

the same degree of consideration to many religious entities, even small religious colleges.²¹ The majority in *Hobby Lobby* may well have been mistaken in concluding that the law required granting Hobby Lobby an exemption, either because the complicity claim was too attenuated or the harm to the public interest was too great. But they were not wrong to assume, just as statutes like the Religious Freedom Restoration Act and Title VII already do, that the category of religion is a reliable marker of instances where profound concerns weave together in genuinely unique ways. And indeed, that is exactly why the drafters of the First Amendment chose to single out religion from the very beginning.

Here, it is important to be clear. Seeing religion as a justifiable category implies that the law's decision to treat it specially is neither regrettable nor morally retrograde. But that does not mean religious concerns ought to prevail in every case. Nor does it mean the category of religion exhausts the universe of things we might want to protect. On the contrary, any one of the goods implicated by religion might offer a sufficient justification for special legal treatment. What is more, religion can also be a benchmark for identifying other kinds of concerns—things like sexual orientation, for instance—where a similar stacking of goods makes the case for special legal rules even stronger than it otherwise might be.²² Explaining all of that is a much longer essay. For now, it is enough to begin where Laborde's valuable book leaves off. When it comes to religion, the whole is more than the sum of its parts. And indeed, that might just be what makes it special.

Group Rights in *Liberalism's Religion*

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Chapter 5 of Laborde's incredibly rich analysis engages with the question of religious group rights. Laborde argues that the politically liberal state should grant (some) religious associations legal exemptions and protections, on the basis of their freedom-of-association-related interests: first, their *coherence*

²¹See *Hobby Lobby*, 134 S. Ct. at 2763–64 (explaining the differing regulatory regimes).

²²For a perceptive discussion of the affinities between religion and sexual orientation, see William N. Eskridge Jr., "A Jurisprudence of 'Coming Out': Religion, Homosexuality, and Collisions of Liberty and Equality in America," *Yale Law Journal* 106 (1997): 2416–30.

interest in living “by their own standards, purposes and commitments,” and second, their *competence* interest in being allowed to “interpret their own standards, purposes and commitments” (175). Accordingly, religious associations may be exempt from gender discrimination laws, if compliance would prevent them from acting as their religious doctrine requires them to (189). I offer two critical comments on Laborde’s account. My first concerns her treatment of ontological issues as irrelevant to group rights. The second concerns the scope of rights she is willing to grant religious associations.

In making the case for associational rights, Laborde distances herself from views that grant independent moral value to religious groups. Like all political liberals, Laborde is committed to *normative individualism*, the view that what morally matters, fundamentally, are the interests and well-being of individuals. But she also distances herself from more neutral accounts of group agency, which suggest that a group’s internal structure and decision-making processes can render it ontologically independent from its members. On these accounts some groups are corporate agents in their own right, and—when they are capable of moral reasoning—are also moral persons. These accounts have predominantly been used to ground corporate groups’ moral and legal responsibilities.¹ But recent work suggests that they might also be used to ground some corporate moral rights.² In contrast, Laborde suggests that the “ontological and metaphysical nature of groups is irrelevant to, or indeterminate about, the justification and scope of their rights” (172). Rather than ask what the group is, we should ask “how would giving it specific legal rights and duties affect our social relations” (173). To give one example, the practice of corporate limited liability need not be grounded in corporations’ separate agency. It can easily be grounded in the benefits of economic prosperity and innovation it (allegedly) generates.

But can ontological questions about the nature of the group be entirely ignored when we determine what rights and duties it might have? Notice there is quite a gap between deeming such questions *irrelevant* to the scope of group’s rights and duties, and deeming them *indeterminate* about these issues. While I agree with the latter, I remain sceptical about the former. To see why, it is useful to consider two distinct ways in which a group’s agency might be related to its rights.³ The first is *conceptual* and concerns whether, given the group’s status as an agent (or other related features), certain rights and duties can attach to it. The second is substantive, and

¹E.g., Christian List and Philip Pettit, *Group Agency* (Oxford: Oxford University Press, 2005).

²Frank Hindriks, “How Autonomous Are Collective Agents? Corporate Rights and Normative Individualism,” *Erkenntnis* 79, no. 9 (2014): 1656–85; Avia Pasternak, “From Corporate Moral Agency to Corporate Moral Rights,” *Law and Ethics of Human Rights* 11, no. 1 (2017): 135–59.

³Adina Preda “Group Rights and Group Agency”, *Journal of Moral Philosophy*, 9, no. 2 (2013).

concerns whether the group's agential status offers a sufficiently strong normative argument in favor of granting the group that right. While we might think that the group's agency in itself does not give a strong moral argument (or even any moral argument at all) in favor of granting it rights, clearly the conceptual stage is necessary in order to even reach that normative discussion. Indeed, much of the recent work on corporate moral agency engages precisely with the conceptual stage. Laborde might be right to point out that, for example, the practice of corporate strict liability need not be grounded in business corporations' agency (indeed, it need not be grounded in agency even in the case of individual actors). But can the same be said about, for example, corporate criminal accountability? Leading accounts of punishment defend it as a form of communicative moral engagement with the perpetrator. If groups are not moral agents, then it follows that they are simply not the type of thing that can be punished in any meaningful sense. But if they are, then quite possibly we ought to engage in moral communication with them.

Similar conclusions apply to the case of group rights. Consider the right to free speech. Granting free speech rights to corporations raises deep concerns about their undermining of individuals' political rights. But before we can discuss and assess these substantive issues, we need to examine which groups can even exercise a right of free speech. Given corporations' ability to form beliefs and values, it makes conceptual sense to grant them such a right. But it would make no sense, I think, to discuss the right of free speech for disorganized groups that lack a unitary common voice (e.g., the Jewish Nation). In fact, Laborde seems to recognize the importance of such questions when she restricts the discussion of freedom of association to groups that "surmount a threshold of unity and identity," which is necessary in order to "be potentially capable of bearing rights" (174). And it is worth noting that the groups to which she ends up granting association rights—churches, religious hospitals, and business corporations—are indeed corporate agents, given their internal structures and decision-making processes. That they are group agents is *relevant* to the discussion of whether specific rights might attach to them. But, as Laborde suggests, these considerations do not determine the scope of their rights, and concerns about the well-being of individuals will be crucial for the substantive argument.

My second point concerns the scope of freedom-of-association rights that Laborde allows for. As she explains, given the assumptions of normative individualism, religious groups may have legal rights only when they protect sufficiently important interests of their members. More specifically, what grounds religious group exemptions is their members' interest in their group's coherence and competence. But here one might ask why coherence and competence are valuable. For example, why is it valuable for Catholic believers that their church is permitted to appoint only male priests? The answer must be the value of integrity, which Laborde elaborates on and defends mostly in chapter 6. There she suggests that "integrity protecting

commitments" (IPCs) may justify individual exemptions from general laws (provided they comply with certain conditions). It follows that freedom of association is not valuable in itself, but rather is an extension of individuals' right to a life of integrity, for which they might require to associate with like-minded people by a common set of rules.

But once we notice the unified nature of Laborde's account of individual and collective rights—both being grounded in the right to integrity—we also notice a tension between her treatment of these two sets of rights. In the individual case Laborde restricts the type of IPCs that could justify individual exemptions. One of the conditions she sets is that the IPC must pass a threshold of thin moral acceptability. By that she means that it must not be "incompatible with any reasonable conception of justice and morality," as are the claims of the Nazi or the fundamentalist terrorist (207). However, Laborde does not seem to set similar restrictions on the doctrines on behalf of which religious associations may demand *collective* exemptions. As long as the demand for discrimination is grounded in a religious doctrine, "however objectionable the doctrine is," it may be treated as a case of permissible discrimination. For example, a white-supremacist church cannot be forced to admit blacks (180). But were we to apply the thin moral acceptability test to this case, we are likely to reach a different conclusion: white supremacy is not compatible with any reasonable conception of morality, so cannot ground permissible discrimination. To ensure consistency, Laborde must either tighten the restrictions on associational rights, or loosen the restrictions on individual exemption rights, and given her liberal commitments, it seems that she should do the former.

A possible reply is that my objection confuses reasons for action and the actions themselves. In the case of the white-supremacist church, its doctrine fails the test of moral acceptability. But what it ends up doing, in light of its obnoxious doctrine, is merely to refuse to admit racial minorities. This action is not a very serious violation of basic rights, and perhaps could be compatible (when disassociated from its obnoxious reasoning) with some reasonable conception of morality. In contrast, violent practices (e.g., infant sacrifice or stoning [209]) are prohibited but—the response goes—not because they are grounded in an unacceptable doctrine, but because these acts in themselves are impermissible violations of basic rights on any reasonable conception of morality.

But I am not sure we can divorce reasons and actions in this way. After all, actions are what we do under some intentional description,⁴ and these intentions define and color the moral meaning of those acts, both for actors and their audience. What the supremacist church *does*, given its intentions, is not merely to refuse to admit some people. Rather, it communicates deep

⁴Donald Davidson, *Essays on Actions and Events*, 2nd ed. (New York: Oxford University Press, 2001).

contempt to people merely for their skin color. *This* act, under *that* description, undermines its victims' (and perhaps other people's as well) social bases of self-respect. Those who are subjected to this wrong can reasonably argue that no liberal conception of justice ought to allow it. This does not imply that there is no room for group exemptions from general discrimination laws. But as in the case of individual exemptions, the relevant groups must be able to justify the exclusion by appeal to some reasonable conception of justice.

Reply: Disagreement, Equal Respect, and the Boundaries of Liberalism

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As indicated in my Introduction, the minimal secularism I defend disaggregates the notion of religion and places reasonable disagreement about justice (not only the good) at the heart of its theory of public reason and exemptions. The aim is to defend a liberalism that takes a middle course between the antireligious proclivities of political liberalism, on the one hand, and the relativist pluralism of critics of secularism, on the other. My interlocutors in this symposium challenge this account of minimal secularism from two opposite perspectives. The first group (Micah Schwartzman, Lori Watson, Avia Pasternak) thinks my liberalism is too permissive towards religious claims. The second group (Melissa Williams, Mark Storslee) argues that my liberalism is, on the contrary, too exclusive or ungenerous towards religious claims. In this reply, I attempt to defend minimal secularism from both charges, emphasizing the role that different conceptions of equal respect play in identifying the boundaries of reasonable disagreement about justice.

Micah Schwartzman pointedly asks about the political import of the modesty of *Liberalism's Religion*. I began thinking about its themes as the hopes triggered by the Arab spring and the early reforms of Erdogan in Turkey suggested the possibility of religious liberal states. At that time, scholars in various disciplines began exploring the contours of "multiple secularisms" as alternatives to the Western model of church-state separation. What was missing, I felt, was a systematic exploration of whether these alternative