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August 2, 2014: Christianity and the State

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Title: Christianity and the State

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8/2/2014—Micah Schwartzman, in a law review article entitled, “What if Religion is Not Special?” contrasts the views people have of religion for purposes of the Establishment Clause with their views of religion for purposes of the Free Exercise Clause. One position that Schwartzman points out as inconsistent is that of “Inclusive Accommodation.” This position holds that religion is an adequate ground for government action—hence religion is not special in legislating—but that religion should be granted constitutional protections from generally applicable laws (as in the Hobby Lobby case, but on constitutional, rather than statutory grounds). Hence religion is special for purposes of constitutional exemptions.

I ran into a similar kind of inconsistency in criticism I received over my attack on the Hobby Lobby Fourth of July newspaper ad that touted America as a Christian nation. I pointed out that the religious exemption granted to Hobby Lobby was a statutory exemption granted by a nation of diverse beliefs. I was accused of suggesting that religious liberty derives from the State.

This criticism evinces a Christian hostility to the State that derives from a view of a fallen world in which the State represents the secular realm cut off from God, while the Church represents the proto Kingdom of redemption. On this view, the religious liberty of Hobby Lobby is prior to anything the State does.

But the same critic who regards the State as fallen then turns around in the context of legislative prayer or Ten Commandment displays or even government generated crèches at Christmas time and wants the same fallen government to endorse religion or even endorse Christianity. In a sense, government power in these contexts is to be used to grant or maintain a kind of cultural centrality to Christianity. In these contexts, the State is not the fallen alien, but the bulwark of Christendom.

A related inconsistency can be seen on the anti-religion side, whatever name one wants to give it. Typically, such persons claim to want government to be neutral with regard to religion, but endorse policies that are anything but neutral. Granted, forcing Christians employers to grant birth control coverage they regard as a violation of their religious beliefs is not aimed at religion per se, and thus may be considered formally neutral, but its effect is harmful to religion. And the strong reaction against the Hobby Lobby decision suggests that some people on the anti-religion side are not at all concerned that Christians might be forced to violate their religious beliefs. And, remember, the decision assumed that no employees would actually lose any benefits. I doubt that the Christians affected see such policies as neutral.

It is probably best to consider religion as a valuable moral resource to society, one that society cannot well do without and one that should be protected, at least where that can be done without serious harm to others. And that is close to what the Supreme Court said and did in Hobby Lobby. But that does not mean that religions ought to be able to mobilize the resources of the State to uniquely further their position. Schwartzman calls my position here "exclusive accommodation" and he says it has problems of its own.