⁶ He would have considered vocal prayers in the classroom an invasion of the conscience, an attempt by government to usurp God's domain. "As such," add Kramnick and Moore, "it [prayer in public schools] ought to be resisted by any religious group that takes its own practices seriously."⁴⁷

Turning from the consideration of Establishment Clause issues, let us consider how Williams might have resolved today's most vexing problem in Free Exercise Clause jurisprudence: religion-based exemptions from generally applicable laws. This is a very complex area of law, and the task of speculating on how Williams would have addressed the issue is difficult because his own thinking in this area, or at least what we know of it, was itself complex. In *Wisconsin v. Yoder* (1972), the Supreme Court held that Amish parents did not have to send their children to school beyond the eighth grade, despite a state law that required attendance up to the age of sixteen.⁴⁸ The Court's decision supported existing law which held that a person has a constitutional right not to have a law applied against him if the law significantly interferes with his exercise of religion and the government lacks a "compelling interest" to enforce the law uniformly. This rule was altered, however, in *Oregon v. Smith* (1990), where the Court held that people with religious

42 Williams, Correspondence (see fn. 15) 1/104.

43 Williams, Correspondence (see fn. 15) 1/337-347, esp. 344-345.

44 Ziff, Puritanism (see fn. 40) 107. Cf. Williams' famous illustration of "Papists, Protestants, Jews and Turks" all enjoying religious freedom within the close quarters of a ship at sea. Williams, Correspondence (see fn. 15) 2/423-24.

- 45 Williams, Correspondence (see fn. 15) 1/ n. 45.
 46 Kramnick and R. L. Moore, *Godless Constitution* (see fn. 2) 59.
 47 Kramnick and R. L. Moore, *Godless Constitution* (see fn. 2) 59
 48 *Wisconsin v. Yoder*, 406 U. S. 205 (1972).

reasons to violate laws should receive no more favorable treatment than anyone else.⁴⁹ The Court made it clear that legislatures could grant specific exemptions if they wished, but that the Constitution does not require exemptions. Unhappy with this new direction in the law, Congress attempted to reinstate the pre-*Smith* standard by passing the Religious Freedom Restoration Act in 1993.⁵⁰ The Court ruled in *Boerne v. Flores* (1997), however, that Congress lacked the power to **enforce** the Act against states and local governments.⁵¹ Thus, the *Smith* case, which denies to religious persons a constitutional right to exemptions from generally applicable laws, is the current law.

We know something about how Roger Williams would have dealt with religionbased exemptions, although not as much as we would like to know. As a general rule, Williams opposed state interference in citizens' religious practices.⁵² But he *did not* hold that government must always grant religious exemptions from generally applicable laws. He affirmed the duty of the civil magistrate to enforce the Second Table of the **Law—the** final six commandments that prescribe duties to each other.⁵³ So, it would be proper, thought Williams, for the civil government to prohibit human sacrifice, as practiced in Peru in his day, as a violation of the commandment against murder; no one was entitled to an exemption on religious grounds. Likewise, it was proper to prohibit prostitution as a violation of the commandment against adultery. Again, no one was exempt. He despised the Quakers' religion,⁵⁴ but permitted them wide latitude in their "peculiar" practices.⁵⁵ He could not countenance them all, however. He required their military service, despite their conscientious objection.⁵⁶ He allowed a "moderate restraint and punishing" of their manner of speech which made an overuse of "thou" in addressing superiors, which Williams thought savored of contempt and so violated the fifth commandment.⁵⁷ He also permitted the state to limit the inordinate length of Quaker men's **hair and** to punish those Quakers who were led by the "inner light" to go naked in public.⁵⁸ Religious persons were simply not entitled to **religion-based** exemptions from these kinds of laws. They applied to everyone, without exception.⁵⁹

How did Williams come to these conclusions? For Williams, the Second Table set forth requirements of public safety, decency, and welfare, areas in which the

- 49 *Employment Division, Oregon Department of Human Resource v. Smith*, 494 U. S. 872 (1990).
 50 Religious Freedom Restoration Act, 42 U. S. C.
 51 *City of Boerne v. Flores*, 521 U. S. at 519.
 52 Camp, Roger Williams (see fn. 12) 113. Cf. Ziff, Puritanism (see fn. 40) 105.
 53 Spurgin, Roger Williams (see fn. 1) 43.
 54 Williams, Correspondence (see fn. 15) 2:685. Cf. Skaggs, Roger Williams' Dreams (see fn. 1) 78-83. For the debate between Roger Williams and the Quakers, see Camp, Roger Williams (see fn. 12) 174-210.
 55 Diemer, Roger Williams (see fn. 14) 18.
 56 Diemer, Roger Williams (see fn. 14) 15. Interestingly, Williams also upheld this conviction against the opinion of his brother, Robert Williams, who objected to the town of Providence "imposing compulsory military service." Williams, Correspondence (see fn. 15) 2/421; 423-424, [LaFantasie].
 57 R. Williams, George Fox Digg'd Out of His Burrowes, in: J. L. Diman (ed.), *The Complete Writings of Roger Williams*, New York 1963, 5/306-307.
 58 Williams, Correspondence (see fn. 15) 2/657.

state rightfully assumed jurisdiction – requirements that maintained civil peace.⁶⁰ Thus, the state had no duty to grant **religion-based** exemptions for violations of these laws since they really did not deal with the kind of profound matters of worship set forth in the First Table of the Law. He felt the Second Table was really just a codification of natural laws that were universally recognized to be binding on all people.⁶¹ Were the requirements of the Second Table on the level of the religious obligations of the First Table, not only would citizens have been entitled to religiously-based exemptions, but an even more fundamental problem would have arisen. Their legalization would have been the equivalent of state endorsement of religion, something that was repugnant to Williams. Yet he could hardly deny that there was a religious dimension to the Second Table, witness their central place in the Mosaic Law.⁶²

Herein lies one of the most pervasive problems in church-state relations, not just in Williams' day, but in any era. Even in a political regime such as the United States that firmly embraces neutrality toward religion, there is no escaping the fact that lawmaking is in many ways ineliminably religious. Much of law has as its goal providing for basic morality and decency in society. Lawmaking in the realms of murder, theft, rape, prostitution, abortion, education, and taxes are for many people secular matters, but for many other people fundamentally religious **matters**, because they are addressed by sacred texts like the Bible or the Koran. There is no absolute line that distinguishes the secular from the sacred. Roger Williams knew this, and so was able to claim that many areas of morality are a part of "natural law," a kind of middle ground with which both church and state are rightly to be concerned.⁶³ Identifying the content of natural law is, of course, a problem that is even more complex today than it was in Williams' day. Suffice it to say that then, as now, there is no perfect "separation."

IV. The separationist-accommodationist debate is in many ways a reflection of this sacred-secular duality in the makeup of moral legislation. Separationists and accommodationists alike acknowledge the important role that religion plays in society.

But separationists tend to be concerned that religious foundations to law theocratize the state and legitimize religious advancements. *Nonreligious* separationists fear this project because they believe that the state's promulgation of religion only perpetuates myth, impeding societal progress. *Religious* separationists generally fear something different. They see the state's authority to advance religion carrying the potential of trivializing religion and perhaps interfering with their own faith practices. Virtually *all* separationists share the view that religion is fundamentally a

⁶⁰ Williams, Correspondence (see fn. 15) 1/13.

⁶¹ Morgan, Roger Williams (see fn. 19) 128.

⁶² Morgan, Roger Williams (see fn. 19) 128.

⁶³ Williams, Correspondence (see fn. 15) 1/n. 307-08.

private matter beyond the purview of the government's competence. Accommodationists, on the other hand, view public (government) expressions of religion as a unifying agent in society and reflective of the reality of a divine sovereignty over public as well as private matters. For them, religious foundations to law are acceptable because the legal order should mirror the divine order in the universe.

Roger Williams, as a religious separationist, believed firmly that the government

sphere is not divine. Government, therefore, should never see its role as redemptive. Thus, when the state legislated morality, it did so to provide for peace, order, and decency in society, not to advance a divine cause. He considered state activity in religion a sacrilege that only interfered with the sacred human-divine encounter.⁶⁴

Contrary to popular belief, the separation of church and state is not an atheistic or agnostic doctrine. It does not contemplate the marginalization of religion in society, but rather the autonomy of religion in order that it can enjoy free course in the minds and hearts of human beings without government interference. It is important to note that Roger Williams was not primarily a civil servant, a political theorist, or a social architect. He was all of these, but he was first and foremost a pastor and preacher in the Protestant tradition. He was a devout believer in God who affirmed the efficacious merits of the sacrificial death of Jesus Christ, but he simultaneously trumpeted the merits of the separation of church and state. Of Williams, Theodore Greene has offered these insightful remarks:

If we care about the quality and vitality of our national life, however, we cannot dismiss a Roger Williams simply as a “subversive.” To understand what was at stake in 1635 may give us a fuller perspective on what is at stake, under different circumstances, when fears for security lead us to curtail liberty today.

The recent Supreme Court decisions and the proposals for federal aid to education have forced all Americans to reconsider the proper relations between church and state. In fact, the case of Roger Williams raises this question in a more significant way than the Supreme Court decisions of prayer and Bible reading in the public schools. The Court cases have been argued largely on behalf of atheists or minority religious groups protesting against compulsory exposure to religious exercises of a dominant group. Roger Williams was an ordained minister of the dominant and only religious faith in Massachusetts. He contended that any use of state authority to impose any semblance of religious worship destroyed the integrity of religion and offended God. Those who see the Supreme Court decisions as an attack on all religion have never tried to understand the religious experience as Williams understood it. Those who hail Williams as a prophet of religious liberty, but do not take religion seriously, also do not understand what Williams felt as the chief reason and source for preserving liberty. If religion were simply a means for inculcating morality, preserving social order, and determining respectability, Williams would probably be glad to make it a function of the state.⁶⁵

For Roger Williams, whose worldview could only be described as Christian, the separation of church and state never denigrated religion or functioned contrary to the interests of religion. **Instead**, it protected the autonomy of religion and

⁶⁴ Spurgin, Roger Williams (see fn. 1) 41.

⁶⁵ T. P. Greene (ed.), **Roger Williams and the Massachusetts Magistrates**, Boston 1964, viii.

respected it as the domain of God, not humans. He understood the separation of church and state to be the only guarantor of the sacred conscience of every person. Any intrusion by government into this sacred domain was a sacrilege, a violation of God’s intended order for human society.⁶⁶

In searching for the “original intent” of the Constitution’s religion clauses, today’s courts would do well to give greater consideration to the views of Roger Williams. Faithful application of his ideas would mean that government should never advance religion, even pursuant to a plan designed to assure that all religions benefit equally. In addition, it would mean that the right to believe and live out one’s faith is fundamental to human society as the plan and design of God. Thus, as a general rule, granting to state and local governments the ability to decide what forms of

religious expression are permitted contravenes God's desired order for human society. Although citizens would not necessarily be entitled to **religion-based** exemptions, the possibility would exist, provided the laws from which an exemption was sought dealt with matters of human endeavor that arise from natural law.

66 Spurgin, Roger Williams (see fn. 1) 41.