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Institutional Religious Freedom in Full: What the Liberty of Religious Organizations Really Is and Why It Is an “Essential Service” to the Common Good

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Abstract: Should the freedom of churches and other religious institutions come down to little more than a grudging recognition that “what happens in the church, stays in the church”? In this article, I provide a more robust definition of what I call institutional religious freedom than a crabbed and merely negative understanding. In addition, I also go beyond a libertarian-style defense of institutional religious freedom as the ecclesiastical equivalent of the “right to be left alone” by suggesting a multitude of reasons why institutional religious freedom in a robust form deserves robust protection. Especially amidst exigent challenges such as the global COVID-19 pandemic, an anemic appeal to an ecclesiastical version of negative liberty on merely jurisdictional grounds will not be enough to defend religious organizations from an increasingly strong temptation and tendency on the part of political authorities—often acting on the basis of understandable intentions—to subject such organizations to sweeping interference even in the most internal matters. In contrast, the article offers an articulation of why both the internal and external freedoms of religious institutions require maximum deference if they are to offer their indispensable contributions—indeed, their “essential services”—to the shared public good in the United States and other countries throughout the world. Underscoring the external and public dimensions of institutional religious freedom, the article follows the work of law and religion scholar W. Cole Durham in that it analytically disaggregates the freedom of religious institutions into three indispensable components: “substantive”, or the right of self-definition; “vertical”, or the right of self-governance; and “horizontal”, or the right of self-directed outward expression and action.

Keywords: religious freedom; religious liberty; religious institutions; religious organizations; institutional religious freedom; religious autonomy; church autonomy; freedom of the church; W. Cole Durham, Jr.

1. Introduction

In its 2012 judgment in *Hosanna-Tabor*, the US Supreme Court held that the First Amendment “gives special solicitude to the rights of religious organizations”. However, precisely what kind and level of “solicitude”? Precisely which “rights”? Additionally, precisely what is the ground of this solicitude and of those rights? Invoking the so-called “ministerial exception”, the Court in *Hosanna-Tabor* largely restricts itself to the idea that the church should be free from government interference in matters of “internal governance”, “internal government”, and “internal church decision”.¹ What the consenting adults who make up the church do among themselves is their own business, the Court implies, and is of no public concern or business of the government. One is tempted to wonder, therefore, if the Court’s “special solicitude” for the rights and freedoms of religious institutions is in the spirit of those old Las Vegas tourism advertisements: “What happens in Vegas, stays in Vegas”.²

Is the freedom of religious organizations valorized in the Religion Clauses and defended in recent Supreme Court jurisprudence little more than the ecclesiastical equivalent of the famed “right to be left alone”? In other words: “What happens in the church, stays

in the church". If so, is this all we *should* mean by the rights and freedoms of religious institutions, i.e., a veil thrown over the inner workings of religion, less from respect for the sacred and more from a sense that the affairs of the church are its own private (and perhaps somewhat unsavory) business? Are churches such as restive, semi-autonomous regions in some countries, which are given special jurisdictional respect and internal autonomy within their borders less from positive respect for their dignity and value and more from fear that external interference with their "internal governance" would create more problems than it would solve?

In the following, I provide a more robust definition of what I call institutional religious freedom than the crabbed and merely negative understanding that is implicit in the Court's majority opinion in *Hosanna-Tabor*. In fact, Associate Justice Samuel Alito's lengthy concurring opinion in *Hosanna-Tabor* points the way to the more robust and more positive articulation of the meaning and value of institutional religious freedom I offer here, and I confess I wonder whether he wrote his concurrence precisely to go beyond the majority opinion's more meager conception. According to Alito, respect for a church's governance, including in matters of ministerial appointments, is important not merely for the sake of protecting its internal autonomy. "A religious body's control over" its "employees", Alito observes, "is an essential component of its freedom to speak in its own voice, both to its own members and to the outside world". In other words, unfettered church governance subserves not only the internal self-government of religious organizations but also the "free dissemination of religious doctrine". We protect what happens in the church not because it stays in the church but precisely because it is meant to go forth from the church. Similar to Alito's, my definition stresses the essential internal *and* external dimensions of institutional religious freedom, as well as its negative *and* positive dimensions.³

In addition, I also go beyond a libertarian-style defense of institutional religious freedom, such as the ecclesiastical right to be left alone, by suggesting a multitude of reasons why institutional religious freedom in a robust form deserves robust protection. When the going gets tough, as it is getting tough right now amidst the global COVID-19 pandemic, an anemic appeal to an ecclesiastical right to be left alone on merely jurisdictional grounds may not be adequate for defending the proper freedom of religious organizations from sweeping interference even in the most internal matters. What is needed instead is an articulation of why both the internal and external freedom of religious institutions requires maximum deference if they are to make their indispensable contributions—and, indeed, "essential services"—to the shared public good in the United States and countries throughout the world.

2. Defining Our Terms: "Religion", "Religious Institution", and "Institutional Religious Freedom"

The concept of the "freedom of the church" was first formulated by Pope Gelasius in the fifth century and then later developed by Pope Gregory VII in the eleventh century as the Roman Catholic Church sought to resist political domination.⁴ However, despite a widespread prejudice that the idea of corporate religious independence (or, as it is often tagged, "separation of church and state") is a uniquely Western idea and achievement, the notion that religious institutions do—and should—retain a distinct place in society, as well as some independence and freedom from control by other agents, particularly political authorities, has strong antecedents and analogs in Hinduism, Buddhism, and Islam.⁵ In Judaism and Christianity, for example, it has ancient roots in biblical notions of institutional separation between the roles of prophet and king and the distinction Jesus draws between "the things of God" and "the things of Caesar". (Wilken 2019). In Hinduism, Buddhism, and Islam, it has deep roots in the institutional differentiation between the roles and duties of religious leaders, on the one hand, and the roles and duties of political authorities, on the other. In fact, in a historical survey spanning numerous cultures, religions, and civilizations, comparative sociologist S. N. Eisenstadt concluded that "in very few [ancient and medieval] empires did there exist even a partial fusion of some of the central political and religious roles" (Eisenstadt 1962).

In some ways building on these historical ideas and antecedents, law professor Douglas Laycock introduced “church autonomy” into contemporary scholarly circulation in 1981 (Laycock 1981). Among other things, Laycock identified a “right of church autonomy” as a distinct though all too frequently neglected interest. “Quite apart from whether a regulation requires a church or an individual believer to violate religious doctrine or felt a moral duty, churches have a constitutionally protected interest in managing their own institutions free of government interference”.⁶ Two years later, another legal scholar, Harold Berman, argued in an influential monograph, *Law and Revolution*, that Pope Gregory VII’s so-called “Papal Revolution” initiated a dramatic struggle for the Church’s institutional freedom that ultimately proved decisive in shaping Western law and politics (Berman 1983).

Subsequent decades have seen an explosion of work in American and European legal scholarship on institutional religious freedom, examining questions such as whether religious organizations (including for-profit corporations) may be exempted from generally applicable laws on the basis of claims of religious autonomy.⁷

For all this recent work, a palpable imbalance remains. Westerners in general and Americans in particular readily deploy a rich vocabulary and discourse of individual rights, including the individual right to freedom of religion and conscience. However, as Mary Ann Glendon, Michael Sandel, Patrick Deneen, William Galston, Robert Bellah, and numerous other commentators on both the right and the left have noted, we do not seem to have a comparably robust appreciation of the meaning and importance of institutional rights and the duties we owe—as individuals and as a society—to communities and organizations, including religious communities and organizations (Glendon 1993; Sandel 1982; Deneen 2018; Galston 2002; Bellah et al. 2008).

What rights and freedoms, then, do organized religious communities and institutions possess? What basic institutional rights and freedoms should any decent society, liberal or otherwise, recognize and respect? What institutional rights and freedoms are non-negotiable, such that, in their absence, a religious institution cannot be meaningfully free and self-organizing, and a political society cannot be said to promote the common good?

Before attempting to define and disaggregate the concept of institutional religious freedom, it is first essential, of course, to be as clear as possible about the meaning of “religion” as well as the meaning of “religious institution”.

I take “religion” to be an interconnected set of beliefs and practices through which people answer the grand questions of life by seeking to live in a relationship with the ultimate power (or powers) that grounds reality and is present to them in the real circumstances of their lives. They do this most characteristically through worship and similar practices seeking a connection with the divine. Religion typically involves related rituals, a community, and a moral code grounded in the sacred realm.⁸ Contrary to the pithy formulation of Anglican Archbishop William Temple that “[y]our religion is what you do with your solitude”, I follow sociologist Christian Smith in emphasizing that religion is fundamentally a matter of religious practices (Smith 2017). Moreover, I take it as too obvious to belabor that religious practices—particularly religious practices related to major life events, including birth, initiation, marriage, and death—are generally performed by or in the context of religious institutions and religious communities. Despite what generations of Western social scientists (disproportionately influenced by Protestantism and various forms of Western individualism and liberalism) have tended to believe, people tend to “do” religion as something exterior and concrete at least as much as they “believe” in it as something interior and spiritual.

However, it is crucial to see that religion, in my understanding, is not some value-free fact or tendency (perhaps optional) that characterizes (perhaps only some) human beings. From the point of view of any one of us thinking clearly about what makes for human flourishing—what would make my own life flourish—it is readily apparent that a life utterly devoid of any reflective interest in the deepest and widest horizons of being as such, and in our place in the universe, is a life that is in some significant way damaged and deficient. The dictum of Socrates that “the unexamined life is not worth living” is

perhaps the supreme expression of this truth: to fail to inquire about ultimate reality, and to fail to align one's life with the truth about that reality as well as one can discern it, is not just to suffer a quantitative ignorance of all the facts about the universe one might wish to know—such as being without one or two volumes of an encyclopedia. It is to miss a qualitatively distinctive opportunity and a basic human good: the chance to live a life that runs with (rather than in ignorance of, or, worse, against) the grain of the universe and reality itself (Tollefsen 2018). This seeking to discern the grain of ultimate reality or the fabric of existence—and to adhere or “bind” oneself to it as best one can—is the natural and near-universal phenomenon we generally term “religion”.⁹ Understood this way, religion is natural and near-universal because human persons have the kinds of capacities and live the kinds of lives that almost inevitably lead them to ask questions about ultimate meaning and ultimate reality.¹⁰

This leads to the next crucial definitional component of our analysis: “religious institution”. According to the *Merriam-Webster Dictionary*, the first meaning of “institution” is “an established organization or corporation (such as a bank or university)” and, further, one that is “especially of a public character”.¹¹ A religious institution, therefore, is an organization or corporation that is established at least in part to advance, reflect, realize, or defend “religion” or a “religious” purpose in the sense defined above. As Paul Marshall notes in his contribution to this Special Issue, nothing whatsoever prevents an institution—say, a humanitarian or development organization—from being simultaneously “religious” and something else (a “humanitarian” or “welfare” agency, in this case) in its constitutive purposes (Marshall 2021). After all, in an empirical study entitled *Global Institutions of Religion*, religion and development expert Katherine Marshall provides an analytical mapping of the enormous variety of religious institutions that operate around the world: formal ecclesial or religious communities; religiously inspired movements; global interreligious or ecumenical bodies; community and congregation-level groups; faith-inspired organizations; and religiously linked academic institutions (Marshall 2013).

All of these various kinds of religious institutions fall within the scope of our concern and analysis. Despite their vast variety and range, what they all have in common are two simple qualities. First, they consciously and deliberately aim at some religious purpose, objective, or end (even, again, if they might also possess some non-religious purpose, objective, or end). Second, they possess some degree of organizational or institutional coherence and agency. Thus, what distinguishes a religious institution such as the Young Men's Buddhist Association of America (YMBA) from a religious group or class such as “Buddhists” is that the former enjoys agency—it can act—while Buddhists as a group do not enjoy organizational coherence and agency even if they may constitute a religious community in some sense on account of their shared religious history, beliefs, and purposes.¹² Groups such as the YMBA illustrate an important, related point. Though some people have suggested or thought that the very creation of coherent religious organizations and institutions enjoying independent agency is somehow a Western, Christian, or Protestant phenomenon, there is abundant evidence to the contrary. The largest organization in Indonesia, for example, is the 90-million member Nahdlatul Ulama, an Islamic civil society institution that is entirely independent of government control and, in fact, predates the declaration of the modern Republic of Indonesia by nearly twenty years.¹³

However, it is important to clarify that religious institutions may enjoy meaningful coherence and significant agency and yet be nested within larger religious institutions that enjoy their own higher and wider degree of coherence and agency. St. Elizabeth Catholic Parish in Rockville, Maryland, USA, is led by a priest and parish council and is capable of exercising coherence and agency on many matters. St. Elizabeth, however, is not autonomous or self-organizing but is nested within another coherent religious institution that enjoys its own agency (and indeed higher authority), the Roman Catholic Archdiocese of Washington, which is, in turn, nested within the worldwide Roman Catholic Church, whose hierarchical leadership, of course, culminates in the Bishop of Rome, the Pope. What distinguishes a “religious institution” is not that it is necessarily self-contained in the sense

that it enjoys supreme autonomy or ultimate authority (even from its own theological or religious standpoint) but that it enjoys some meaningful degree of institutional coherence and agency. Precisely in order to respect the integrity and variety of different “religious institutions”, it is necessary to acknowledge that they differ from each other in how they understand their authority, agency, and institutional coherence. Some, such as St. Elizabeth, understand themselves to be organically nested within wider and larger religious institutions, whereas other religious institutions (such as some independent, congregational religious communities) understand themselves to be entirely autonomous and under no higher institutional authority.

Following scholar of law and religion W. Cole Durham, Jr., I and a collaborative research team I lead at the Religious Freedom Institute take “institutional religious freedom” to be a right of self-determination for religious institutions and organizations as just defined. Building on the insights of other scholars, we suggest that at its core, this right to self-determination entails the right of religious communities to decide upon and administer their own affairs without government interference.¹⁴ In this sense, we take institutional religious freedom to be *the effective power of religious communities and organizations to be independent of control or interference by the state and other social actors and therefore to enjoy meaningful self-determination in the conduct of their “internal” affairs or self-governance as well as their “external” affairs or engagement with the wider society.* To elaborate, *institutional religious freedom is the presumptive right of a religious institution to be free from coercive interference on the part of individuals, social groups, governments, or of any human power in three main areas or dimensions: self-definition, self-governance, and self-directed outward expression and action.*

If the essence or core of institutional religious freedom is reasonably clear, what are its main components or constituent elements? Durham argues that institutional religious freedom has three main dimensions: substantive, vertical, and horizontal. *Substantive* dimensions of institutional religious freedom pertain to the core content of a religious community’s religious life, such as the definition of the community’s beliefs and doctrines and the content and organization of its worship and rituals. *Vertical* dimensions pertain to a community’s leadership structure, hierarchy, lines of authority, the training and appointment of ministers and leaders, the conferral of membership, and the disciplining of members. This dimension includes the right of religious institutions to have and practice their own distinctive pattern of religious organization, i.e., whether nested and hierarchical or autonomous and congregational, as discussed above. *Horizontal* dimensions pertain to a community’s ability to engage the wider society in systematic ways through the creation of specialized institutions and the organized manifestation and propagation of its religious message and teachings.

That is, a religious institution enjoys the presumptive right to define its identity and its core convictions (the self-definition or “substantive” dimension of institutional religious freedom), govern itself by its core convictions (the self-governance or “vertical” dimension of institutional religious freedom), and act and express itself based on its core convictions in society and public life to the extent and in the manner it wishes to do so (the self-directed action and expression or “horizontal” dimension of institutional religious freedom). The horizontal dimension of institutional religious freedom is subject to two basic limits: it does not authorize violence or the infringement of the fundamental rights of others.

Note that this freedom is presumptive in the sense that there is a strong presumption in its favor and a corresponding duty on the part of other actors, including the state, to defer to the three-fold freedom of religious institutions (substantive, vertical, and horizontal) to the maximum extent possible. In certain respects, however, such as concerning the freedom of a religious body to define and interpret its own identity and doctrine, this freedom is absolute or near-absolute—the collective equivalent of the individual’s absolute *forum internum* right (and duty) to follow the dictates of conscience with respect to one’s own beliefs about religion and morality.

At the same time, precisely to foster the conditions favoring the proper autonomy and self-organization of religious institutions, in the long run, it may well be justifiable

and necessary to limit the freedom of particular religious bodies in the short or medium term (and perhaps even in the long term). To foster the appropriate freedom and ability of young pupils to play and flourish at recess, it may be justifiable and necessary for the responsible teacher to discipline the schoolyard bully and perhaps even stop the bully from participating in recess at all, at least for a time. Likewise, when faced with religious institutions that coerce, bully, and intimidate other religious institutions in ways that prevent them from exercising their proper freedom, governments are well within their rights—and, indeed, they would be obligated by the norms of religious freedom—if they were to take steps to stop such bullying or coercive practices by certain religious institutions. However, governments must also ensure that the steps they take are proportionate. Just as a teacher would not be acting proportionately if, say, he or she was to cancel recess for all pupils, indefinitely, because of the actions of one bully, so governments would not be acting proportionately if they were to impose blanket restrictions on the freedom of all religious institutions (such as through excessively onerous registration requirements, or blanket restrictions on access to funding) because of the actions of some religious institutions.

Why, though, *should* there be a presumption in favor of institutional religious freedom? Why should we give the freedom of religious institutions the benefit of the doubt? The rest of the article is designed to clarify the dimensions and constituent elements of institutional religious freedom but also to articulate a range of reasons why governments and societies should afford these dimensions and elements maximum deference.

3. The Substantive Dimensions of Institutional Religious Freedom

The substantive dimensions of institutional religious freedom pertain to the core content of a religious community's religious life. *A religious community enjoys the substantive dimension of institutional religious freedom when it is independent of outside interference and meaningfully self-determining in (a) defining its core beliefs and doctrines, (b) defining and exercising its core ministry functions, and (c) organizing its core leadership and administrative structures and exercising their core functions.* This is the most central dimension of institutional religious freedom because it pertains to the freedom of a religious community or organization to define and constitute itself in the most fundamental ways, i.e., in terms of what it believes and teaches, what constitutes its authentic worship and religious rites, and how its leadership and administration should be organized.

The substantive or core dimension of institutional religious freedom has been—and remains—a frequent axis of conflict between political and religious authorities throughout history. For example, at regular intervals between the 4th and 8th centuries, Christian emperors with Arian leanings sought to impose Christological formulas on the church that many Christian authorities and councils considered incompatible with core Christian doctrine, triggering fierce defenses of the substantive dimension of the church's institutional religious freedom (such as by St. Maximus the Confessor in the 7th century).¹⁵

However, among the most notable and radical attempts in history to limit the substantive dimensions of institutional religious freedom occurred in France in the late 18th century and in Turkey in the early 20th century. After the French Revolution, when the republican government instituted the Civil Constitution of the Clergy (1790) and thus initiated the complete re-organization and, effectively, the destruction and re-creation of the French Catholic Church in terms of its core doctrines, core ministry, and core leadership and administration. In the eyes of its architects, of course, the aim of this policy was not to abolish the Church or destroy religion *per se* but to guarantee “the Church's fidelity [to the state] and prevent it from constituting itself as an independent power” (Gueniffey 2015).

Inspired in no small degree by the example of the French Revolution, the National Assembly of the young Turkish Republic followed the initiative of Kemal Atatürk and in March 1924 abolished the Caliphate, the pinnacle of the leadership of the Sunni Islamic community that had endured for centuries. This was a direct political intervention in the core governance structure of one of the world's largest religious communities, and it triggered criticism and repercussions that continue to be felt today.¹⁶

4. The Vertical Dimensions of Institutional Religious Freedom

Second, the vertical dimensions of institutional religious freedom pertain to the freedom of a religious community from outside interference in the exercise of its self-defined authority over the members of its hierarchy as well as its lay membership. In other words, *the vertical dimension of institutional religious freedom pertains to the freedom of religious communities to make particular leadership decisions as well as decisions about ministry positions within an accepted governance structure or system.* In the words of the Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe of 1989, the vertical dimension of institutional religious freedom is “the right of religious communities” to “organize themselves according to their own hierarchical and institutional structure”.¹⁷

As we indicated above, one aspect of the substantive dimension of institutional religious freedom also pertains to leadership and structure. However, this substantive dimension concerns the religious community’s core governance structure—what the Anglican theologian Richard Hooker termed “ecclesiastical polity”. This substantive dimension is implicated whenever the most fundamental features of a religious community’s governance structure are challenged or altered, whether for good or bad reasons, by an outside actor. This was clearly the case with the Constitution of the Clergy in post-revolutionary France, which originally demanded the popular election of priests and bishops, removed papal involvement in the selection of bishops, and ultimately decreed that all clergy must take a public oath of loyalty to the Constitution as a condition of their appointment.

In other words, a religious community’s right of self-determination in matters of leadership and governance has what we may call wholesale dimensions and retail dimensions. If a government were to impose a politically appointed bishop on a Baptist denomination, or if it were to remove the Pope from playing any role in the appointment of bishops in its territory, the action of the government, in either case, would represent an attack on a wholesale or core dimension of the religious community’s right to self-determination in matters of leadership and governance. In each hypothetical case, an outside actor attempts to alter the basic form and structure of a religious community’s self-governance. If the attempt is successful, the religious community *ipso facto* undergoes a radical transformation. In these cases, therefore, it is clearly the substantive dimension of institutional religious freedom that is at issue.

However, consider a different kind of case. In medieval Western Christendom, both ecclesiastical and temporal authorities agreed that the appointment and investiture of bishops could not validly occur without the Pope. There was a virtually universal understanding and acceptance of the Catholic Church’s core governance structure and hierarchical line of authority, deriving from its core doctrine of Petrine supremacy and apostolic succession. Without attacking this basic structure in a “wholesale” way, however, kings, emperors, and other political rulers nonetheless frequently sought to exercise “retail” influence over the appointment of particular bishops, especially in important sees. In some instances, the Church accepted or at least tolerated attempts by political authorities to influence certain episcopal appointments.

In other instances, particularly beginning with Pope Gregory VII (1020–1085), the Church increasingly resisted “lay investiture” as undue interference in its proper freedom or *libertas ecclesiae* (“freedom of the church”). However, even though the famous “Investiture Controversy” that resulted involved intense and protracted conflict, it was played out between disputants who were all Catholic Christians, who all agreed far more than they disagreed. Above all, they agreed that the Church must enjoy *some* independent role in the appointment of bishops, and they also agreed that it was not *necessarily* illegitimate for temporal authorities to exercise some influence on episcopal appointments as well. The challenge was identifying a precise jurisdictional boundary and division of labor that both sides could accept.¹⁸

In this second example, the dimension of institutional religious freedom at issue was not so much the substantive or wholesale dimension of the religious community’s core

self-understanding as the vertical or retail dimension of *the precise scope, application, and limits of its line of authority*. This is not to say that the Investiture Controversy was not profound and consequential. Indeed, it illustrates the reality that “retail” encroachments on a religious community’s vertical religious freedom can over time endanger its “wholesale” independence. While it could be argued that none of the ad hoc bargains the Church made with temporal rulers in medieval Christendom fatally compromised its essential freedom, Pope Gregory VII initiated his extraordinarily consequential “Gregorian Revolution” partly to ensure that the Church would not negotiate away its independence by degrees and become the mere spiritual department of an ascendant Holy Roman Empire. A religious community that cannot choose its own leaders and personnel according to its own criteria and without outside interference is in an important way neither free nor independent. (The Investiture Controversy also illustrates that, on occasion, some of the most serious threats to a religious community’s institutional religious freedom can come from its putative friends and allies).

Issues related to the vertical dimensions of institutional religious freedom are numerous. According to Cole Durham, the vertical aspects of institutional religious freedom include a religious community’s authority over its senior leadership and clergy, lay individuals carrying out teaching functions and other ministerial roles, and individuals carrying out roles that are arguably secular. Additionally, all these aspects have been proven to be dynamic issues and a source of salient conflict and controversy in numerous contexts in recent years.

Consider the recent negotiations between the Vatican and the Chinese government over the appointment of bishops. The foregoing analysis of institutional religious freedom may help to clarify the terms of the negotiations and thus, in the process, may illustrate the value of careful attention to the distinct dimensions of this concept. Interpreted charitably, the Vatican appears to have sought from the Chinese government some recognition in principle of its hierarchical, episcopal structure and the supreme, extraterritorial authority of the Pope within this structure. In terms of our analysis, therefore, the Vatican apparently sought Chinese recognition of the *substantive* dimension of its institutional religious freedom (or at least a slice thereof). However, to achieve what it hopes will be a portion of its substantive religious freedom, it is manifestly willing to sacrifice at least a non-trivial portion of its *vertical* religious freedom, i.e., it is willing to accept a role for the Chinese government in the appointment of bishops. As the Investiture Controversy illustrates, however, where the civil authority has a large enough role in the appointment of bishops, the religious community’s governance structure arguably becomes, not merely quantitatively different, but a *qualitatively different kind of structure* in substance if not in name, and perhaps even verges on a *de facto* caesaropapism (O’Connell 2020).

Consider two other illustrative cases, one from China again and one from Egypt. Without undertaking a wholesale attack on the governance structure of Tibetan Buddhism and hence the substantive dimension of its institutional religious freedom, which it (quite reasonably) fears would be disastrously counterproductive, the Chinese government is attempting to limit the community’s vertical religious freedom by promoting its own hand-picked reincarnation of the Panchen Lama and eventual successor of the Dalai Lama. This the PRC is doing in open defiance of the Dalai Lama himself and, of the religious beliefs and sensibilities, it seems, of the vast majority of Tibetan Buddhists (Denyer 2016). In Egypt, President Abdel Fattah al-Sisi has apparently been using a combination of pressure, exhortation, and manipulation to coax the country’s Muslim leaders to undertake a “religious revolution” in response to Islamic radicalism. However, one official at Al-Azhar, Sunni Islam’s oldest seat of learning, claimed that Al-Azhar preachers resent state interference in their religious affairs. In effect criticizing the top-down subversion of the religious community’s vertical religious freedom, the official insisted, “Any change must come from scholars of Islam, not from the government” (Amin 2017).

Consider, too, the *Hosanna-Tabor* decision mentioned at the beginning of this article. In a 9-0 decision, in a case that squarely addressed the vertical dimensions of institutional

religious freedom (without addressing either its substantive or horizontal dimensions), the U.S. Supreme Court cited the legal and historical importance of the “autonomy of religious groups” and “religious autonomy” as a basis for giving religious organizations wide latitude in hiring and firing clergy and other employees who perform religious duties. The Court held that a “ministerial exception”—precluding the general application of employment discrimination laws to the employment relationship between a religious institution and its ministers—is grounded in the First Amendment Free Exercise Clause and Establishment Clause. Importantly, the decision explicitly argued that a religious community’s autonomy concerning the hiring and firing of employees is not restricted to senior leaders and clergy. Instead, the Court ruled that the authority to select and control all those who minister to the faithful must be the church’s alone.¹⁹ The question is whether institutional religious freedom demands more than simply respecting—or leaving alone—“internal” church decisions.

5. The Horizontal Dimensions of Institutional Religious Freedom

A third and often overlooked dimension of institutional religious freedom is horizontal. As noted above, the horizontal dimension of institutional religious freedom pertains to a religious community’s freedom to extend outward, as it were, and engage the wider society in systematic ways through the creation of core institutions, specialized institutions, and the organized manifestation and propagation of its religious message and teachings. This is undoubtedly the largest and most complex component of institutional religious freedom, comprising a wide variety of distinct but nonetheless closely interrelated freedoms, rights, and privileges.

One of the most important rights or privileges falling within the horizontal dimension of institutional religious freedom is the right to entity status. To what extent does a given religious community enjoy the right to acquire “legal personality” or the status of a recognized “legal entity” under the laws of the nation, region, or district in which it exists and operates? Under the conditions of the post-Westphalian, sovereign administrative state, religious communities often must acquire some kind of formal legal recognition or legal personality in order to mount an organized presence, own property and construct buildings, and engage and influence civil society and public life. This is, therefore, a fundamental aspect of institutional religious freedom. Additionally, available evidence suggests that there is enormously wide global variation in the registration requirements that governments use to grant and deny legal entity status to religious communities as well as to sub-entities they seek to establish for particular purposes (such as education, promotion of human rights and social justice, and charitable or humanitarian work).²⁰

It is important to note, though, that the acquisition of such legal personality or legal recognition is normally a precondition of effective religious influence but not necessarily a precondition of what one might call substantive religious existence. As Maryann Cusimano Love observes that many of the world’s major religious communities and traditions have existed long before most of the world’s nation-states and long before the creation of the Westphalian state system. To that extent, many religious actors are not so much non-state actors as “pre-state” actors. They precede the modern nation-state, and, therefore, their core substantive commitments and identities do not ultimately depend on the modern nation-state (Love 2018, 2011). At the same time, as in the case of post-revolutionary France, as well as in the more recent cases of Cambodia under the Khmer Rouge (1975–1979), China during the Cultural Revolution (1966–1976), or North Korea today, particular nation-states have sometimes engaged in such extreme efforts to restrict or eliminate the core institutional capacities of religious communities that they have posed an existential threat to these communities. In these extreme cases, it is the substantive dimension of institutional religious freedom, not merely the horizontal dimension, that is threatened.

Of course, apart from these extreme cases, a religious community’s substantive existence (and perhaps even significant social influence) may not be lost or threatened when it cannot acquire official or legal entity status. Religious communities have often survived

and thrived when they have been compelled to live an underground existence, whether extra-legal or illegal, as numerous historical and contemporary examples suggest. What restrictions on access to entity status do normally and directly influence is the horizontal freedom or capacity of religious communities to reach outward into their societies in a public and systematic way.²¹

Still, if restrictions on access to legal entity status go far enough, they can exercise a kind of institutional stranglehold and perhaps a slow-motion death sentence. While such a stranglehold may not threaten a religious community's immediate survival, it may doom it to marginality, decline, and even extinction in the long run. A contemporary example may be found in Turkey's treatment of the Ecumenical Patriarchate. The Turkish government refuses to grant legal standing or entity status to the Ecumenical Patriarchate, and this refusal carries far-reaching implications. "The lack of legal standing and status in essence nullifies property and other fundamental civil rights in Turkey for the Ecumenical Patriarchate which precludes its full exercise of religious freedom", according to one recent analysis. "Since it lacks a legal standing, the Ecumenical Patriarchate is powerless to pursue legal remedies to assert property rights or even seek to repair deteriorating property without government approval" (Bozonelis 2018).

To disaggregate the horizontal dimension of institutional religious freedom a bit further, based again on the analysis of Cole Durham, it undoubtedly includes the freedom to create legally recognized entities that are sufficient to carry out the full range of a religious community's activities, including charitable, educational, cultural, health, and humanitarian activities. Additionally, as the late Alfred Stepan noted in elaborating his important concept of the "twin tolerations", or the minimal conditions necessary for institutionalizing the relationship between religious and political authority in a way that is compatible with liberal democracy, institutional religious freedom must also include the right of religious communities to create civil society organizations, NGOs, and political parties.

As Stepan put it, religious communities "should also be able to publicly advance their values in civil society, and to sponsor organizations and movements in political society, as long as their public advancement of these beliefs does not impinge negatively on the liberties of other citizens, or violate democracy and the law, by violence. This core institutional approach to democracy necessarily implies that no group in civil society, including religious groups, can a priori be prohibited from forming a political party".²² In addition, institutional religious freedom includes the freedom of religious communities to create media organizations dedicated to promoting and propagating their religious message and the implications of this message for society. Additionally, it includes their right to create and operate for-profit corporations that reflect their religious values, though the precise scope and application of this right are a matter of disagreement (as is true, more or less, of all the features of institutional religious freedom discussed here) (Schwartzman et al. 2016).

Closely related to the freedom of religious communities to establish legally recognized entities and sub-entities to advance their religious mission is the freedom to seek and secure the financial resources necessary to operate and sustain these entities and sub-entities. Of course, if in a given context religious communities possess the right to create legal entities but do not have the right to fund and support them without undue and arbitrary restrictions, then their "right" to institutional religious freedom is merely formal and empty. Furthermore, what may seem like subtle restrictions on funding—such as the imposition of governmental limits on the amounts or types of foreign funding—can sometimes have devastating consequences for religious institutions (as well as other organizations) that are seeking to operate in contexts where there may not be significant indigenous sources of funding or traditions of philanthropic contribution to non-governmental organizations.²³

A final and critical aspect of the horizontal dimension of institutional religious freedom worth highlighting is the legally recognized right of religious communities to own, use, transfer, and rent property as well as construct buildings in order to carry out their distinctive activities. Much of the ability of religious communities to establish a presence in their societies depends on their ability to secure and maintain a quite literal and physical

presence in terms of visible houses of worship as well as other buildings dedicated to the fulfillment of their religious mission.

As prosaic and unglamorous as it may seem, the freedom of religious communities to acquire or rent a property and construct buildings for religious use is a frequent target of government regulation and interference and a common flashpoint in religion-state relations throughout the world. It is, for example, a major issue for unregistered churches and other religious communities in China.

Consider the case of the Shouwang Church. The Shouwang Church is a Protestant house church in Beijing and among the largest of some 3,000 such congregations in the city. After years of government harassment prevented the Shouwang Church from renting or buying a building, police finally forbade church members to hold services in the open air, placing the pastor under house arrest and detaining other congregants as well. According to the German weekly *Die Zeit*, Beijing police used some 4500 officers to provide surveillance of the area where the church had been hoping to meet as well as of the homes of about 500 church members in order to prevent the church from congregating. In response, in May 2011, the pastors of the Shouwang Church sent a petition to the National People's Congress not only protesting their mistreatment but also insisting on the positive social and political contributions of religious freedom: "We believe that liberty of religious faith is the first and foremost freedom in human society, is a universal value in the international community, and is also the foundation for other political and property rights".

For our purposes, one aspect of this case is striking. The dimension of religious freedom that the Shouwang Church was trying to exercise when it ran afoul of Chinese authorities was not individual but institutional and, in particular, horizontal. None of the specific individual dimensions of religious freedom that we often assume to be the core of this fundamental freedom—such as the individual right to choose, change, practice, or exit one's religion or the right to proselytize or manifest one's religion to other individuals—was at issue or directly threatened. Indeed, though the church was an unregistered house church, it grew for years, successfully evangelized, conducted innumerable Bible studies and other church meetings in members' homes, and won adherents even among intellectuals and Chinese Communist Party members—all without triggering official opposition or persecution.

What the Chinese authorities were determined to stop in 2011 were the Shouwang Church's repeated and increasingly public attempts to exercise rights and freedoms *as an institution or self-organizing community*, and, in this case, precisely the unglamorous or prosaic rights to purchase property and rent building space. Of course, China is not alone in this respect. Other countries in which religious communities face serious challenges to their horizontal rights to own property and construct buildings include Egypt, Russia, Vietnam, Turkey, Malaysia, and Indonesia.²⁴

A crucial addendum to the foregoing attempt to provide a rough definition and disaggregation of institutional religious freedom is that we take a religious community's right of self-determination to mean not just a right that exists in law, in theory, or on paper. Clearly, a country's constitution or laws may protect, or at least not expressly restrict, the institutional religious freedom of its people *de jure* while creating (or allowing) a social and political environment that limits or even nullifies its exercise *de facto*. In other words, the power or capacity of religious communities to be independent cannot be real and effective unless certain conditions are in place. For such a power to be effective and not merely transitory, unstable, and merely formal, it normally requires a combination of (a) transparent and publicized guarantees in law, (b) consistent protection and enforcement of these guarantees by relevant public authorities, and (c) the presence of a supportive social, cultural, and political environment that makes it possible for religious communities to be effectively independent. The absence of any one of these conditions may diminish or nullify institutional religious freedom as we have defined it.²⁵

6. Why Should We Value Institutional Religious Freedom?

In this section, we address a question that has, if anything, suffered even greater neglect: *Why should we value the self-organization of religious institutions?* Why does the freedom of religious institutions deserve presumptive deference? To the extent that there are fundamental elements of institutional religious freedom that have meaning across countries and contexts, what are the normative foundations of institutional religious freedom? Why do institutions as such have rights and freedoms that go beyond the rights and freedoms of their individual members? What is the moral or normative basis for recognizing and respecting institutional religious freedom as a distinctive form of freedom? The question of foundations is not only of theoretical interest but of crucial practical significance. For it is only when we grasp the grounds and goods that might justify institutional religious freedom that we can, for example, assess the weight of institutional religious freedom claims and balance them against the rights of individuals, including third parties that may be affected by the exercise of institutional religious freedom.

Influential answers to these questions have been offered. In a *locus classicus* of American discourse on religious freedom, James Madison, in his Memorial and Remonstrance of 1785, appears to identify a grounding for religious freedom that applies to institutions as much to individuals. According to Madison, “Religion is wholly exempt from [the] cognizance [of Civil Society]” and therefore “exempt” from the “authority” of the “Legislative Body”. Additionally, the rationale for this sweeping claim is that “religion” in its individual and corporate instantiations must answer to a higher authority, what Madison terms the “Universal Sovereign” or “Governor of the Universe”. Cécile Laborde and other liberal theorists offer another rationale: all of the expressive associations that individuals form around any of their deep commitments, religious or otherwise, warrant respect and basic freedom from interference because of the respect we owe to the dignity and autonomy of the individuals who form them (Laborde 2017).

Whatever the validity of these answers, one explicitly theistic and the other stringently liberal, they do not seem adequate for making a normatively broader and fully compelling case for the value of institutional religious freedom. A more complete case for institutional religious freedom, we believe, must come from a thick and nuanced account of the role that self-organizing religious institutions may play in achieving the common good of particular societies.

The reality, though, is that we lack such a thick and nuanced account of how and why self-organizing religious institutions contribute to the common good of particular societies. We do not have a sufficiently nuanced, comparative, and global appreciation of the distinctive ways religious institutions and religious communities as such mediate the influence of religion in society and contribute to the common good. In a few countries, mostly in the West and especially in the United States, we know a great deal about the instrumental contributions of religion, including religious institutions, to some aspects of the common good, including the accumulation of social capital, the promotion of altruistic behavior, the enhancement of health and life expectancy in individuals, and the delivery of social services. As a rule, however, when it comes to much of the rest of the world, discussion of religion’s social and political influence tends to revolve around an abstract catch-all category, “religion”, and there is less research anchored in a careful and empirical study of the precise vehicles or mechanisms whereby religion takes concrete shape and exercises influence, including the crucial vehicle of religious organizations and institutions.²⁶

It must be emphasized, though, that the problem is not only the limits of our empirical understanding but that at a deeper, theoretical level, we do not sufficiently appreciate the ways in which religious institutions and communities are not just agglomerations of religious individuals, which the common casting of religious communities as another form of “voluntary associations” tends to do, or effective “NGOs” and social-service mechanisms but distinctive wholes. Additionally, these wholes are of a special character in that they do not just pool or empower the religiosity of their individual members, but

they mediate the presence and influence of religion in qualitatively distinct ways. That is, they do not contribute to the common good only in an instrumental fashion. By realizing and embodying communal goods that can be experienced and actualized only in and through coordinated believing and acting, religious communities and institutions seem to play a direct, compelling, and perhaps unique role in realizing the common good of particular societies. Nonetheless, this dynamic is relatively poorly understood and cries out for deeper and richer understanding, and this deeper and richer understanding is precisely what our proposed initiative will pursue.

Still, despite our ignorance and all the necessary insight that awaits further research and understanding, we do know of at least eleven ways in which the available evidence strongly suggests that self-organizing religious institutions make distinctive contributions to the common good. Furthermore, the evidence seems to suggest that their ability to make these contributions depends significantly on their free and self-organizing quality, i.e., their quality as reasonably independent from the control of other actors, particularly the state, and thus in possession of at least some degree of freedom precisely as religious institutions. That is, generally speaking, religious institutions appear to need institutional religious freedom (in the specific dimensions and ways we delineated it in Section 1) in order to contribute to the common good of their societies.

Some of the pathways whereby self-organizing religious institutions promote the common good are well-grounded within traditions of moral and political thought and in extant scholarship; others are principled commitments that may be further analyzed by the proposed project. In any case, while all of these propositions, especially when taken together, provide solid *prima facie* grounds for the importance of religious institutions for the common good and for the importance of institutional religious freedom. We treat them as starting points for inquiry and hypotheses to be further tested, revised, and/or refined through further research.

First, despite a tendency in prevailing Western narratives to see an opposition between individual religious freedom and institutional religious freedom, there is ample reason to believe that self-organizing religious institutions are a crucial bulwark and, indeed, a precondition of individual human freedom in general and religious freedom in particular. Individual religious faith is never acquired or nourished in a sociological vacuum but almost always grows in the soil of some kind of network, community, or institution. Without self-organizing religious institutions and communities, the very ability of religious individuals to form, practice, protect, and transmit their religious life across space and time, from one generation to the next, is likely to be significantly reduced.

In terms of individual freedom, constitutional lawyer Frederick Schauer, as well as numerous other scholars, continue a line of argument that goes back at least to Edmund Burke, Alexis de Tocqueville, and, more recently, Mary Ann Glendon, by suggesting that civil society institutions—to the extent that they are genuinely self-organizing and autonomous—play an indispensable role in protecting individual rights by providing counterweights to the influences of the government and the market.²⁷ Although there is some tendency in prevailing narratives to cast religious communities and “organized religion” as threats to religious freedom and social flourishing and progress, it is also true that religious communities can serve as a bulwark of individual religious freedom, not to mention as a vehicle for constructive and peaceful public dissent. Far from being an inevitable enemy of individual religious freedom, strong religious institutions and thus strong institutional religious freedom are often important, if not indispensable, to the exercise, nourishment, and defense of the individual dimensions of freedom of religion and conscience.²⁸

Second, self-organizing religious institutions serve not just the interests of individuals but the common good of diverse societies in numerous ways. We noted earlier that Katherine Marshall provides a useful mapping of the variety of religious institutions that operate around the world. Her mapping not only provides a sense of the sheer variety of religious institutions in terms of their scale and purpose. It also provides a sense of

their enormous contributions to the global common good (Marshall 2013). In country after country, Marshall finds, particularly in Africa and many parts of Asia, religious institutions are a large source of social, educational, health, and humanitarian services. To name but one example, “[f]aith-inspired organizations offer a significant proportion of health services in Cambodia, helping to reduce child mortality, improve maternal health, and combat HIV/AIDS, malaria, and other diseases” (Delaney and Scharff 2010). Furthermore, based on an analysis of the World Values Survey, Marshall also finds that in nations as different as France, India, Britain, Zambia, Brazil, South Africa, and Argentina, individuals surveyed express far greater confidence in religious organizations than in their own governments or the United Nations (Marshall 2013, p. 44).

Indeed, in several recent works across a number of disciplines, scholars have demonstrated that the independence of religious institutions and religious actors vis-à-vis the state is a strong predictor of various important religious, social, and political outcomes. In *God’s Century*, Monica Toft, Daniel Philpott, and Timothy Shah demonstrate through an extensive global analysis and numerous detailed case studies that religious actors with higher degrees of institutional “independence” vis-à-vis political authority are far more likely than religious actors with high degrees of institutional “integration” with state authorities to engage in peacebuilding and promote transitional justice, to engage in efforts to resist authoritarian rulers and promote the inauguration and consolidation of democratic regimes, and *not* to be involved in religious civil wars or religious terrorism (Toft et al. 2011).

In a series of significant studies, the economist Timur Kuran has demonstrated that what slowed the economic development of the Middle East was not colonialism or geography, still less Muslim attitudes or some incompatibility between Islam and capitalism. Kuran demonstrates that, to the contrary, starting around the tenth century, Islamic law, which had benefitted the Middle Eastern economy in the early centuries of Islam, began to act as a drag on development by, among other things, slowing or blocking the emergence of independent religious institutions (Kuran 2010). The results were a relative lack of religious pluralism and a comparatively weak civil society in many Muslim-majority societies, which, in turn, not only helped retard the development of stable self-government and economic dynamism but also helped encourage the growth of violent Islamist extremism (Farr 2008).

Third, self-organizing religious institutions are a vital driver of achieving basic moral and social goods in society, including moral and social norms and discourses that have served the global common good. This is no place for a comprehensive discussion of such a vast and diffused dynamic, but one example that may be cited is that religious institutions have played an important role in defining and constructing the official and quasi-official moral and legal norms that help to define the global order. In the last century in particular, religious institutions have played a crucial role in widening the normative vision of the major players in international politics to include a robust recognition of the rights, needs, and dignity of individual human beings. One way to describe this faith-inspired normative shift is that religious traditions such as Christianity, Islam, Judaism, Jainism, Buddhism, and Hinduism have contributed in different ways to what could be called a norm of global humanitarianism. According to the norms of humanitarianism, every human being on the face of the earth is equally entitled to a certain set of basic immunities, protections, and goods, including rights not to be tortured, not to die of starvation, rights of freedom of expression and conscience, including religious freedom, and the rights even of prisoners of war not to be subject to “inhumane” treatment.

On this general subject, Michael Barnett provides a historically rich and conceptually illuminating treatment, *Empire of Humanity*, which emphasizes the constitutive role of specific religious institutions in the development of global humanitarianism. “Religious beliefs”, Barnett writes, “were critical to the origins of humanitarianism and continue to influence its unfolding”, and in almost every case, it was self-organizing religious institutions and movements that were the indispensable carriers of these beliefs (Barnett 2011). To cite but one concrete example that highlights the influential role of self-organizing

religious institutions that acted largely independently of political control or influence, in the mid-twentieth century, before the end of World War II, a movement of ecumenical Protestants active in the World Council of Churches and the American Federal Council of Churches (now the National Council of Churches) lobbied intensely and effectively for an international body and an international charter dedicated to promoting global peace and human rights. The impact of this one religious movement on the global common good was, and remains, incalculable (Nurser 2005).

Fourth, self-organizing religious institutions—and the freedom that gives them a social and political voice—are a particularly important resource for the socially and politically vulnerable and marginalized. The wealthy do not generally need religious institutions—or any other civil society institution—in order to generate or project social and political power because they have a ready ability to translate their abundant relationships and financial resources into direct political influence. However, as the seminal work of political scientists Sidney Verba, Kay Schlozman, and Henry Brady suggests, without the opportunity to participate in certain kinds of self-organizing religious institutions and communities that are independent of the powers that be, particularly poor and marginalized people are less likely to acquire important civic skills and resources as well as avenues of political mobilization—skills, resources, and avenues that are necessary to offset the political disadvantages that typically accompany lower socio-economic status and race-based discrimination (Verba et al. 1995).

For example, it is hard to imagine the Civil Rights Movement without the personal influence and leadership of the Rev. Dr. Martin Luther King, Jr. However, it is perhaps even harder to imagine the Civil Rights Movement without the Southern Christian Leadership Conference and its vast network of autonomous black congregations, which equipped, empowered, organized, and mobilized a generation of otherwise marginalized and disempowered African-Americans for the Civil Rights struggle in countless, irreplaceable ways (Harris 2001). Self-organizing religious institutions and communities often confer on the poor and marginalized a power and resilience to mobilize and organize—especially in the face of fierce opposition—as well as exercise levels of public influence they might not otherwise enjoy. In so doing, they help to give the poor and marginalized the ability to resist unjust structures and influence the common good via changes in public policy and law as well as cultural norms.²⁹

Fifth, history and contemporary experience both suggest that self-organizing religious institutions can serve as powerful and effective restraints on state power while at the same time contributing to the common good. In numerous historically significant instances, strong religious institutions have often proven to be powerful and effective peer competitors with the temporal powers that be. It is obvious, however, that this capacity to serve as a bulwark against state power, and to resist state-imposed determinations of the public good and their reflection in law and culture, can be operative only insofar as religious communities are self-organizing and possess at least some degree of effective institutional religious freedom in its various dimensions, particularly vertical and horizontal. The Investiture Controversy of the 11th century is the classic illustration. However, the background circumstances and events that led to the Magna Carta in the following century are equally illustrative.³⁰

In recent history, think of the enormously significant resistance to varying forms of political tyranny set in motion by Nahdlatul Ulama (the world's largest Muslim organization, which exists entirely of state control) and other independent Islamic civil society organizations in Indonesia in the 1990s, by Catholic and Protestant churches during the military dictatorship in South Korea in the 1970s and 1980s, by organizations of Buddhist monks in Burma in the mid-2000s, by churches and other religious organizations during the anti-apartheid struggle in South Africa in the 1980s and 1990s, by the Catholic Church and the Solidarity movement in Poland in the 1980s, and by the Catholic hierarchy as well as religious lay movements in the Congo today.³¹

Religious institutions play a valuable role in countering government domination even when the state is not authoritarian. In democratic states, as Tocqueville observed, religious institutions may help counter the corruption, despotism, social lethargy, and cultural disintegration that tend to occur when the state exercises undue influence over determinations of the common good, public morality, and the direction of society (de Tocqueville 1835). Additionally, as Michael McConnell, Robert George, and William Saunders have pointed out, societies are more likely to flourish when determinations of what constitutes the common good and the degree to which such determinations are reflected in law and public policy are decided by free and equal competition between the voluntary institutions of civil society, including voluntary religious institutions, rather than the state alone. For example, McConnell observes that in the American constitutional settlement, religious institutions play a role analogous to the free press. Conversely, the latter is designed as a check on the government and as a means of shaping public opinion independent of the state, so too are religious institutions intended to help shape public morality and the common good independent of the state (McConnell 1989; George and Saunders 1996).

Here again, the public effort by the Chinese Shouwang house church to defend its religious freedom is revealing. After the crackdown on Shouwang, the state-owned *Global Times* newspaper commented, “[A] church should not become a power which can promote radical change . . . Otherwise, the church is not engaged in religion but in politics, which is not allowed for a church” (Spegele 2011). In other words, the Chinese authorities saw in Shouwang’s actions and statements a special and indeed political threat precisely insofar as it was acting as an institution or organized community. From the Chinese government’s point of view, it seemed, a church can be tolerated to the extent that it is essentially nothing more than an agglomeration of private individuals engaged in private religious activity. However, the moment that it begins to act as an organized community in the public spotlight, and on public issues, it ceases to be a “church” in the benign and harmless sense. It becomes, instead, “a power which can promote radical change”.

Perhaps inadvertently, in other words, the Chinese government’s response to Shouwang reveals a striking acknowledgment—and fear—of the potential power and importance of institutional religious freedom. For it is only with such freedom that religious communities can limit what may otherwise be the unlimited power of political authorities. States and governments are not the only public institutions, and they do not have a monopoly on organized, public action on behalf of the common good.

Sixth, an emphasis on institutional religious freedom may yield a more balanced and more universal vision of human freedom in general and religious freedom in particular. Most people in most of the world, even in Western countries, are not committed to a pure or extreme version of the “rugged individualism” Robert Bellah and his co-authors so memorably described and decried in their modern classic, *Habits of the Heart* (Bellah et al. 2008). Most people in most places seek a balance between respect for the individual and respect for community, associations, institutions and organizations. A vision of religious freedom in which the rights of religious institutions and communities are just as central as the rights of individuals is more likely to find a wider resonance and appeal amidst the world’s cultural, philosophical, and religious diversity, in which communitarian and traditional outlooks bulk large (Bell 1993, 2000).

The response of the Shouwang Church in China to the persecution it faced is once again illustrative. Strikingly, the way the Shouwang Church framed and defended its religious freedom in its petition to the National People’s Congress was devoid of the language of individualism, individual rights, freedom of conscience, and personal freedom but instead expressly focused on the more communal values of “peaceful civil society”, “social stability”, “ethnic solidarity”, and “the nation’s prosperity”. In other words, Shouwang’s 2011 manifesto, if it can be called that, was not the Universal Declaration of Human Rights translated into Chinese.

Rather than a declaration of individual rights, it was, even in its format, a collective statement: it was organized and formulated by the church’s pastors on behalf of an entire

church community. In addition, these Chinese Christians spoke a language that reflected the communitarianism of their culture and society, as well as their common fidelity to a transcendent source of being and meaning. In its substance, their argument was not framed around a Western-style heroic individualism based on freedom of conscience—a Chinese equivalent of Martin Luther’s “Here I Stand”—but rather around a patriotic appeal to communal values such as harmony, stability, and prosperity. As one young member of the church told *Washington Post* columnist Michael Gerson, the congregation is mainly “intellectuals and professionals” who “respect the government, love the country, respect authority” (Gerson 2011). The Shouwang Church made the argument that respecting its religious freedom—its freedom as a self-organized and orderly community faithful to God—would not profit individuals or individual freedom or even the Shouwang Church as much as it would benefit Chinese society as a whole. The Shouwang Church experience suggests that a focus on institutional religious freedom is likely to resonate with the way many people, especially outside the West, instinctively understand their religious freedom and why it is valuable to them.

Seventh, institutional religious freedom may provide a better and deeper barometer of the extent to which any given society is configured and structured for religious freedom and other basic freedoms than other widely used indicators, such as numbers of individuals suffering religious harassment, discrimination, or persecution. How many individuals suffer imprisonment or torture for their beliefs about religion in any given country is certainly one crucial and indispensable indicator of the state of religious freedom in that country. However, a deeper and longer-term indicator is the freedom and ability of persons with shared religious beliefs to organize, control, finance, sustain, and assemble their own religious communities and institutions across time, legally and securely, from one generation to the next. This is because the presence of independent, self-organizing religious institutions in a society says something about a society’s basic structure or fundamental social and political order. All other things being equal, a society with a diverse and thriving array of autonomous, self-organizing religious institutions is one that is more likely to possess a high degree of dynamism, pluralism, and, over the long term, social and political stability. Or at least this is a pattern or relationship that social science gives us reason to expect under some conditions.

Many existing measures of global religious freedom and global religious restrictions, however, such as that of the Pew Research Center, are highly sensitive to incidents, events, and episodes that may fluctuate significantly and even wildly from year to year. However, such incidents may reflect external events or dynamics over which even well-ordered regimes have little control. Furthermore, such incidents and events may say little about the basic condition of religious freedom for the vast majority of people in the given society. For example, just as the Doing Business index may provide a better long-term indicator of a country’s economic environment and economic strength than, say, a fluctuating stock market, so too a country’s level of institutional religious freedom—insofar as it can be measured—may provide a better and deeper long-term indicator of a country’s religious freedom environment than the number of religion-related terrorist attacks or frequency of religion-related hate crimes.³² Furthermore, just as governments can take concrete measures to improve their scores on the Doing Business index because these scores reflect policies and regulations that are well within the control of most states, so too a focus on institutional religious freedom will tend to place the spotlight on government policies and regulations vis-à-vis religious institutions that states can control and modify if they have the will to do so.

Eighth, institutional religious freedom may permit religious communities to develop their own sites of institutional power and authority, which, in turn, may make them more able to anchor themselves in their own authentic sources and self-understanding and thereby resist authoritarian political manipulation. In an era of growing tribalism fueled in part by an increasing melding of religion and nationalism, many unscrupulous political actors around the world seek to recruit religious identities, symbols, and concerns to advance their

own partisan political agendas—agendas that often, at the root, have little to do with core religious or theological concerns and commitments. To the extent that religious communities are freer to develop independent institutions that reflect their own authentic theological authorities and traditions and are therefore freer to find and express their own voice in society, they are to that extent more able to control their own message and less likely to be vulnerable to manipulation, co-option, and politicization, either by non-religious actors or by religious actors that are less authentic carriers of a given religious tradition.

Ninth, institutional religious freedom may enable and empower self-organizing religious communities to build the kinds of enduring communities and organizational structures that are an increasingly desirable if not essential antidote to widespread global trends towards greater social alienation, isolation, and anomie. The dangers of social isolation and disconnection have become even more alarming and apparent amidst the global COVID-19 pandemic. As more and more social networks and “connections” tend to be merely virtual in more and more of the world’s societies, it becomes all the more important to ensure that religious communities—often a leading generator of valuable social capital—enjoy the freedom to build robust institutions and organizations that are capable of facilitating robust, face-to-face, and authentic communal bonds and forms of fellowship.³³

Sherry Turkle, in her book *Alone Together*, which documents the negative impact of modern social media on community, observes that the root of the word “community” literally means “to give among each other” and argues that this kind of authentic sharing requires “physical proximity” and “shared responsibilities (Deneen 2018, pp. 94–95)”. There is indeed strong evidence that religious institutions and organized religious communities are an important source of face-to-face community and social capital, not only within the walls of their houses of worship but also in ways that spill out into their neighborhoods (Putnam 2020; Campbell and Putnam 2014). Summarizing this research, *Atlantic* writer Emma Green recently wrote, “Churches, synagogues, and mosques influence life well outside their walls: People who belong to religious institutions are more civically engaged than their secular neighbors. They are more likely to serve on school boards, volunteer at charities, and join clubs”. The decline or disappearance of these communities can therefore come at a high price. “In the absence of these institutions, communities can become fractured and isolated. Neighborly infrastructure decays” (Green 2017).

Tenth, self-organizing religious institutes demonstrate and actualize the communal features of religion, which may well be close to the heart of religion. Institutional religious freedom protects the communal features of religion, and these features may well be intrinsic to both the nature and the good of religion. Religion, undoubtedly, has elements that are irreducibly individual and interior. On the other hand, equally undoubtedly, as John D. Zizioulas demonstrates in his modern classic, *Being as Communion: Studies in Personhood and the Church*, much of what religion is all about, and much of the good that it transmits, can be lived and experienced only in and through communion and community. Most of the world’s lived religious traditions would surely affirm that religion cannot be fully and authentically lived—and perhaps cannot be lived at all—if it is lived exclusively as a matter of individual belief, private experience, or interior spirituality. This becomes even more plausible to the extent we have a clearer idea of what religion really is.

We noted at the beginning of the article that on the compelling and elegant definition of religion originated by Melford Spiro, developed by Martin Riesebradt, and eloquently advocated of late by Christian Smith, religion is “a complex of practices that are based on the premise of the existence of superhuman powers, whether personal or impersonal, that are generally invisible” (Smith 2018). As a matter of fact, Tyler VanderWeele of the Harvard School of Public Health, based on his own research and an extensive review of the biomedical literature on religion and health, has found that participation in communal religious services—not individual religiosity—appears to be the strongest predictor of a variety of positive health outcomes, including longevity (VanderWeele 2017). Here, perhaps,

the discoveries of social science and epidemiology are converging with the insights of theology and interpretive sociology.

Eleventh, there are strong reasons to believe that affording religious institutions the maximum freedom to be autonomous and self-organizing is a far better antidote to the inevitable existence of dangerous, authoritarian, and extremist religious institutions and communities than any available alternative. Belief in the value of institutional religious freedom is not naïve. It is not predicated on piety that all religious institutions are a source of sweetness and light. When Robert Putnam analyzed and bemoaned the decline of social capital in America, he had to acknowledge that some social capital comes in dangerous packages. Think of tight-knit gangs or crime families.

A similar reality obtains with religious institutions. In the aggregate, there seems to be a good reason to think that religious institutions have a wide range of positive effects under most circumstances. However, it is undeniable that many religious institutions, in history and the present day, have generated or sanctified hatred, intolerance, oppression, injustice, fanatical violence, and inequality.

This is a reality with which proponents of institutional religious freedom—and proponents of religious freedom in general—must reckon. Remarkably, though, the very ambivalence of religious institutions constitutes another strong and independent reason to believe in the value of institutional religious freedom.

In fact, the threat and the reality of bad and even violent religious institutions are one more reason to favor more freedom for religious institutions rather than less freedom. Though it may be counter-intuitive, strong evidence suggests that the best antidote to dangerous or hate-filled religious institutions is not the heavy-handed, top-down elimination of religious freedom and outright repression of those institutions. On the contrary, as Nilay Saiya has demonstrated in a series of articles and in his groundbreaking book, *Weapon of Peace: How Religious Liberty Combats Terrorism*, it is precisely a severe religious restriction that tends to beget violent religious reaction, including in the form of religious terrorism. While restrictive policies sometimes spring from the good intention of stopping or mitigating violent religious extremism, analysis by Saiya and other scholars strongly suggests that religious repression plays a real and significant causal role in exacerbating as well as metastasizing religious violence. Conversely, societies with more religious freedom tend to have far less religious terrorism, in part because religious freedom under the rule of law creates an environment of peaceful religious contestation in which, for example, dangerous and intolerant religious groups must compete with more tolerant religious groups in the marketplace of ideas and in the court of public opinion (Saiya 2016, 2018). The more room societies provide for religious institutions and communities to be free and self-organizing, the less of a problem they seem to have with religious terrorism and violent religious extremism.

7. Conclusions

I am glad that what happens in Las Vegas generally stays in Las Vegas. As a rule, however, what happens in churches and other religious institutions is too important and too valuable to stay within their walls. In order to ensure that what is incubated in religious institutions is free to spread well beyond their sanctuaries, we need a broader, rich, and truly multi-dimensional understanding of institutional religious freedom that goes beyond giving religious institutions concessive carve-outs and ministerial “exceptions” so they can be left alone. Such protections are necessary, to be sure. However, so much more is at stake than the internal autonomy or the well-being of religious organizations in a narrow sense. What is at issue is not just the negative freedom of religious institutions. What is at issue is the hundreds of millions of people around the world—human beings both religious and non-religious—whose political, social, economic, and spiritual flourishing (and not infrequently survival) depends on the self-organizing dynamism of religious institutions of all kinds. Institutional religious freedom is not merely constitutionally correct. In its positive and expansive dimensions, it is globally essential.

In my view, the profound human needs that the COVID-19 pandemic has so dramatically accentuated argue not for restricting religious institutions as much as possible but for unleashing them as much as feasible—while respecting, of course, the essential requirements of public health. This is because religious institutions are demonstrably effective in providing a wide array of basic health and welfare services that the devastating effects of the current crisis have made more essential than ever—especially for the poor, the elderly, and the young. More profoundly, however, this is also because the current crisis has dramatically underscored the far-reaching reality and devastating consequences of a lack of spiritually meaningful and embodied community of the sort that strong religious institutions and religious groups are uniquely able to provide and promote in a wide range of societies and cultures across the globe. In today’s increasingly atomized and dangerously divided world, there may be no greater public policy priority or, more clearly, “essential service”.

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Notes

- ¹ *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012). See particularly the opinion by Chief Justice John Roberts, who wrote for a unanimous majority. The facts of the case, as summarized on Oyez, were that “Cheryl Perich filed a lawsuit against the Hosanna-Tabor Evangelical Lutheran Church and School in Redford, Mich., for allegedly violating the Americans with Disabilities Act when they fired her after she became sick in 2004. After several months on disability, Perich was diagnosed and treated for narcolepsy and was able to return to work without restrictions. However, she said the school at that point urged her to resign and, when she refused, fired her”. Later, “Perich filed a complaint with the Equal Employment Opportunity Commission, which ruled in her favor and authorized a lawsuit against the school”. However, “[a]ttorneys representing Hosanna-Tabor Evangelical Lutheran Church and School argued that the ‘ministerial exception’ under the First Amendment should apply in their client’s case. The exception gives religious institutions certain rights to control employment matters without interference from the courts”. Ultimately, in a unanimous judgment written by Chief Justice John Roberts and handed down in January 2012, “the Court held that Perich was a minister for the purposes of the Civil Rights Act’s ministerial exception, dismissing Perich’s suit and her claims for damages. Chief Justice Roberts described the history of the ‘ministerial exception,’ established by courts to prevent state interference with the governance of churches, a violation of the First Amendment’s establishment and free exercise clauses. He rejected the EEOC and Perich’s argument that these clauses of the First Amendment are irrelevant to Hosanna-Tabor’s right to choose its ministers” (<https://www.oyez.org/cases/2011/10-553> (accessed on 3 June 2021)).
- ² For an argument that the scope of the principle of religious freedom implied or presupposed by the (unanimous) majority in *Hosanna-Tabor* is in fact too restrictive, see (Farr 2020).
- ³ Associate Justice Samuel Alito, concurring opinion, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 US_(2012).
- ⁴ See the texts by Pope Gelasius I and Pope Gregory VII helpfully assembled and insightfully interpreted by (O’Donovan and O’Donovan 2006).
- ⁵ For an exploration of how frequently bodies of Islamic scholars or *ulema*—as individuals and as more-or-less organized and institutionalized associations—argued for as well as practiced a large degree of independence from political authority and thus institutional religious freedom in a robust and meaningful sense, particularly in the early centuries of Islam, see (Kuru 2019). Moreover, consistent with the argument of this article, Kuru argues that the institutional religious freedom of *ulema* was a major causal factor in the progress of Muslim societies where and when it was practiced and, conversely, a major ingredient in Islamic “underdevelopment” where it has not been practiced. The study by (Lapidus 2014) confirms Kuru’s observation that a significant institutional differentiation between the *ulema* and political authorities has been far less rare in Islamic societies than is often assumed. Indeed, the largest Muslim organization in the world today—Indonesia’s 90-million member *Nahdlatul Ulama*, or “Awakening of Scholars”—is an institutionalized body of Islamic scholars, teachers, and their followers that has been independent of political control since its founding in 1926. For discussions of the large degree of autonomy Hindu priests (or Brahmins)—as a body and as a class—enjoyed vis-à-vis political authorities in traditional India, see (Basham 1959). Additionally, in Theravada

Buddhist societies, throughout history as well as today, the order of monks, the *sangha*, is characterized by a substantial degree of organizational coherence and independence and, in some respects, in the description of Donald Eugene Smith, “constituted a check on the king’s power in the traditional Buddhist state” (Smith 1966).

See, (Laycock 1981), p. 1373.

See, for example, (Alvaré 2014; Schwartzman et al. 2016.)

Here I closely follow Daniel Philpott’s cogent reflections on the nature and definition of religion in his *Religious freedom in Islam: the fate of a universal human right in the Muslim world today* (Philpott 2019).

In Latin, the noun “*religio*” may be related to the verb “*religare*”—“to re-bind” or “to bind back”. Amidst immense current controversy concerning the meaning and definition of “religion”, it is crucial to note (though it is seldom acknowledged) that the core (“descriptive”) meaning and nature of religion as such will inevitably remain elusive except insofar as it is grasped from within such a first-person standpoint or, in other words, from the perspective of practical reason. Jacques Maritain thus eloquently captured the core “business” or point of religion *per se* when he observed that “[i]t is something to know that God is a transcendent and sovereign Self; but it is something else again to enter oneself and with all one’s baggage—one’s own existence and flesh and blood—into the vital relationship in which created subjectivity is brought face to face with this transcendent subjectivity and, trembling and loving, looks to it for salvation. This is the business of religion” (Maritain 2015, location 1064 of 2148 in the Kindle Edition). In some respects, without apparently being conscious of Maritain, Martin Riesebrodt (2012) provides a sociological elaboration of Maritain’s theological insight.

For a careful social-scientific argument—rooted in critical realism and personalism—that human beings are naturally religious in this sense, see (Smith 2018).

Merriam-Webster Dictionary, “Institution”. Available online: <http://www.merriam-webster.com/dictionary/institution> (accessed on 27 May 2021).

For the website of the Young Men’s Buddhist Association of America, which provides information on the institution’s history, purposes, and activities, see <https://www.ymba.org> (accessed on 3 June 2021).

For an outstanding discussion of the enormous and wide-ranging impact of Nahdlatul Ulama (as well as another large Islamic civil society organization, Muhammadiyah) on Indonesia’s political history from the NU’s founding in 1926 through the country’s democratic transition in the late 1990s, see (Hefner 2011). For a discussion of the NU’s impact in recent years, especially with respect to the promotion of religious freedom and tolerance, see (Shah and Shah 2020).

(Durham 2001). For a more recent and comprehensive statement, see W. Cole Durham, Jr., “Religious autonomy at the crossroads”, in (Durham 2021). On the Freedom of Religious Institutions in Society (FORIS) Project at the Religious Freedom Institute, see <https://www.religiousfreedominstitute.org/foris-project> (accessed on 3 June 2021).

Much of this history is ably recounted and clarified, with numerous primary texts, in (Rahner 2005).

At the time, the abolition of the Caliphate deeply disturbed Muslims around the world, causing significant reverberations in far-away India, for example. Decades later, Osama bin Laden, in his famous videotaped message of 7 October 2001, shortly after the 9/11 attacks, referred to the “humiliation and disgrace” that Islam has suffered for “more than eighty years”. Analysts generally believe that his primary historical reference was to the Turkish abolition of the Ottoman Sultanate and Caliphate in 1922 and 1924, respectively, i.e., about eighty years earlier. See, for example, (Lawrence 2005).

“Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe”, adopted in Vienna on 17 January 1989. The proposal quotes from selected sections, which are available at <https://www.religlaw.org/content/religlaw/documents/viennamtgsce1986.htm> (accessed on 3 June 2021).

For an analysis and collection of the relevant primary sources, see (Tierney 1996; Lindsay 1962).

Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 565 U.S. 171 (2012).

On registration requirements for religious groups, see the article by (Finke et al. 2017). See also (Fox 2015).

On the remarkable ability of religious communities and institutions to eke out a remarkable degree of freedom and independence even under conditions of severe and systematic repression, see Fenggang Yang’s discussion of black, red, and gray religious markets in China, in (Yang 2006, 2012). See also Yang’s (2012).

(Stepan 2001). See also Michael McConnell’s argument that the U.S. Constitutional guarantee of the “free exercise” of religion was intended to protect the public exercise of religion by communities as well as individuals, in (McConnell 1989).

Worth noting is that challenges of funding in Global South contexts are probably much more likely to hamper fundraising for religious sub-entities engaged in charitable, educational, or human rights advocacy work than for core religious and ministry institutions (e.g., churches, mosques, temples, etc.). On the challenges and opportunities of fundraising for local NGOs in the Global South, both secular and religious, see (Ron et al. 2017).

That the Chinese government does not consider horizontal rights of property and building construction prosaic or insignificant is further illustrated by the recent case of the Golden Lampstand Church in Shanxi Province, an underground church with some 50,000 worshippers. Though authorities tolerated the existence of the church for years, the large and visible worship hall the church built for itself was not something they could accept. In early January 2018, China’s paramilitary “People’s Armed Police” took over the building, packed it with explosives, and then finished the demolition with excavators. See (Goldman 2018).

The case of the early Christians in the late Roman Empire also illustrates the ways in which full institutional religious freedom depends on both cultural acceptance and legal recognition. The early Christians won rapidly growing social acceptance, particularly among certain groups and social classes, in the 2nd and 3rd centuries. At the same time, they existed in a kind of legal limbo. They were probably not the object of formal or explicit legal condemnation or proscription by imperial authorities, but nor

did they enjoy the formal legal recognition apparently accorded to some other groups—the status of “*religio licita*” (permitted religion) enjoyed by Judaism, for example. This legal ambiguity meant that Christians were vulnerable to ad hoc and sometimes intense persecution at the behest of either local magistrates or emperors, particularly since Christianity was already suspect as a new religion with tendencies (in some Roman eyes) towards obstinacy and factionalism. Christianity’s ambiguous legal status did not necessarily prevent it from spreading from individual to individual, but it did greatly limit its institutional religious freedom. Indeed, Roman refusal to accord Christians even a modicum of legally defined and protected freedom to organize themselves and assemble for acts of public worship or “liturgy” (based on the Latin word *leiturgia*, or “public work”)—which is to say, the rudiments of institutional religious freedom—was a frequent source of Christian protest, as may be seen in the famous “Apology” of the early North African church father Tertullian. See (Tertullianus 1998).

- 26 See, aside from Marshall’s valuable monograph, *Global Religious Institutions*, her World Faiths Development Dialogue and its series of rich “mappings” of religious institutions and their impact on development in several countries, including Bangladesh, Cambodia, and Guatemala. See also (Madsen 2007; Iyer 2018).
- 27 See generally (Schauer 2005) and, earlier, (Glendon and Yanes 1991) and (Glendon 1993). Even earlier, though from a perspective informed more by sociology and public policy than by law, Peter L. Berger and Richard John Neuhaus articulate a similar argument in their classic volume, *To Empower People* (Berger and Neuhaus 1977). For the analysis provided by Tocqueville, see “How the Americans Combat Individualism with Free Institutions” and “On the Use That the Americans Make of Associations in Civil Life” (Mansfield and Winthrop 2000). Earliest of all, in his *Reflections on the Revolution in France*, Burke said, “To be attached to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ as it were) of public affections. It is the first link in the series by which we proceed towards a love to our country and to mankind” (Burke 2009).
- 28 For excellent discussion of the liberty-protecting potential of civil society institutions in general, see (Hirst 1997).
- 29 On the reading of Eugene Genovese, in his modern classic, (Genovese 1976), America’s black slaves could create a “world” of resistance to the dehumanizing institutions and practices to which they were subjected in no small part because they could create and control their own religious institutions, suffused with religious narratives of their own construction. For a similar account that focuses on the self-organizing religious institutions of black slaves, see (Raboteau 2004).
- 30 Virtually all the issues that fired the burning conflict between the Archbishop of Canterbury Thomas à Becket and English King Henry II from 1164 to 1170, eventually leading to Becket’s murder at Henry’s behest in December 1170, pertained to institutional religious freedom. Significantly, according to the account of John of Salisbury, Becket, as he received the blows from his assassins, uttered the words, “And I for my God am ready to die, and for the declaration of justice and the liberty of the Church”. By a complex but still definite route, Becket’s resistance helped to lead—a few decades later—to the Magna Carta in 1215, the first clause of which declares, “In the first place we have granted to God, and by this present charter have confirmed for us our heirs in perpetuity, that the English Church shall be free, and shall have her rights entire, and her liberties inviolate”. See, for example, the illuminating discussion and presentation of the relevant primary source materials in a chapter entitled “The Freedom of the Church: The English Experience, 1160–1260”, in (Noonan 1987).
- 31 For a summary discussion of the democratizing role played by these and other religious movements in recent decades, see (Toft et al. 2011), pp. 82–120.
- 32 According to the “Doing Business” website, “The *Doing Business* project provides objective measures of business regulations and their enforcement across 190 economies and selected cities at the subnational and regional level”. It adds: “The *Doing Business* project, launched in 2002, looks at domestic small and medium-size companies and measures the regulations applying to them through their life cycle”. See <http://www.doingbusiness.org> (accessed on 3 June 2021).
- 33 On the costly decline of just these forms of face-to-face religious community and fellowship, see, generally, (Campbell and Putnam 2014).

References

- Alvaré, Helen, ed. 2014. *The Conscience of the Institution*. South Bend: St Augustine’s Press.
- Amin, Shahira. 2017. Rift widens between Egyptian president, Al-Azhar. *Al-Monitor: The Pulse of the Middle East*. February 26. Available online: <https://www.al-monitor.com/pulse/originals/2017/02/egypt-sisi-azhar-rift-religious-leaders-tawadros-morsi.html> (accessed on 3 June 2021).
- Barnett, Michael N. 2011. *Empire of Humanity: A History of Humanitarianism*. Ithaca: Cornell University Press, p. 20.
- Basham, Arthur Llewellyn. 1959. *The Wonder That Was India: A Survey of the Culture of the Indian Sub-Continent before the Coming of the Muslims*. New York: Grove Press, pp. 81, 86–87.
- Bell, Daniel A. 1993. *Communitarianism and Its Critics*. Gloucestershire: Clarendon Press.
- Bell, Daniel A. 2000. *East Meets West: Human Rights and Democracy in East Asia*. Princeton: Princeton University Press.
- Bellah, Robert N., Richard Madsen, William M. Sullivan, Ann Swidler, and Steven M. Tipton. 2008. *Habits of the Heart: Individualism and Commitment in American Life*. Berkeley: University of California Press.
- Berger, Peter L., and Richard John Neuhaus. 1977. *To Empower People: The Role of Mediating Structures in Public Policy*. Washington, DC: American Enterprise Institute.
- Berman, Harold Joseph. 1983. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge and London: Harvard University Press.
- Bozonelis, Theodore. 2018. Turkey: The systematic persecution of religious minorities. *Human Rights without Frontiers*. February 16. Available online: <https://publicorthodoxy.org/2018/02/09/religious-persecution-in-turkey/> (accessed on 3 June 2021).

- Burke, Edmund. 2009. *Reflections on the Revolution in France*. Edited by L. G. Mitchell. Oxford: Oxford University Press, pp. 46–47.
- Campbell, David E., and Robert D. Putnam. 2014. *American Grace: How Religion Divides and Unites Us*. New York: Simon & Schuster.
- de Tocqueville, Alexis. 1835. On the Principle Causes Tending to Maintain a Democratic Republic in the United States. In *Democracy in America*. New York: A Mentor Book from New American Library, pp. 264–301.
- Delaney, Augustina, and Michael Scharff. 2010. *Faith-inspired Organizations and Development in Cambodia*. Washington, DC: World Faiths Development Dialogue, p. 15.
- Deneen, Patrick J. 2018. *Why Liberalism Failed*. New Haven: Yale University Press.
- Denyer, Simon. 2016. China prepares for Dalai Lama's death by looking to its own top Tibetan cleric. *The Washington Post*, September 26. Available online: https://www.washingtonpost.com/world/asia_pacific/china-pushes-its-panchen-lama-into-spotlight-in-preparation-for-post-dalai-era/2016/09/25/7c28ac20-7f5e-11e6-ad0e-ab0d12c779b1_story.html?utm_term=.c7018a86b0c8 (accessed on 3 June 2021).
- Durham, W. Cole, Jr. 2001. The Right to Autonomy in Religious Affairs: A Comparative View. In *Church Autonomy: A Comparative Survey*. Edited by Gerhard Robbers. Frankfurt: Peter Lang.
- Durham, W. Cole, Jr. 2021. *Law, Religion, and Freedom: Conceptualizing a Common Right*. Edited by Javier Martínez-Torrón and Donlu Thayer. London and New York: Routledge, pp. 257, 265–70.
- Eisenstadt, Shmuel Noah. 1962. Religious Organizations and Political Process in Centralized Empires. *Journal of Asian Studies* 21: 272. [CrossRef]
- Farr, Thomas. 2008. *World of Faith and Freedom: Why International Religious Liberty is Vital to American National Security*. Oxford: Oxford University Press, pp. 217–72.
- Farr, Thomas F. 2020. The ministerial exception: An inquiry into the status of religious freedom in the United States and abroad. In *Religious Freedom and the Law: Emerging Contexts for Freedom for and from Religion*. Edited by Brett G. Scharffs, Asher Maoz and Ashley I. Woolley. London and New York: Routledge, pp. 25–38.
- Finke, Roger, Dane R. Mataic, and Jonathan Fox. 2017. Assessing the Impact of Religious Registration. Unpublished paper. 28.
- Fox, Jonathan. 2015. *Political Secularism, Religion, and the State: A Time Series Analysis of Worldwide Data*. New York: Cambridge University Press.
- Galston, William A. 2002. *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice*. Cambridge: Cambridge University Press.
- Genovese, Eugene. 1976. *Roll, Jordan, Roll: The World the Slaves Made*. New York: Vintage Books.
- George, Robert P., and William L. Saunders. 1996. Romer v. Evans: The Supreme Court's Assault on Popular Sovereignty. *Civil Rights Practice Group Newsletter* 1. no. 1. Available online: <https://fedsoc.org/commentary/publications/romer-v-evans-the-supreme-court-s-assault-on-popular-sovereignty> (accessed on 4 June 2021).
- Gerson, Michael. 2011. In Search of China's Soul. *The Washington Post*, May 13, p. A17.
- Glendon, Mary Ann. 1993. *Rights Talk: The Impoverishment of Political Discourse*. New York: Free Press.
- Glendon, Mary Ann, and Raul F. Yanes. 1991. Structural Free Exercise. *Michigan Law Review* 90: 477–550. [CrossRef]
- Goldman, Russell. 2018. Chinese Police Dynamite Christian Megachurch. *New York Times*. January 12. Available online: <https://www.nytimes.com/2018/01/12/world/asia/china-church-dynamite.html> (accessed on 3 June 2021).
- Green, Emma. 2017. The Quiet Religious-Freedom Fight That is Remaking America. *The Atlantic Monthly*. November 5. Available online: <https://www.theatlantic.com/politics/archive/2017/11/rliupa/543504/> (accessed on 15 April 2021).
- Gueniffey, Patrice. 2015. *Bonaparte: 1769–1802*. Translated by Steven Rendall. Cambridge and London: Harvard University Press, p. 734.
- Harris, Fredrick C. 2001. *Something Within: Religion in African-American Political Activism*. New York: Oxford University Press.
- Hefner, Robert W. 2011. *Civil Islam: Muslims and Democratization in Indonesia*. Princeton: Princeton University Press.
- Hirst, Paul. 1997. *From Statism to Pluralism: Democracy, Civil Society, and Global Politics*. London: UCL Press, pp. 120–23.
- Iyer, Sriya. 2018. *The Economics of Religion in India*. Cambridge: Harvard University Press.
- Kuran, Timur. 2010. *The Long Divergence: How Islamic Law Held Back the Middle East*. Princeton: Princeton University Press.
- Kuru, Ahmet T. 2019. *Islam, Authoritarianism, and Underdevelopment: A Global and Historical Comparison*. Cambridge and New York: Cambridge University Press.
- Laborde, Cécile. 2017. *Liberalism's Religion*. Cambridge: Harvard University Press.
- Lapidus, Ira M. 2014. *A History of Islamic Societies*. New York: Cambridge University Press.
- Lawrence, Bruce B., ed. 2005. *Messages to the World: The Statements of Osama Bin Laden*. London: Verso.
- Laycock, Douglas. 1981. Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy. *Columbia Law Review* 81: 1373–417. [CrossRef]
- Lindsay, A. D. 1962. *The Modern Democratic State*. New York and Oxford: Oxford University Press, pp. 64–83.
- Love, Maryann Cusimano. 2011. *Beyond Sovereignty: Issues for a Global Agenda*. Australia: Wadsworth.
- Love, Maryann Cusimano. 2018. Christian Transnational Networks Respond to Persecution. In *Under Caesar's Sword: How Christians Respond to Persecution*. Edited by Daniel Philpott and Timothy Samuel Shah. Cambridge and New York: Cambridge University Press, pp. 457–58.
- Madsen, Richard. 2007. *Democracy's Dharma: Religious Renaissance and Political Development in Taiwan*. Berkeley: University of California Press.

- Harvey Mansfield, and Delba Winthrop, transs. 2000, *Democracy in America*. London: University of Chicago Press, pp. 485–92.
- Maritain, Jacques. 2015. *Existence and the Existent*. Kindle Edition. New York and Mahwah: Paulist Press.
- Marshall, Katherine. 2013. *Global Institutions of Religion: Ancient Movers, Modern Shakers*. New York and London: Routledge.
- Marshall, Paul. 2021. Institutional Religious Freedom: An Overview and Defense. *Religions* 12: 364. [CrossRef]
- McConnell, Michael W. 1989. The Origins and Historical Understanding of Free Exercise of Religion. *Harvard Law Review* 103: 1488–91.
- Noonan, John T., Jr. 1987. *The Believer and the Powers That Are: Cases, History, and Other Data Bearing on the Relation of Religion and Government*. New York: Macmillan, pp. 21–35.
- Nurser, John. 2005. *For All Peoples and All Nations: The Ecumenical Church and Human Rights*. Washington, DC: Georgetown University Press, p. 58.
- O’Connell, Gerard. 2020. The China-Vatican agreement has been extended. Now, Rome is looking for more from Beijing. *America Magazine*. November 17. Available online: <https://www.americamagazine.org/politics-society/2020/11/17/china-vatican-agreement-rome-beijing-pope-francis-catholic> (accessed on 28 May 2021).
- O’Donovan, Oliver, and Joan Lockwood O’Donovan. 2006. *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought*, 100–625. Grand Rapids: Eerdmans, pp. 177–79, 240–49.
- Philpott, Daniel. 2019. *Religious Freedom in Islam: The Fate of a Universal Human Right in the Muslim World Today*. New York: Oxford University Press.
- Putnam, Robert David. 2020. *Bowling Alone: The Collapse and Revival of American Community*. 20th Anniversary Edition. New York: Simon & Schuster Paperbacks.
- Raboteau, Albert J. 2004. *Slave Religion The “Invisible Institution” in the Antebellum South*. Oxford: Oxford University Press.
- Rahner, Hugo. 2005. *Church and State in Early Christianity*. San Francisco: Ignatius Press.
- Riesebrodt, Martin. 2012. *The Promise of Salvation: A Theory of Religion*. Chicago: University of Chicago Press.
- Ron, James, Shannon Golden, David Crow, and Archana Pandya. 2017. *Taking Root: Human Rights and Public Opinion in the Global South*. New York and Oxford: Oxford University Press.
- Saiya, Nilay. 2016. Religion, state, and terrorism: A global analysis. *Terrorism and Political Violence* 31: 204–23. [CrossRef]
- Saiya, Nilay. 2018. *Weapon of Peace: How Religious Liberty Combats Terrorism*. Cambridge and New York: Cambridge University Press.
- Sandel, Michael J. 1982. *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press.
- Schauer, Frederick. 2005. Towards an Institutional First Amendment. *Minnesota Law Review* 89: 1256–279. [CrossRef]
- Schwartzman, Micah J., Chad Flanders, and Zoë Robinson, eds. 2016. *The Rise of Corporate Religious Liberty*. Oxford: Oxford University Press.
- Shah, Timothy Samuel, and Rebecca Shah. 2020. *Indonesia Religious Freedom Landscape Report 2020*. Washington, DC: Religious Freedom Institute, Available online: <https://static1.squarespace.com/static/57052f155559869b68a4f0e6/t/5f34524992021e34b58624ac/1597264467556/Indonesia+Landscape+Report+ONLINE.pdf> (accessed on 4 March 2021).
- Smith, Donald Eugene. 1966. *South Asian Politics and Religion*. Princeton: Princeton University Press, p. 14.
- Smith, Christian. 2017. *Religion: What it Is, How it Works, and Why it Matters*. Princeton: Princeton University Press.
- Smith, Christian. 2018. Are Human Beings Naturally Religious? In *Homo Religiosus? Exploring the Roots of Religion and Religious Freedom in Human Experience*. Edited by Timothy Samuel Shah and Jack Friedman. Cambridge: Cambridge University Press, pp. 35–54.
- Spegele, Brian. 2011. China’s Banned Churches Defy Regime. *Wall Street Journal*, July 28, p. A1.
- Stepan, Alfred C. 2001. The World’s Religious Systems and Democracy: Crafting the ‘Twin Tolerations’. In *Arguing Comparative Politics*. New York and Oxford: Oxford University Press, p. 217.
- Tertullianus, Quintus Septimius Florens. 1998. *Apology*. Translated by Terrot R. Glover. Cambridge: Harvard University Press.
- Tierney, Brian. 1996. *The Crisis of Church and State, 1050–1300*. Toronto: University of Toronto Press in association with the Medieval Academy of America.
- Toft, Monica, Daniel Philpott, and Timothy Shah. 2011. *God’s Century: Resurgent Religion and Global Politics*. New York: W.W. Norton & Company.
- Tollefsen, Christopher. 2018. Religious Liberty, Human Dignity, and Human Goods. In *Homo Religiosus?: Exploring the Roots of Religion and Religious Freedom in Human Experience*. Edited by Timothy Samuel Shah and Jack Friedman. New York and Cambridge: Cambridge University Press, pp. 230–42.
- VanderWeele, Tyler J. 2017. Religion and health: A synthesis. In *Spirituality and Religion within the Culture of Medicine: From Evidence to Practice*. Edited by John Peteet and Michael Balboni. New York: Oxford University Press.
- Verba, Sidney, Kay L. Schlozman, and Henry E. Brady. 1995. *Voice and Equality: Civic Voluntarism in American Politics*. Cambridge: Harvard University Press.
- Wilken, Robert L. 2019. *Liberty in the Things of God: The Christian Origins of Religious Freedom*. New Haven: Yale University Press.
- Yang, Fenggang. 2006. The Red, Black, And Gray Markets of Religion in China. *The Sociological Quarterly* 47: 93–122. [CrossRef]
- Yang, Fenggang. 2012. *Religion in China: Survival and Revival under Communist Rule*. New York: Oxford University Press.