

# “Equal Respect for Conscience”: Roger Williams on the Moral Basis of Civil Peace<sup>1</sup>

By Martha C. Nussbaum

Sixthly, it is the will and command of God that (since the coming of his Sonne the Lord Jesus) a permission of the most paganish, Jewish, Turkish, or antichristian consciences and worships, bee granted to all men in all Nations and Countries.

Roger Williams, *The Bloody Tenent of Persecution* (1644)<sup>2</sup>

Your Selvs praetend libertie of Conscience, but alas, it is but selfe (the great God Selfe) only to Your Selves.

Roger Williams, letter to the governors of Massachusetts and Connecticut (1670)

LIFE WAS TOUGH FOR THE SETTLERS OF SEVENTEENTH CENTURY NEW ENGLAND. THEY responded to hardship by trying to gain God’s favor for their colonies—which required, as they saw it, establishing and sternly enforcing a religious orthodoxy. By punishing, or banishing, those who disobeyed in word or deed, they hoped to cast impurity from their common life. The idea that a good community would be one that allowed all people to seek God in their own way took root only gradually and with great struggle.

This lecture traces that struggle, focusing on the life and ideas of Roger Williams, founder of the colony of Rhode Island and seminal philosophical thinker about religious liberty and fairness, whose ideas shaped the American tradition, and also, it seems, the strikingly similar arguments of John Locke forty years later.

Three aspects of Williams’s thought deserve particular emphasis. First, Williams develops a distinctive view of conscience as a seat of emotion, imagination, and ethical choice that is the source of our equality as human beings

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and that is worthy of equal respect wherever it is found. Political principles, he argues, must be based on that equal respect. Second, he argues that equal respect for conscience entails protecting an extensive sphere of freedom around the individual, and that this protection must be truly impartial, imposing no orthodoxy. Third, he then argues that a civil peace among people who differ in conscientious commitment requires a moral consensus that is itself impartial, giving the ascendancy to no religion or creed more than any other; such a consensus is available because there is a part of the moral sphere that we can share while differing in ultimate religious commitments. Williams dramatizes this idea from the start by making his major work a dialogue between two friends called Truth and Peace, in which Truth acknowledges the deep importance of reaching an ethically grounded accommodation, for political purposes, with people whom one believes to be in error. I shall trace these features of Williams’s argument, and then clarify them further by comparing his ideas on key issues to those of Locke and John Rawls.

### I. This “wild and howling land”

LIFE IN NEW ENGLAND WAS FRAGILE AND EXPOSED. THE WIND, THE SEAS, THE FORESTS, the deep snows—all this was very strange to people accustomed to life in England. “But oh poore dust and Ashes,” Roger Williams wrote of himself and his fellows, “like stones once roling downe the Alpes, like the Indian Canoes or English Boats loose and adrift, where stop we until infinite mercy stop us.”<sup>3</sup> In his remarkable *Key into the Language of America*, a study of Indian life and languages, Williams ponders the Indians’ ability to coexist with impermanence and constant vulnerability in “this wild and howling land.” He confesses that Europeans have a greater need for stability.

The Europeans of Massachusetts reacted to their insecurity by attempting to enforce orthodoxy of religious belief and practice. John Cotton, pastor of the First Church of Boston, one of Massachusetts’s most influential religious leaders and Roger Williams’s lifelong intellectual adversary, wrote copiously in defense of imposed religious orthodoxy, arguing that it was necessary for civil order. It was also God’s will, he said, in order to separate the diseased element of society from the healthy element. Heretics and dissidents are like Satan in our midst. Even if they behave peaceably, they are enticements to sin.

### II. “To ship my selfe all alone in a poore Canow”: Williams’s Rhode Island

MY AIM IS TO ANALYZE OF WILLIAMS’S INTELLECTUAL CONTRIBUTION. BUT SINCE HE WAS A LEADER as well as a thinker, his work must be assessed in the context of his career.

Williams was born in England in 1603, to a prosperous merchant family. He grew up in London, near the Smithfield plain, where religious dissenters were sometimes burned at the stake. As a young man, he attracted the attention of Sir Edward Coke, Chief Justice of the King’s Bench. Coke arranged for the young man’s education at Sutton’s Hospital, the future Charterhouse School, and then at Cambridge University, where Williams received his A. B. in 1627, after a classical education that focused on natural law theories based on ancient Greek and Roman Stoicism, which suffuse Coke’s work, and which were much in vogue at the time. Williams quickly impressed by his remarkable flair for languages,

mastering Latin, Greek, Hebrew, French, and Dutch. In this way he made John Milton's friendship: he taught Milton Dutch in exchange for Hebrew lessons. On graduation, Williams took orders in the Church of England; in 1629 he accepted a post as chaplain at Otes in Essex, home of Sir William Masham—grandfather of the Sir Francis Masham who was Locke's host at Otes in the 1690's.<sup>4</sup>

In 1630, a leading Puritan reformer was placed in the pillory. One of his ears was cut off, one side of his nose was split, and he was branded on the face with the letters SS, for "Sower of Sedition." Later the other side of his nose was split and his other ear was cut off. For good measure, the man was then imprisoned for the rest of his life. Williams, who witnessed these events, and who was already very critical of the Anglican orthodoxy, decided that he could not live in England. He set sail for Massachusetts.

At first, Williams was warmly welcomed by the leaders of the Colony.<sup>5</sup> Boston found his views about religious liberty too radical, but he was welcomed by the congregation at Salem. But he soon made trouble, publishing a pamphlet attacking the colonists' claims to the Indians' land. He also urged resistance to an oath of loyalty proposed for all colonists. During this period Williams spent some peaceful months at Plymouth, studying Indian life and languages.

By 1635/6, the authorities saw that Williams was bent on continuing his divisive teaching. They ordered his arrest. Tipped off in advance, he fled. Looking back on the incident from Providence in 1670, he describes it this way:

...I was unkindly and unchristianly (as I believe) driven from my howse and land, and wife and children (in the midst of N. Engl. Winter now, about 35 years past) ... I steerd my course from Salem (though in Winter snow wch I feele yet) untill these parts, whrein I may say as Jacob, Peniel, that is I have seene the Face of God...<sup>6</sup>

In keeping with his sense of deliverance, Williams named the new settlement Providence.

A key part of the life of the new settlement was respectful friendship with the Indians. Williams had always treated them as human beings, not beasts. He respected their dignity. When the great Narragansett chief Canonicus (who spoke no English) broke a stick ten times to demonstrate ten instances of broken English promises, Williams understood his meaning and took his part. When the colonists objected that the Indians could not own land because they were nomadic, Williams described their regular seasonal hunting practices, arguing that these practices were sufficient to establish property claims—a legal argument that strikingly anticipates recent litigation over aboriginal land claims in Australia. Linguist that he was, he reports having, at this period, a "Constant Zealous desire to dive into the Natives Language" (C II.750), and he learned several of the languages by living with them for long periods of time.<sup>7</sup>

When Williams arrived as a refugee, then, his dealings with the Indians had prepared the way for a fruitful relationship. Chiefs Massasoit and Canonicus welcomed him like a friend, because he had befriended them before he needed them. He continued to do so. One of the key provisions of the Charter of Rhode Island was that "itt shall not bee lawfull to or For the rest of the Collonies to invade or molest the native Indians...", a provision that Williams particularly sought, noting that hostility to the Indians "hath hietherto bene ... practiced to our Continuall and great grievance and disturbance."<sup>8</sup> As he wrote to the Governor of Massachusetts Bay, explaining his refusal to return, "I feel safer

down here among the Christian savages along Narragansett Bay than I do among the savage Christians of Massachusetts Bay Colony.” Williams was not speaking of conversion: he never tried to convert the Indians. He was speaking of moral decency. Williams’s experience of finding integrity, dignity, and goodness outside the parameters of orthodoxy surely shaped his evolving view of political principles.

Williams provided for wide religious liberty in the new colony. Rhode Island rapidly became a haven for people who were in trouble elsewhere. Baptists, Quakers, and other dissidents joined the Puritan dissenters. In 1658 fifteen Portuguese Jewish families arrived in Newport. They enjoyed the same religious liberty granted to others—a fact that is impressive, since Jews in Britain gained full civil rights only in 1858.

In 1643 Williams set sail for England to secure a charter for the new colony. During the voyage he wrote his book about Indian languages. While in England, he wrote *The Bloody Tenent of Persecution*. Meanwhile, Cotton’s angry reply to *The Bloody Tenent*, published in 1647, led Williams to produce another work about a hundred pages longer than the first one, refuting all of Cotton’s arguments. Published in 1652 in London, it bears the unwieldy title, *The bloody Tenent Yet More Bloody: By Mr Cottons endeavour to wash it white in the Blood of the Lambe; of whose precious Blood, spilt in the Blood of his Servants; and Of the blood of Millions spilt in former and later Wars for Conscience sake, that Most Bloody Tenent of Persecution for cause of Conscience, upon a second Tryal, is found now more apparently and more notoriously guilty.*

The civil wars and the Restoration made it necessary to renegotiate the Charter. Williams again went to England, and found in Charles II a ready ally for his experiment in religious liberty. The Barbados already permitted religious liberty, by omission and policy rather than by explicit royal guarantee. Rhode Island, however, was the first case of an official policy of religious liberty, and Williams writes with amusement of how shocked the King’s ministers were by it. The charter was shocking indeed—not only in protecting the Indians, but, above all, in its clause regarding religious liberty:

[N]oe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or call in question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of sayd colony; but that all and everye person and persons may, from tyme to tyme, and at all tymes hereafter, freely and fully have and enjoye his and their owne judgments and consciences, in matters of religious concerns, throughout the tract of lande hereafter mentioned; they behaving themselves peaceable and quietlie, and not useinge this libertie to lycentiousnesse and profanenesse, nor to the civill injurye or outward disturbance of others; any lawe, statute, or clause, therein contained, or to be contained, usage or custome of this realme, to the contrary hereof, in any wise, notwithstanding.<sup>9</sup>

What does the clause protect? Belief and the expression of opinion in religious matters, clearly. But Williams throughout his writings was very careful to insist that acts of worship also should enjoy protection. Indeed, in his own writings we rarely encounter the word “belief” without the word “worship” or “practice.” He introduces *The Bloody Tenent* with the announcement that “consciences and worships” are all to be permitted. Elsewhere, he uses phrases such as “for either professing doctrine, or practicing worship” (BT 63), “doctrine or practice,”

“holdeth or practiseth,” “doctrines and worships,” “to subscribe to doctrines, or practise worships,” (BT 63, etc.). It is unfortunate that the charter is less careful, but we can understand the latitude of its protection from the other direction, as stopping where civil disturbance begins. Williams was no John Stuart Mill: he thought that the business of civil government included not only protection of individuals from harm to their rights by others, but also the maintenance of public order and morality. Thus, like virtually everyone at this time, he favored laws against adultery and other so-called “morals laws.” Not, however, on religious grounds: his conception of public morality keeps it quite distinct from religious norms and justifications.

The final provision in the clause is very interesting: the charter guarantees liberty of religious belief and practice even when a law or custom forbids it. In other words, if law says that you have to swear an oath before God to hold public office, this law is nullified by the Charter. Moreover, it appears that the Charter nullifies the applicability of laws to individuals when such laws threaten their religious liberty. If a law says that people have to testify on Saturday, and your religion forbids this, then that law is non-applicable in your case. In other words, it would appear that Williams has forged the legal concept of “accommodation,” which soon became widely accepted in the colonies. Laws of general applicability have force only up to the point where they burden individual religious liberty (and public order and safety are not at stake). This policy was stated explicitly by Williams in a letter. Comparing the colony to a ship at sea, on which Christians, Jews, pagans, and Muslims have all embarked, he says that the captain of that ship is entitled to require anything that is connected to the ship’s safety and that of her passengers, but beyond that point there is to be the widest possible allowance for religious liberty, alike for all passengers. This doctrine of accommodation soon became a distinctive American legal tradition; I shall return to it in comparing Williams’s ideas with those of Locke.

### III. “This Conscience is found in all mankinde”<sup>10</sup>: Williams’s Defense of Religious Liberty.

BEHIND THIS IMPORTANT POLITICAL ACHIEVEMENT IS A BODY OF THOUGHT AS RICH, ON THESE issues, as that of Locke, and considerably more perceptive concerning the psychology of both persecutor and victim. At its heart is an idea, or image, on which Williams focused with deep emotion and obsessional zeal: the idea of the preciousness and dignity of the individual human conscience. Conscience, for Williams, plays the role that the faculty of moral choice plays in Stoicism; conscience basically is a seat or faculty of searching and choosing, although for Williams it includes imagination and emotion as well as ethical selection. Although Williams focuses on its religious employment, he makes it clear that it governs the entire conduct of life. It is, Williams holds, the main source of our identity as agents: it is “indeed the man.”<sup>11</sup>

Williams has his own religious beliefs, which entail that most people around him are in error. Error, however, does not mean that they do not have the precious faculty of conscience: “This Conscience is found in all mankinde ... in Jewes, Turkes, Papists, Protestants, Pagans, etc.” And although of course it is important to find the truth, truth is not the basis of respect: what he reveres is the

faculty itself, the capacity for searching and choosing. He holds (with the Stoics) that the faculty exists in non-virtuous people, and that all consciences deserve not just respect, but equal respect.

So: everyone has inside something infinitely precious, something that demands respect from us all, and something in regard to which we are all basically equal. Williams now argues that this precious something needs extensive space to unfold itself, to pursue its own way. To respect human beings is therefore to accord that sort of space, impartially, to each and every one of them. He expresses indignation that someone “that speaks so tenderly for his owne, hath yet so little respect, mercie, or pitie to the like consciencious perswasions of other Men[.] Are all the Thousands of millions of millions of Consciencs, at home and abroad, fuell onely for a prison, for a whip, for a stake, for a Gallowes? Are no Consciencs to breath the Aire, but such as suit and sample his?”<sup>12</sup>

These images are revealing. They tell us that Williams thinks of consciences as delicate, vulnerable, living things, things that need to breathe and not to be imprisoned. Here, to my mind, Williams makes decisive progress beyond the Stoicism of his classical education. Stoic thinkers treat the moral core of the person as something rock-hard, something that cannot be damaged by worldly conditions. They therefore have great difficulty drawing any political conclusions at all from their arguments about respect for human dignity. Dignity is so secure within that even slavery and torture cannot affect it: so Stoic writings, beginning from a radical egalitarianism about worth, end up oddly quietistic. The moral power cannot really be coerced: so external coercion is not all that important. Williams, by contrast, sees that the conscience is not invulnerable: it can be damaged and crushed, and it needs space to unfold itself. This insight is necessary for a workable doctrine of the worth of political liberty.

Williams has the very keenest sensitivity to any damage to this precious thing, comparing persecution repeatedly to “spirituall and soule rape” (BT 219). And it is “soul rape” when any person is limited with respect to either belief or practice (so long as he is not violating civil laws or harming others): “I acknowledge that to molest any person, Jew or Gentile, for either professing doctrine, or practicing worship merely religious or spirituall, it is to persecute him, and such a person (whatever his doctrine or practice be true or false) suffereth persecution for conscience” (BT 63).

To be more precise, Williams has two distinct images for persecution, rape and imprisonment, corresponding to different types of damage to conscience. Persecution is like imprisonment, in that people whose faculty of conscience is undamaged within still need breathing space to act on their conscience’s promptings, searching for meaning through whatever forms of prayer, worship, or writing and speaking they select. But persecution is also like rape, in that it goes inside a person and does terrible damage. Williams clearly thinks that being forced to affirm what you do not believe can harm the soul in its very capacity to strive, deforming and weakening it (though it never destroys the basis of equal respect, because it never extinguishes utterly the capacity for striving).<sup>13</sup> So what is needed is, first, protection for the conscience so that it can grow undefiled, and, second, the creation and protection of a space around it so that it can venture out into the world and conduct its search.

Persecution is therefore a terrible error, one of the worst there can ever be. Williams explicitly says that it is a worse error than being a heretic (C I.348), and that “a Soule or spirituall Rape is more abominable in Gods eye, then to force and ravish the Bodies of all the Women in the World” (BT 182). Indeed, persecution is a doctrine “which no Uncleannes, no Adulterie, Incest, Sodomie, or Beastialtie can equall, this ravishing and forcing (explicitly or implicitly) the very Soules and Consciences of all the Nations and Inhabitants of the World” (BTY 495). Williams does not believe that the offenses to which he compares persecution are trivial—indeed, he is inclined to favor the death penalty for adultery. So we can see how strong his objection to persecution is, if it is worse than these things. Most rulers in all ages, he concludes, have practiced “violence to the Souls of Men” (BTY 12).

One of Williams’s reasons for abhorring persecution is instrumental: if you force someone, it hardens their opposition, thus preventing their voluntary conversion, hence their salvation. He makes this point repeatedly when he is in *ad hominem* debate with John Cotton, and it was a common Protestant argument in the period, one that Locke later makes central to his own case for toleration. One cannot read Williams’s text, however, and doubt that Williams also thinks damage to conscience an intrinsic wrong, a horrible desecration of what is most precious about a human life.

Williams has insisted that this precious something is in us all, and is worthy of *equal* respect. Therefore it is a heinous wrong to give it freedom for some (the orthodox) and to deny this same freedom to others. Again and again, he hammers home the charge of partiality and unfairness. Magistrates “give Libertie with a partiall hand and unequall balance” (BT 401). How “will this appear to be equall in the very eye of Common peace and righteousnesse?” (BT 402) His own marginal summaries of his argument, particularly in the later work, keep recurring to this theme, saying “Unchristian partiality” (BTY 55), “Gross partiality to private interests” (BTY 113), and “Gross partiality the bloody doctrine of persecution” (BTY 290).

Williams has a keen nose for special pleading and unfairness, and he sees it everywhere restrictions on religious liberty are found. He suggests that the error of the persecutor is a kind of anxiety-ridden greed, which is hypocritically disguised as virtue. Each, anxious and insecure, aims to carve out special protections and privileges for himself by attacking in others what he most values in his own life. In his letter to the governors of Massachusetts and Connecticut he indicts them for a hypocritical and unfair set of principles—for worshipping, in effect, only the “great God Selfe.”

If persecution is the worst of errors, liberty of conscience is, as Williams repeatedly states, a “most precious and invaluable Jewel” (BTY 30). It is for this “one commoditie” that “most of Gods children in N. England have run their mighty hazards” (30). The proponent of liberty does not indulge in special pleading. Even though he believes that he is right, he has an even-handed spirit of love, gentleness, and civility to all men, a civility that includes respect for their freedom.

In one remarkable passage Williams states that persecution is not only “to take the being of Christianity out of the World, but to take away all civility,

and the world out of the world, and to lay all upon heapes of confusion” (BT 201). What does he mean by saying that persecution takes “the world out of the world”? I think he is expressing the view that the spirit of respect, combined with the spirit of fair play, is at the heart of our worldly lives with one another. Take these things away, and you despoil the world itself. You make it nothing but a heap of confusion.

Williams is an emotional writer. His way of writing philosophy is not precise or analytic. Nonetheless, it is not implausible to find proto-Kantian themes in his writings. At the heart of the thought of both men are two ideas, closely connected: the duty to respect humanity as an end wherever we find it, and the duty to be fair, not to make an exception for one’s own case. Indeed, respecting humanity *entails* not making an exception of oneself. Just as Kant asks a person to test the principle of his or her conduct by asking whether it could without contradiction be made a universal law for all human beings, so Williams’s critique of the leaders of Massachusetts and Connecticut is that their idea cannot pass Kant’s test: they love freedom—but only for themselves. They could not will persecution as a universal law, and their selfishness prevents them from willing liberty of conscience (which could pass the Kantian test) as a universal law. As for the Formula of Humanity, Williams constantly complains that the conscience is precious, but people use other people’s consciences as tools to serve their own anxious and greedy ends. Williams does not use the word “autonomy,” but his insistence on the independent quest of the individual conscience and his disdain for all external authority in spiritual and ethical matters, strikes, again, a proto-Kantian note.

#### IV. A “Model of Church and Civil Power”<sup>14</sup>

IF WILLIAMS HAD OFFERED ONLY AN ACCOUNT OF CONSCIENCE AND ITS FAIR, IMPARTIAL, treatment, he would already have made a large contribution to our understanding of religious liberty. He accomplished, however, much more, developing an elaborate account of the proper jurisdictions of religious and civil authority that anticipates Locke’s more famous account, though I shall argue that it offers better guidance. In this part of his work, Williams is replying to a “model” of church and state proposed by John Cotton. Truth asks Peace what (book) she has there. Peace produces Cotton’s book, and reads from it the claim that the established Church must hold high authority in the civil realm, and should be superior to all civil magistrates, if peace is to be preserved (BT 221-2). The two hundred pages that follow contain Williams’s alternative “model.”

According to Williams, there are two separate sets of ends and activities in human life; corresponding to these are two utterly different sorts of jurisdiction, two sorts of authority. Civil or state authority concerns “the bodies and goods of subjects” (exactly the characterization that Locke later gives). Civil authority must protect people’s entitlements to property and bodily security, and it may properly use force to do so (BT 148, BTY 188). The civil law applies to all, including members of the clergy (BT 268). The foundation of civil authority lies in the people, and it is the people who are entitled, democratically, to choose civil magistrates (BT 249).

The other sphere of human life is that of the soul and its safety. Law

and force have absolutely no place in this sphere, which must be governed by persuasion only (BT 148). Churches and their officers have this sphere as their jurisdiction (BTY 188), but with the proviso that their only proper means of addressing the soul is persuasion. The two sorts of authority, civil and spiritual, can coexist peaceably together (BT 223, BTY 40). Peace is in jeopardy only to the extent that churches overstep their boundaries and start making civil law, or interfering with people's property, livelihood, and liberty.

Williams now tells us that there is, of course, a way in which the civil state needs to make laws "respecting religion": namely, it has to make laws protecting it, saying, for example, "that no persons Papists, Jewes, Turkes, or Indians be disturbed at their worship (a thing which the very Indians abhor to practice toward any)" (BT 252). Such protective laws are not only permitted, they are extremely important, "the Magna Charta of highest liberties" (BT 220). There is, he continues, another type of law "respecting religion" that is very different from these protective laws: the sort of law that establishes, or forbids, acts of worship, says who can and cannot be a minister, and so on. To say that these should be civil laws "is as far from Reason, as that the Commandments of Paul ... were civil and earthly constitutions" (BT 253).

John Cotton makes two claims that Williams must answer, if he is to defend his radical position well. First, he makes a claim about peace and stability: people simply cannot live at peace with one another unless some religious orthodoxy is established. In response, Williams invokes both reason and experience on his side. People with false religious views, he says, may be perfectly decent and peaceable citizens. We can see this all the time: that people do live together peacefully, so long as they respect one another's conscience-space. (Once again, life with the Indians provides a handy illustration.) What really breaks the peace is persecution: "Such persons onely breake the Cities or Kingdomes peace, who cry out for prison and swords against such who crosse their judgement or practice in Religion" (BT 79, often repeated).

The other argument of Cotton's on which Williams focuses is an argument about competence. Cotton claims that being a good citizen and being a good civil magistrate are inseparable from having the right religion. We simply do not want our public life to be run by sinners, because they are making very important decisions, and if they are sinners they will do so sinfully and badly. Here Williams makes one of his most interesting and novel arguments. God has created different sorts of things in the world, he says, and there are "divers sorts of goodness" corresponding to these different sorts of things. He illustrates this point at length, talking about the goodness of artifacts, plants, animals, and so on (BT 245). One of the ways God created diversity in the world was to create a type of "civill or morall goodness" that is "commendable and beautifull" in its own right, and that is distinct from spiritual goodness. It can be there in its full form, and be beautiful, even if the person is religiously in error, even "though Godlines which is infinitely more beautifull, be wanting" (BT 245). What is needed to be a good subject in a civil state is the moral sort of goodness, and it is that sort, as well, that we need in our civil magistrates. Later, returning to the point, he insists that the foundation of the magistrate's authority "is not Religious, Christian, &c. but naturall, humane and civill" (BT 398). For many activities, a worldly

foundation is sufficient: “a Christian Captaine, Christian Merchant, Physician, Lawyer, Pilot, Father, Master, and (so consequently) Magistrate, &c. is no more a Captaine, Merchant, Physician, Lawyer, Pilot, Father, Master, Magistrate, &c. then a Captaine, Marchant, &c. of any other Conscience or Religion.” Particularly surprising is his casual mention of “father” as a role whose duties can be fully executed independently of spiritual enlightenment.

In short, for Williams the civil state has a moral foundation, but a moral foundation need not be, and must not be, a religious foundation. The necessary moral virtues (honesty is one to which Williams devotes special emphasis) can be agreed on and practiced by people from many different doctrines. To be sure, he adds, a person’s religion will connect these moral virtues to higher ends (BT 399), but so far as the moral sphere itself goes, orthodox and dissenter, religious and non-religious, can agree.

It is not fanciful to see here an adumbration of John Rawls’s idea of civil society as involving a set of “freestanding” moral principles concerning which people from different “comprehensive doctrines” can join in an “overlapping consensus.”<sup>15</sup> Like Williams, Rawls stresses that political society has a moral foundation. But he holds that this is a “module” that can be linked to different religious doctrines in a variety of different ways. Although religious people will certainly feel that their religion provides the moral principles with their highest ends or deepest sources (here again he agrees with Williams), they can nonetheless agree about the moral terrain in a way that is, for practical purposes, “freestanding,” that is, not requiring the acceptance of a religious orthodoxy. So we do not have, exactly, a “wall of separation,” between people’s religions and their political principles. (Williams used that phrase only once, and in a letter, not at all in his major writings.) We do have separation of jurisdictions between church and state, but where people are concerned, they will rightly see the morality of public life as one part of their “comprehensive doctrine” — a part, nonetheless, that they can share with others without converting them to what they take to be the true religion.

This idea is a much more helpful idea to think with than the bare idea of “separation,” which might suggest that the state does not have anything to do with the deep ethical matters that are so central to the religions. The state needs to be built on moral principles, and it would be weird and tyrannical to ask religious people to accept the idea that moral principles are utterly “separate” from their religious principles. The idea of an overlapping consensus, or, to put it Williams’s way, the idea of a moral and natural goodness that we can share while differing on ultimate religious ends, is an idea that helps us think about our common life together much better than the unclear and misleading idea of separation. We must respect one another’s freedom and equality, the deep sources of conscience that lead us through life. We will only do this if we keep religious orthodoxy out of our common political life. But we can, and must, base that common life on ethical principles that, for many of us, also have a religious meaning and a religious justification. All we need to do, when we join with others in a common political/moral life, is to acknowledge that someone might actually have those ethical virtues, in the way that is relevant for politics, while not sharing our own view of life’s ultimate meaning. If we once grant that, then Williams’s other

argument concerning fairness and impartiality will lead us to want a state that has no religious orthodoxy, that is, just in that sense, “separate” from religion.

### V. Comparisons: Locke and Rawls

WE CAN NOW MAKE OUR PHILOSOPHICAL ACCOUNT MORE PRECISE IF WE COMPARE Williams’s thought to that of two later thinkers who are central to our philosophical tradition on such matters: John Locke, and John Rawls. Locke probably knew Williams’s work, and he wrote his *Letter Concerning Toleration* at Otes in Essex, the same noble house where Williams was employed as a chaplain.<sup>16</sup> Rawls probably did not read Williams,<sup>17</sup> but he was a keen student of U. S. history, and understood well the framework that Williams had disseminated through his institutional designs.

The arguments of Locke’s letter bear a close resemblance to those of Williams’s books, in the general nature of their conclusions about the role of the state, and in the focus of their arguments on the importance of “equal and impartial liberty,” as Locke puts it. Nonetheless, there are six significant differences, all of which, I believe, should make us prefer Williams’s approach.

First, Locke never attacks the Anglican establishment; he seems to think that equal liberty is compatible with a religious establishment. Williams is keenly aware of the danger of religious establishments as threats to both liberty and equality: to liberty because a dominant sect will easily slip into curbing the conscience space of minorities; to equality, because the very existence of an orthodoxy makes a statement that all citizens are not fully equal, that we do not all enter the public square “on equal conditions.” That last phrase is actually taken from James Madison’s great 1785 work, “A Memorial and Remonstrance Against Religious Assessments,”<sup>18</sup> and Williams anticipates the arguments of that essay. Throughout the period of the founding, the central argument against religious establishments was an equality argument, and, whether directly or not, it was Williams’s argument.

Second, Williams gives us, in his discussions of conscience, an account of the moral basis of the political doctrine, telling us what equal respect is all about and why it is so important. There is nothing like this in Locke, at least not in the *Letter*.

Third, Locke and Williams have subtly different positions on “accommodation,” that is, on the question whether laws applicable to all should contain exceptions for people with special religious requirements. Locke is in favor of the exceptionless rule of law, provided that the laws themselves are neutral. Some laws maliciously target minorities, and those laws must go. For example, if it is legal to speak Latin in a school, it must be legal to speak Latin in a church. If it is legal to bathe in water for the sake of health, it must be legal to bathe in water for the sake of baptism. But there Locke draws the line. If there is any non-malicious law that has the incidental effect of burdening minorities, then the person whose conscience poses an obstacle to his obeying that law had better follow conscience, says Locke, because eternal salvation is more important than jail, but he will have to go to jail or pay the fine.

Williams, as we have seen, is subtly different: he allows exceptions to

general laws for conscience’s sake, up to the point where the person’s conduct would threaten peace and public safety.<sup>19</sup> In so holding, he anticipates a norm that became general by the time of the Founding: all the state constitutions had free exercise clauses with similar “peace and safety” overrides.<sup>20</sup> (Madison, in 1776, actually favored an even more protective standard: no burden to conscience unless the constitution itself is in jeopardy.<sup>21</sup>) The practices of the colonies involved granting such conscience-based exemptions without legal penalty: Jews did not have to testify on Saturday; sects that objected to oaths didn’t have to swear; Quakers and Mennonites were exempt from military conscription. Most remarkably, and only in Rhode Island, Jews were exempted from the incest law if they wanted to contract uncle-niece marriages on religious grounds. The laws remained valid; religious minorities did not have to obey them. In the early days of the Republic, George Washington writes a letter to the Quakers explaining his stance as its first President, concerning their conscientious refusal of military service:

I assure you very explicitly, that in my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness: and it is my wish and desire, that the laws may always be as extensively accommodated to them, as a due regard for the protection and essential interests of the nation may justify and permit.<sup>22</sup>

This is pure Williams, and it is far from what Locke’s stricter notion of the rule of law would permit.

The contrast between Williams and Locke is still with us, in the form of divergent standards that have played a role in recent Supreme Court debates. The Williams idea was long a hallmark of free exercise jurisprudence, in the form of what has come to be known as the “*Sherbert test*,” after an important 1963 case involving a woman who was fired because her Seventh-Day Adventist beliefs forbade her to work on Saturday, and was then denied unemployment compensation on the grounds that she had refused “suitable work.” The Court, finding in her favor, said that government may not impose a “substantial burden” on a person’s free exercise of religion without a “compelling state interest.”<sup>23</sup> The case had an important equality aspect: the fact that Saturday and not Sunday was the required day put unfair pressure on this minority woman, pressure that the majority did not have to face. This basic idea was implemented for some years,<sup>24</sup> but in 1990 the Lockean position took hold, with Justice Scalia’s controversial opinion in a case involving Native American peyote use.<sup>25</sup> Scalia said that laws must rule exceptionlessly, so long as they were neutral and not hostile or discriminatory. In so writing he was siding with Locke. Justice O’Connor has been the most vocal defender of the Williams viewpoint, and Congress has attempted to restore the more protective standard through legislation.<sup>26</sup> Scalia, like Locke, is very interested in legal neutrality: thus, when a Florida community passed an ordinance forbidding ritual animal sacrifice he struck it down, holding that the fact that they allowed animals to be slaughtered in all sorts of other ways showed that they were simply targeting Santeria worshippers; this was a highly Lockean judgment.<sup>27</sup> But he does not believe that courts should go beyond this to insist on the protection of conscience against laws that are not discriminatory — although he is willing to allow the legislature to pass such exemptions if it wants.

What this conflict over accommodation is really about is the equality of minorities in a majority world. Rules about workdays, drugs, and a host of other

matters favor the majority: so alcohol is legal and peyote is not, Sunday is the usual day of rest and Saturday is not. Williams understood the vulnerability of minority conscience in a world of majority rule, and his more protective standard should, I believe, be restored.

Fourth, Locke argues from Protestant premises most of the time. He seems inattentive to the importance of coming up with arguments for toleration that all citizens can share. He even relies heavily on skepticism about religious truth, a view that many religious citizens could never endorse. Williams does refer to Christian norms at some places in his argument; but he tries hard to develop an independent ethical argument for his political principles, based on the dignity and vulnerability of conscience, the equal worth of all consciences, and the needs of consciences for ample space. His own religious views might have informed some of his ways of thinking, but they do not figure as premises in his arguments. No doubt he was used to talking about important matters to people who were pagan and Christian, Jew and gentile: there was nobody around who shared Williams's exact beliefs, as he often stressed, and he felt that what politics was about was finding a basis for a common life among people who disagree.

The fifth difference between Locke and Williams lies in the way in which they conceive the space of the political. Locke speaks in terms of separation of jurisdictions. For him, religion and politics do not overlap at all. For Williams, as we have seen, the different religious doctrines meet, and overlap, in a shared moral space. Each religious person will connect this moral space to his own higher religious goals and ends; but within that space, we are all able to speak a common language and share moral principles. I believe that this idea of overlap is ultimately more fruitful than the idea of separation, which suggests to religious people that they must give up some ways in which their comprehensive doctrine links the political with the religious. Williams does not ask them to give up such links, and indeed he recognizes that the links may prove very important. He simply asks people to live and talk together in the shared space, without compromising equality by introducing elements of their religious doctrine into the institutions they create and sustain.

Sixth and last, Locke is not distinguished as a moral psychologist. He has nothing to say about why people persecute others. Williams does, tracing persecution to anxious insecurity and the accompanying desire to create security by lording it over others. He has a keen sense both of the inner life of the persecutor and of the inner vulnerability of the persecuted to something that is very like rape, an inner shattering of the soul's integrity and peace. He also understands clearly how people engage in special pleading to favor their own case, while appearing to defend morality itself.

On balance, then, I would give Locke the prize for succinct clear writing, but Williams the prize for philosophical insight, on this topic at any rate.

To move now, more briefly, to Rawls. Rawls's *Political Liberalism* is a much greater work of political philosophy than are Williams's treatises; there can be no doubt about that. Rawls argues explicitly and clearly about matters that Williams presents turgidly and sometimes obscurely. Nonetheless, I think it is important to see the similarities between the two works. Starting from the idea of human equality and equal respect for that equality, both argue for political principles

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that guarantee the most extensive religious liberty that is compatible with a like liberty for all, impartially administered. Although Rawls does not discuss the religion clauses of the U. S. Constitution, and thus we cannot prove what his position on accommodation would have been, his discussion of the free speech clause suggests that he, like Williams, would favor extensive accommodation of conscience-based religious conduct, with limits set only by the most urgent of state interests. Indeed, his position on speech suggests that he would go beyond Williams to the position James Madison (unsuccessfully) defended for religious liberty in Virginia in 1776: no limits on this liberty unless the constitution itself is in jeopardy.<sup>28</sup>

Most striking and fascinating is Williams’s anticipation of the idea of overlapping consensus, a shared moral space in which people of differing conscientious commitments can converse and regulate their common life without favoring any particular comprehensive doctrine. I have argued that this idea is superior to the Lockean idea of separation, since it does not ask religious citizens to sever their political principles from the rest of their comprehensive doctrines. They may continue to connect their religious doctrines to the political principles that are developed in the shared political space, and they may even find in religious doctrines the deepest personal sources of those principles. As citizens living a common life with others, however, they refrain from arguing for political principles in terms of those doctrines—not because they think them unimportant, but out of respect for their fellow citizens. Williams clearly had this idea, although he does not fully develop the notion of a freestanding moral argument.

Another similarity between Williams and Rawls lies in the idea that we must seek civil peace not through force, and not, if possible, in a mere grudging *modus vivendi*, but through respectful moral agreement: stability for the right reasons, as Rawls puts it. Williams’s political experiment was, in effect, the Euro-American world’s first audition for the idea that stability based on respect would be stable enough.<sup>29</sup>

Rawls rarely gets the credit he is due for psychological insight, but I believe that the account of moral education in *A Theory of Justice* goes beyond Williams’s own moral psychology, rich though it is, in its suggestion that political stability needs not only good institutions, but a positive program for developing moral sentiments to support them. Although Rawls apparently withdrew the details of that account in *Political Liberalism*, concerned that it might appear too closely tied to a particular comprehensive doctrine, he continued to insist on the importance of a “reasonable political psychology” in connection with stability.<sup>30</sup> Here Williams, insightful though he is, comes up short. He is so busy diagnosing the errors of his adversaries that he proposes no constructive program to develop moral sentiments connected to civil peace and reciprocity. His life offered many examples of helpful political rhetoric on this question, but he never proposed a way to generalize the good moral sentiments that he exemplified and sought to elicit in others, for example by developing a program for public education, a concept that was not yet current. If we agree with Williams about the depth of the problem he has identified, we ought to agree with Rawls that attention to the development of the moral sentiments is a crucial part of the solution. I cannot doubt that Williams would agree that this is a lack in his writing: His experiment

was so embattled, that he did not have the leisure that would be required to work out such a constructive program.

On balance, I would say that Williams stands the test of these weighty comparisons, emerging as a major figure in the tradition.

#### VI. "Truth and Peace, Their Meetings Seldome and Short"<sup>31</sup>

WILLIAMS'S WORK AND CAREER CONSTRUCT THE BASIS FOR A POLITICS BASED ON EQUAL respect for conscience. But he was too shrewd to expect that this goal would be attained easily or without a great deal of effort. At the end of *The Bloody Tenent*, he imagines Truth and Peace commenting on the fact that they do not actually meet very often. So often (they observe) they meet up lovingly, only to be parted by hypocrisy and selfish partiality. They have, however, a surprise ally. At the end of the work, a third character makes her appearance.

"But loe!" says Peace. "Who's here?"

Truth replies, "Our Sister Patience, whose desired company is as needful as delightfull" (BT 424).

Patience utters not a single word, but she is clearly there. The year before, in his *Key to the Languages of America*, Williams had written eloquently of the patience of the Indians, who can sit silently for ages, waiting for what they want. "Every man hath his pipe of their Tobacco, and a deepe silence they make, and attention give to him that speaketh..."<sup>32</sup> To his impatient world, Williams commended this example. Now, at the close of his great dialogue, Patience is represented as, in effect, an Indian, silent after the prolixity of her sisters, waiting for a time that may be very long in coming, a time of equal respect for people who differ. In that silence, at the close of so much speech, rests Williams's hope for the future.φ

### Notes

<sup>1</sup> This paper uses material from chapter 2 of my book *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* (New York: Basic Books, February 2008). It is, however, a separate paper written for a philosophical audience. (Those who are interested in more historical detail and a wider study of Williams's thought should consult the book chapter.) I am very grateful to Céline Leboeuf and the *Harvard Review of Philosophy* for inviting me to deliver this paper as a lecture and to submit the paper, and I am also grateful to all of the *Review* members for a memorable evening of philosophical conversation and some excellent comments.

<sup>2</sup> Throughout I reproduce Williams's spellings, which are not terribly distracting, but not his frequent use of italics, which seem intrusive to readers unaccustomed to seventeenth-century style.

<sup>3</sup> Roger Williams, *The Correspondence of Roger Williams*, ed. Glenn La Fantasia (Providence: Brown University Press, 1988), vol. I p. 345. Hereafter the works of Williams will be cited as follows: the correspondence, as C I and C II, followed by the page number in each case. The *Complete Writings of Roger Williams* (New York: Russell and Russell, 1963), in seven volumes, will be cited as CW followed by the volume number and page number. However, since most citations to the *Writings* are to the *Bloody Tenent of Persecution* (1644), which is in volume III, and to the sequel, *The Bloody Tenent Yet More Bloody* (1652), in volume IV, references to these works will be made as to BT (followed by page number) and BTY (followed by page number).

<sup>4</sup> I am grateful to Mark Goldie and Quentin Skinner for correspondence on this point.

<sup>5</sup> See the detailed account in C I.12-23, "Editorial Note."

<sup>6</sup> C II.610.

<sup>7</sup> See his book *A Key into the Language of America*, Williams CW vol. 1, p. 47. Williams tells us that he focuses on the Narragansett dialect, and that the work is an “implicit dialogue” (p. 29) with the native inhabitants. See further treatment of the *Key* in Andrew Delbanco, *The Puritan Ideal* (Cambridge, MA: Harvard University Press, 1989), p. 166.

<sup>8</sup> C II, 535, 541.

<sup>9</sup> C II, 541.

<sup>10</sup> C I.348.

<sup>11</sup> *Ibid.*

<sup>12</sup> C I.338.

<sup>13</sup> For a similar reworking of the Stoic position, see my “The Worth of Human Dignity: Two Tensions in Stoic Cosmopolitanism,” in *Philosophy and Power in the Graeco-Roman World: Essays in Honour of Miriam Griffin*, ed. G. Clark and T. Rajak (Oxford: Clarendon Press, 2002), pp. 31–49.

<sup>14</sup> BT 221.

<sup>15</sup> John Rawls, *Political Liberalism* (expanded paper edition 1996), especially pp. 133–72 on overlapping consensus.

<sup>16</sup> I owe this information to Quentin Skinner. Locke’s Letter was published in 1689, so there would have been ample time for him to be acquainted with Williams’s work. We know from the correspondence that Williams sent a copy to Coke’s daughter (who was shocked by it and said that she had no intention of reading it).

<sup>17</sup> I infer this from the fact that he did not mention Williams, as he very likely would have had he known the work. Williams’s books are not easily available, and a good modern edition of the most important extracts is greatly to be desired.

<sup>18</sup> Widely available, but reprinted, among other places, in *Religion and the Constitution*, second edition, ed. Michael McConnell, John H. Garvey, and Thomas C. Berg (New York: Aspen, 2006), pp. 49–53.

<sup>19</sup> A large philosophical issue arises here: what might the ground of the exemption reasonably be said to be? The U. S. Constitution contains the word “religion,” and the tradition makes it clear that people will not get exemptions from laws of general applicability for reasons that are not reasons of conscience in some religion-like sense. During the Vietnam War, a capacious understanding of “religion” emerged, and two conscientious objectors who did not profess religious beliefs (one not at all, the other only in a non-theistic and *sui generis* sense) were given draft exemptions: See *U. S. v. Seeger*, 380 U. S. 163 (1965), *Welsh v. U. S.*, 398 U. S. 333 (1970). Some legal scholars oppose accommodations because they believe that they cannot be administered in a way that is fair to the non-religious. The issue cannot be pursued further here, but I do pursue it in the final section of *Liberty of Conscience*, chapter 4.

<sup>20</sup> On all these issues, see detail in my *Liberty of Conscience*, chapter 4. And see Michael McConnell, “The Origins and Historical Understanding of Free Exercise of Religion,” *Harvard Law Review* 103 (1990), 1409 ff., extract in McConnell, Garvey, and Berg, pp. 87–94.

<sup>21</sup> On the controversy between Madison and George Mason, see McConnell, “The Origins,” p. 90 in McConnell, Garvey, and Berg, and Nussbaum, *Liberty of Conscience*, chapter 4.

<sup>22</sup> Washington, 1789, reproduced in McConnell, Garvey, and Berg, p. 42.

<sup>23</sup> *Sherbert v. Verner*, 374 U. S. 163 (1963), discussed in *Liberty of Conscience*, chapter 4.

<sup>24</sup> Most famously in *Wisconsin v. Yoder*, 406 U. S. 205 (1972), affirming the right of Amish parents to withdraw their children from the last two years of compulsory public education in order to learn skills of farming and carpentry alleged to be crucial for the continuation of their communal religious life.

<sup>25</sup> *Employment Division v. Smith*, 494 U. S. 872 (1990).

<sup>26</sup> In the Religious Freedom Restoration Act of 1993 (popularly known as RFRA). This law, passed by an overwhelming bipartisan majority and signed into law by President Clinton, restored the more protective *Sherbert* standard. It was then declared unconstitutional as applied to the states by the Court in *City of Boerne v. Flores*, 521 U. S. 507, on grounds of separation of power. It remains constitutional as applied to acts of the federal government: see *Gonzalez v. O Centro Espirita Beneficente do Vegetal*, 126 S. Ct. 1211 (2006); and quite a few states have passed their own versions of RFRA. For the whole question of contemporary free exercise jurisprudence, see *Liberty of Conscience*, chapter 4.

<sup>27</sup> *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U. S. 520 (1993). For related

neutrality cases, see *Fraternal Order of Police v. City of Newark*, 170 F. 3d 359 (3d Cir. 1999), upholding the right of Muslim police officers to keep their beards, given that a secular exemption had already been granted to people with a certain skin condition; *Gonzalez v. O Centro* (above), upholding the right of a small Brazilian sect to use a hallucinogenic tea called *hoasca* in its sacred ceremonies, given that Congress had already created an exemption to the Controlled Substances Act for the sacramental use of peyote; and *Cutter v. Wilkinson*, 544 U. S. 709 (2005), giving prisoners belonging to various religious minorities rights of worship similar to those already granted to Christian prisoners.

<sup>28</sup> See *Political Liberalism*, p. 355: “for free political speech to be restricted, a constitutional crisis must exist requiring the more or less temporary suspension of democratic political institutions, solely for the sake of preserving these institutions and other basic liberties.”

<sup>29</sup> Not the whole world’s: the edicts of the Buddhist Emperor Ashoka, in India of the 3<sup>rd</sup>-2<sup>nd</sup> B. C. E., contained this idea, clearly, and it was further developed during the Moghul Empire of the sixteenth century, by the Emperor Akbar—although the issue of stability is of course different under a monarch.

<sup>30</sup> *Political Liberalism*, pp. 81–88.

<sup>31</sup> BTY 501.

<sup>32</sup> *Key*, p. 134.