A Christian Approach to Corporate Religious Liberty
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"Extracting Our Abstractions: Why We Need a Christian Approach to Corporate Religious Liberty" by Edward A. David - Canopy Forum

Pointing to the polarization that surrounds disputes like *Burwell v. Hobby Lobby Stores, Inc.* (2014), *A Christian Approach to Corporate Religious Liberty* argues that such cases need not involve pitting flesh-and-blood individuals against so-called "corporate moral persons." Instead, it proposes that these disputes should be resolved by attending to the moral quality of group actions. Discerned in the writings of Saint Thomas Aquinas, this reconceptualization helps illuminate the moral stakes of a novel—and controversial—form of religious freedom.

One of the political cartoons to appear after *Burwell v. Hobby Lobby Stores, Inc.* (2014) depicts two people conversing in a corporate penthouse. The first, presumably an employee, asks with indignation: "You don't pay minimum wage?" The other responds matter-of-factly. "It's against my religion," he says — an unsurprisingly stoic response from a person with a skyscraper for a head.

The words "corporations are people, too" display prominently on the latter's nameplate. The tagline undoubtedly resonates with our moral discourse today. It alludes both to the idea of legal personality and to the notion that people — that is, flesh-and-blood individuals — deserve moral respect. Yet by drawing these ideas together and by applying them to corporations, the tagline effectively highlights the (presumed) absurdity of "corporate moral personhood." No one, it implies, could take this idea literally. No one could approach it with any moral seriousness.

From a Christian ethical perspective, this sentiment makes good moral sense. Generally speaking, the metaphor of corporate personhood glosses over too many empirically significant — and ethically relevant — distinctions between groups and individuals to be of good use. In its place, we would do well to view groups in a different way. A promising model comes from a potentially surprising source: the medieval theologian Saint Thomas Aquinas and, before him, Aristotle. Both understood groups from the perspective of moral philosophy, viewing them as the ethically analyzable actions of coordinating individuals. Avoiding the pitfalls of corporate personhood, it is this Aristotelian-Thomistic model that grounds my thinking in *A Christian Approach to Corporate Religious Liberty* (Palgrave Macmillan 2020).

Understanding organized groups

Before detailing a Thomist account of groups, let us dig beneath our societal penchant for corporate metaphors. There, we find a long-standing occupation in the Western mind with defining, or re-defining, organized groups according to changing political and metaphysical commitments.

One trajectory within this history could be characterized as a gradual process of reductionism: this begins with a strong metaphysical understanding of the church, the medieval *corpus mysticum*; it passes by Locke's "true church," a "voluntary society of men" (*A Letter Concerning Toleration*, 6); and it terminates in today's metaphysically bereft association of consenting individuals.

Encompassing churches and non-church entities alike, the reductionist view is championed by those who object to strong corporate rights as justified by a strong group metaphysics. (Political liberals like Richard Schragger and Micah Schwartzman could fall into this camp.)

A somewhat opposite trajectory is a movement towards what we might clumsily refer to as ecclesialism. Tacitly described by Chad Flanders, Micah Schwartzman, and Zoë Robinson, ecclesialism (my term, not theirs) suggests that the moral justifications of church-autonomy doctrine have, in recent years, been used to protect non-church entities like for-profit corporations. Winnifred Fallers Sullivan has recently identified this "migration," involving a blend of church and business corporation, as a form of low church ecclesiology (118–120). For its potential association with a strong group metaphysics, ecclesialism is typically articulated — and rejected — by those fearful of strong for-profit claims to corporate religious liberty.

So, we see how various conceptions of groups are intimately tied to political and metaphysical commitments. The corporate personhood metaphor, the history of which is masterfully outlined by Adam Winkler, exemplifies the same point: presupposing a discredited strong group metaphysics, the metaphor serves as a supposedly intelligible means for us to continue wrestling with the *to whom* or *to what* — i.e., the appropriate moral and legal subjects — of corporate religious liberty.

That said, problems remain with both the normative conclusions and the metaphysical commitments of the aforementioned trajectories. Each seems to suggest that *pro tanto* rights to corporate religious liberty should be restricted to voluntary associations alone; each, too, evinces a questionable and even irresponsible use of group metaphysics. From a Christian ethical perspective, these problems typically and unduly restrict corporate religious freedoms. Furthermore, they do not advance clear-eyed discussion around corporate religious liberty's proper scope and logic. An alternative approach is needed.

A radical perspective on groups

Despite its concern with practical affairs, my monograph has been published in a philosophy of religion book series (a rather theory-heavy venue with which many law and religion scholars may be unfamiliar). Inclusion there is most likely due to my position concerning organized groups. It is a radical perspective — one that advocates a complete change in approach and attention towards a rich philosophical inheritance. Indeed, *A Christian Approach to Corporate Religious Liberty* reaches deep within the Christian tradition for metaphysical and moral insights.

First, the metaphysical. Discussion of the ethics of corporate religious liberty should not begin with conceptions of corporate personhood. As Cécile Laborde notes, these notions "do not engage the interest that grounds particular rights claims, nor do they provide a sense of how those interests are implicated within groups" (172). It is for this reason that my book begins with an alternative conception of groups — that is, with a metaphysics that *does* illuminate moral grounds and that *does* indicate how rights are implicated within a group setting. This conception is provided by Aquinas's group metaphysics.

Following Aristotle's description of the *polis*, Aquinas understands an organized group to be a composition of parts. When viewed through the lens of moral philosophy, this composition is best described as a coordination of individuals' actions. In short, according to Aquinas, a group ought to be viewed in the first instance as a *verb*, rather than as a thing or "person" (in a metaphorical sense). This metaphysical perspective brings moral clarity to groups and group life. With it, we can

understand how individuals contribute to group life (e.g., through execution of a shared intention) as well as how the group itself acts in a manner distinct from its members (e.g., an army surrounds the enemy in a way a lone individual cannot). These types of insights help illuminate the moral ends, means, and circumstances of collective action, while shedding light upon potential benefits and harms experienced by members and third parties.

A nuanced vision of group freedoms

With Aquinas's group metaphysics in hand, Christian ethical reflection — particularly its teachings on church-state relations and on religious freedom more generally — takes on new meaning. The Second Vatican Council, for example, highlights the dignity of the individual's search for truth. Aquinas's group metaphysics builds upon this position by describing how one's search can operate in coordinated or *group* settings. This descriptive datum, in turn, can be used in prescriptive arguments which hold that the state (itself a moral coordination) should respect group efforts to live out religious truth.

Turning to another teaching: the World Council of Churches points to the distinct activities of religious institutions (e.g., selection of ministers, teaching, and worship). Aquinas's group metaphysics highlights the *decision-making procedures* that authorise such activities. Thus, his perspective can be used in arguments that endorse state deference to a group's internal decisions. Finally, Catholic and Protestant teachings recognize the responsibility with which religious freedom should be invoked. On this point, Aquinas's group metaphysics illuminates how religious-freedom claims *morally bear upon* the group itself as well as the coordinating (and non-coordinating) individuals involved. If morally justified, the state may need to interfere in a group action.

Thus, Aquinas's metaphysics helps make intelligible the subjects involved in, and the concerns raised by, our corporate religious liberty disputes. Following Aquinas, therefore, we see how practical moral reason — i.e., the type of reason we use to guide moral conduct — does not rest content with mere metaphor. Instead, practical reason seeks to recognize the group itself and to identify its coordinating parts: all elements are subject to moral analysis. By implication, church teachings are nuanced, and are even corrected, by this clear view of social reality.

Take, for instance, the claim made by some religious leaders that businesses — even religiously motivated ones — are "religious institutions" deserving of the most robust protections. Aquinas helps cut through this confusing designation and its potentially untoward legal result: insofar as businesses have intelligibly distinct ends (e.g., the retail of goods), then the nature of their coordination (including the full range of coordinated parts) is empirically different from that of a church. These differences are ethically salient (consider knock-on effects among religiously heterogenous associations) and therefore should be seriously considered when negotiating the proper scope of corporate religious liberty claims — especially as they pertain to for-profit firms like Hobby Lobby or Masterpiece Cakeshop.

Neither left nor right, but free from abstractions

At this point, with both liberties and restrictions encouraged, we might wonder where on the political spectrum my approach to corporate religious liberty falls. In short, I would claim that it fits on neither the left nor the right. Instead, my approach advocates for a prudent extraction of the abstractions that tend to obfuscate our moral discourse. *Metaphors*, we recall, distract from the

actual moral subjects involved. *Individual rights*, when too narrowly focused upon, risk deracinating group life. And the moral concept of *religious institutions* (or *institutionalism*) tends to gloss over ethically salient distinctions between group-types (between churches and for-profit corporations, for instance).

A Christian approach to corporate religious liberty recognizes the value of these abstractions as found within the development of our laws and politics. At the same time, however, it acknowledges how these concepts have confused ethical thinking and have made our civic life together that much more combative and regretfully polarized. It is my hope that *A Christian Approach to Corporate Religious Liberty* offers a much-needed practical reorientation — a truly Christian way forward.