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Edward A. David

A Christian Approach to Corporate Religious Liberty

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Preface

I began writing this book in the months preceding the U.S. Supreme Court's decision in *Burwell v. Hobby Lobby* and am finishing it in the midst of a global pandemic that has brought about the temporary, and state-sanctioned, closure of countless religious institutions. Then, as now, the book's basic argument—that *group actions* should be the focus of corporate religious liberty disputes—still holds. Why this holds has to do with the enduring operation of practical moral reason: Group actions are executed by coordinating individuals; and actions, insofar as they constitute the self, are an important subject of moral evaluation.

The significance of this argument cannot be overstated. Amid disputes over church freedoms and religious exemptions for-profit firms, *rights*—whether of individuals or of groups—give currency to the contemporary debate. But the concept of rights, while useful for moral deliberation, can too easily succumb to secular liberal narratives that rob (non-state) groups, or *group actions*, of their inherent moral value; as a result, too much emphasis is placed upon individual rights-holders and the all-pervasive rights-protecting state. Stuck in such paradigms, even religious communities find themselves speaking no differently than their secular

liberal counterparts. Their ability to morally deliberate on their own terms—with regard to virtue, right social action, and ultimate ends—diminishes: thus the need for an alternative approach to corporate religious liberty, one that affords a wide range of moral concepts for practical moral reason.

But with whose practical reason is this book most concerned? First and foremost, this book seeks to inform the moral deliberations of theologians and their church communities, especially as they wrestle with religious liberty disputes involving houses of worship, religious nonprofits, and for-profit corporations. Drawing upon modern Roman Catholic and Protestant church teachings, this book encourages Christian communities to embrace their ethical *and* group-ontological heritage so that they might speak with clarity to their own congregations and, in the wider public, to “who[m]ever has ears to hear” (Mark 4:9).

This encouragement, however, is not given to church communities alone. Another and equally important audience of this book includes political theorists and philosophers of law who puzzle over the ethics of corporate religious liberty. A growing literature—particularly in the field of law and religion—addresses this concern. But the approaches taken typically emphasize political liberal commitments (for example, to equality or freedom) often at the expense of believers’ more wide-ranging perspectives. Hence, this book seeks to articulate a modern theological jurisprudence—an approach that accounts for Christian beliefs, while engaging with the concerns of contemporary political liberals.

Undoubtedly, this book’s focus (the *who* or *what* of corporate religious liberty) and its dual audience (theologians and political-legal theorists) create challenges for a work of this size: The book covers only Roman Catholic and Protestant perspectives, leaving little room for Orthodox and other theological traditions. It wrestles with disputes in the United States alone and focuses upon free exercise challenges in particular, thus largely passing over establishment questions and insightful international comparisons. And, depending on one’s point of view, the book may concede too much to secular political liberalism or may weigh too theological to be of “practical” use; indeed, for some, it may sit frustratingly in-between.

These challenges notwithstanding, the book's moral and metaphysical argument has far-reaching implications. For theologians, it recovers the Christian tradition's diverse group ontologies and suggests how these too should inform moral deliberation. For political and legal theorists, it makes an ethical case for religious exemptions, showing how group ontology can be used responsibly in this endeavor. And, for both audiences, it encourages thoughtful—even collaborative—moral discourse, with concepts like *right action* (as opposed to possessive *rights*) serving as means to carefully navigate the ethics, and ultimate ends, of corporate religious liberty. Will this book satisfy all? I suspect not. But I do hope that its suggested approach might offer truly practical ways forward.

Oxford, UK

Edward A. David

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Special thanks must be given to Brendan George, my editor at Palgrave Macmillan, who was hugely supportive of my research and throughout each stage of the publication process. Lauriane Piette offered expert editorial advice, and Palgrave's blind peer review further improved arguments made in this book. Of course, all opinions expressed and errors made are solely my own.

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brothers, Joseph and Alex, were a constant source of encouragement—even with an ocean between us. To them, in particular, I dedicate this book.

About This Book

This book offers a Christian approach to the religious freedoms of organized groups, from houses of worship to for-profit corporations. Challenging the terms of the contemporary debate, this book argues that corporate religious freedoms should chiefly apply to group actions, as opposed to rights-holding individuals or group persons *per se*. This argument provides moral clarity to free exercise disputes that are often obscured by rights-talk and a lack of civic or moral virtues. Chapter 1 establishes the importance of determining to whom or to what corporate religious liberty applies. This query is then answered in Chapters 2 through 5 with a theory of corporate religious liberty, one informed by the group ontology of Saint Thomas Aquinas and modern church teachings on religious freedom. Finally, Chapters 6 and 7 consider how the supernatural personality of the Church might be reasonably accounted for by law, and how it might positively influence moral discourse over corporate religious freedoms.

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