

LIVING TOGETHER: THE ROOTS OF RESPECT[†]

Martha Nussbaum*

In this lecture, Professor Martha Nussbaum discusses the life and writings of Roger Williams, founder of Rhode Island. The harsh realities of life in seventeenth-century New England gave rise to two very different methods of dealing with the transient and unstable nature of colonial existence. Some sought to keep the “howling world” at bay by instituting strict religious orthodoxy. Williams, however, urged mercy and reasonableness as an alternative to this imposed response to uncertainty. Williams argued that individuals with different religious ideas and philosophies can, and must, learn to coexist, and maintained that law, while relevant to keeping civil peace, has no authority in the jurisdiction of the soul, which should be governed by persuasion, not force. Williams proposed that, while souls may differ on what the truth is, it is the quest for that truth, the struggle to find the answers to the soul’s questions, that is what is most precious about the human conscience, no matter the individual’s ultimate belief.

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 Bloudy Tenent of Persecution*, 1644¹

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

Letter from Roger Williams to the governors of
Massachusetts and Connecticut (1670)

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* Ernst Freund Distinguished Service Professor of Law and Ethics, University of Chicago.

1. 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.

Life was tough for the settlers of seventeenth-century New England. They responded to hardship by trying to gain God's favor for their new colony—which required, as they saw it, establishing and sternly enforcing a religious orthodoxy.² 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 one of the century's great apostles of religious liberty and fairness, Roger Williams, founder of the colony of Rhode Island and seminal writer about the persecuted conscience. During the seventeenth century, American writings about religious liberty were in conversation with similar work in England, and there are striking similarities between the arguments used in Williams's two most influential books (published in England in 1644 and 1652) and those used later and more famously by John Locke. Nonetheless, the American tradition has some distinctive features that ultimately proved valuable in forging our constitutional heritage.

The American tradition I want to recover contains, first, a distinctive emphasis on the importance of a mutually respectful civil peace among people who differ in conscientious commitment. The vulnerability of all Americans in the perilous new world they had chosen led to a recognition (which came much slower in Europe, if indeed it has come at all) that people with different views of life's ultimate meaning and purpose needed to learn to live together if they were to survive at all. Roger Williams dramatizes this idea from the start by making his work a dialogue between two friends called Truth and Peace, in which Truth acknowledges the deep importance of reaching accommodation with people whom one believes to be in error.

The second distinctive feature of the American tradition is a personal, and highly emotional, sense of the preciousness and vulnerability of each individual person's conscience, that seat of imagination, emotion, thought, and will through which each person seeks meaning in his or her own way. The experience of both solitude and space that the wild world conveyed to its new inhabitants brought with it a picture of human life as a risky and lonely quest. This idea, in turn, led to the thought that this search, this striving of conscience, is what is most precious about the journey of human life, and that each person—Protestant, Catholic, Jew, Muslim, or pagan—must be permitted to conduct it in his or her own way, without interference from either the state or from orthodox religion. To impose an orthodoxy upon the conscience is nothing less than what Williams, in a memorable and repeated image, called "Soule rape."

2. See PERRY MILLER, *ORTHODOXY IN MASSACHUSETTS 1630–1650: A GENETIC STUDY* (1933).

I. THIS “WILD AND HOWLING LAND”

Life in New England was fragile and exposed. If people did not die on the voyage to the new land, they knew well that they might die shortly in it, whether from starvation, disease, or cold, or at the hands of the native inhabitants, whose claims to the land were utterly ignored.³ On the dubious authority of a land claim made by James I, they grasped for security, alleging that the land was their own because Englishmen first discovered it—something that Roger Williams called a “solemne pub[lic]k lye.” He added the sarcastic comment, “Christian kings (so calld) are invested with Right by virtue of their christianitie to take and give away the Lands and Countries of other men.”⁴

The world around them really was alarming. The wind, the seas, the forests, the deep snows—all this was very strange to people accustomed to life in England, whether urban or rural. “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.”⁵ In his remarkable *Key into the Language of America*, a study of Indian life and languages written during a sea voyage back to England in 1643, Williams ponders the Indians’ ability to coexist with impermanence and constant vulnerability in “this wild and howling land.” Astonishingly, the Indians do not mind picking up and moving on to a new place whenever climate, or insects, or sheer inclination moves them. “I once in travel lodged at a house, at which in my returne I hoped to have lodged againe there the next night, but the house was gone in that interim, and I was glad to lodge under a tree.”⁶ This sense of life as utterly transient, as requiring reinvention at every moment, deeply shaped the new Americans’ culture and, ultimately, their religious sensibilities.⁷ The idea that we are solitary seekers, each questing after meaning in a wild and lonely world, came naturally to people who had the experiences that Williams so vividly depicts.

The Indians may have made their peace with transience; the Puritan settlers, used to a very different sort of existence, resisted. To keep the “howling world” at bay, they found it prudent to enforce orthodoxy of religious belief, expression, and practice, suppressing dissent. John Cotton (1595–1652), pastor of the First Church of Boston, one of Massachusetts’s most influential religious leaders and Roger Williams’s lifelong in-

3. Actually, the tribes in the immediate area were peaceful and helpful, when they were treated with respect. The settlers did, however, encounter aggression from the Pequot Indians; Williams assisted the Narragansett tribes in those conflicts.

4. 1 ROGER WILLIAMS, *THE CORRESPONDENCE OF ROGER WILLIAMS* 15 (Glenn La Fantasia ed., 1988) [hereinafter *CORRESPONDENCE I*].

5. *Id.* at 345.

6. ANDREW DELBANCO, *THE PURITAN ORDEAL* 166 (1989) (quoting ROGER WILLIAMS, *THE KEY INTO THE LANGUAGE OF AMERICA* (1643)).

7. *See id.*

tellectual adversary, wrote copiously in defense of religious persecution, 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. As he and Williams wrangled endlessly about whether people diverse in faith could coexist peacefully in civil society, Cotton maintained again and again that the wholesome parts of a community cannot but be corrupted by the presence of heretics and dissidents, unless those people are brought to judgment, punished, and, if unrepentant, banished. Such people are like Satan in our midst. Even if they behave peaceably like ordinary citizens, they will be covert enticements to sin.⁸

Sometimes the desire to keep sin at bay did not content itself with persecution and banishment. Witch trials were common in both Massachusetts and Connecticut; John Demos's research shows that the most common "victim" was not a young girl, but, instead, a young adult male on the threshold of responsible adulthood.⁹ He concludes that heightened vulnerability led to the desire to demonize others. Such reactions to insecurity are sadly familiar in America's history; Arthur Miller was right to connect the witch trials to witch-hunting of leftists in the McCarthy era. Today we are told by our leaders that we are living in a time of heightened vulnerability, a time when "civilization" itself is at stake.

In this situation it is all too easy to let the longing for homogeneity and control ride roughshod over the spirit of fairness and respect, projecting the causes of instability onto other people, grabbing hold of John Cotton's seductive metaphor of a stain in our midst that must be removed if we are to resist corruption.

There are, however, other ways of living in difficult times. What makes Roger Williams of particular interest is not just the quality of his philosophical work, which is high. It is also the way in which he offers an alternative to the paranoid response to uncertainty, urging on his readers attitudes of mercy, gentleness, reasonableness, and civility, words which recur with obsessive frequency throughout the two philosophical dialogues that constitute his major works.

8. In works such as *DEMOCRACY AS DETRIMENTAL TO CHURCH AND STATE* (1636) and *THE WAY OF THE CHURCHES OF CHRIST IN NEW-ENGLAND* (1645), Cotton defended a stringent and exclusive picture of theocratic community. This same view is the basis for his book-length attack on Williams, *THE BLOODY TENENT WASHED AND MADE WHITE IN THE BLOOD OF THE LAMBE: BEING DISCUSSED AND DISCHARGED OF BLOOD-GUILTINESSE BY JUST DEFENSE* (1647). Some extracts from Cotton's writings appear, along with other material of great interest, in 1 *THE PURITANS: A SOURCEBOOK OF THEIR WRITINGS* (Perry Miller & Thomas H. Johnson eds., 1938).

9. See JOHN DEMOS, *ENTERTAINING SATAN: WITCHCRAFT AND THE CULTURE OF EARLY NEW ENGLAND* 154 (1982).

II. “TO SHIP MY SELFE ALL ALONE IN A POORE CANOW”: WILLIAMS’S RHODE ISLAND

Williams is typically remembered as a religious and political leader rather than as a thinker—an odd kind of zealot bent on purity, who managed to found and successfully run a colony. If his ideas are remembered at all, he is identified with one (uncharacteristic) phrase he used once in a letter, the “wall of separation” between religion and state, rather than for his careful and extensive arguments about the evils of persecution, the primacy of individual conscience, and the jurisdictions proper to the civil and the religious spheres. Although he is a systematic thinker of considerable originality, his ideas are rarely set out with care, and the relationship of those ideas to those of more famous seventeenth-century philosophers, Locke in particular, is rarely appreciated (although his important writings of the 1640s anticipate Locke’s 1689 *A Letter Concerning Toleration* in every major point).¹⁰

But since Williams was a leader as well as a thinker, and since his work needs to be assessed in the context of his life and career, we must first recount his story.¹¹

Williams was born in England, probably 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 the distinguished lawyer 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 (an elite “public school”), and then at Pembroke Hall in 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 receiving Hebrew lessons. On graduation, Williams took orders in the Church of England and, in 1629, accepted the post of chaplain at Otes in Essex, the manor house of Sir William Masham—grandfather of the Sir Francis Masham who was Locke’s host at Otes in the 1690s.¹²

10. It cannot be proven that Locke read Williams, since he does not mention whom he is reading, even in correspondence; but Williams is a prominent part of a literature on the topic with which Locke was certainly familiar. I am grateful to Quentin Skinner for correspondence on this point.

11. Among good biographical studies of Williams providing many of the details included in my description here, see W. CLARK GILPIN, *THE MILLENARIAN PIETY OF ROGER WILLIAMS* (1979); EDWIN S. GAUSTAD, *LIBERTY OF CONSCIENCE: ROGER WILLIAMS IN AMERICA* (1991); PERRY MILLER, *ROGER WILLIAMS: HIS CONTRIBUTIONS TO THE AMERICAN TRADITION* (1953).

12. I am grateful to Mark Goldie and Quentin Skinner for correspondence on this point.

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 the religious life he wanted in England. He set sail for Massachusetts.

At first, Williams was warmly welcomed by the leaders of Massachusetts Bay Colony.¹³ Although Boston found his views about the individual conscience too radical, he was welcomed by the congregation at Salem. He expressed his religious ideas freely. At the same time, he published a pamphlet attacking the colonists’ claims to the Indians’ property. The officials of Massachusetts Bay called him into court, but took no action when Williams agreed to withdraw the pamphlet. He continued, however, to teach the falsity of the colonists’ property claim. He also urged resistance to a proposed oath of loyalty to be taken by all colonists. During this period, Williams spent some peaceful months at Plymouth, where he pursued his study of Indian life and languages.

By 1635–36, 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, wherein I may say as Jacob, Peniel, that is I have seene the Face of God.¹⁴

So begins the story of Rhode Island. In keeping with his sense of divine 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 or devils. 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 the 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 very recent litigation over aboriginal land claims in Australia. Linguist that he was, he reports having, at this

13. See the *Editorial Note* found in CORRESPONDENCE I, *supra* note 4, at 12–23, for a detailed account.

14. 2 ROGER WILLIAMS, THE CORRESPONDENCE OF ROGER WILLIAMS 610 (Glenn La Fantasia ed., 1988) [hereinafter CORRESPONDENCE II].

period, a “Constant Zealous desire to dive into the Natives Language”¹⁵ and he learned several of the languages by actually living with them for long periods of time. “God was pleased to give me a Painfull, Patient spirit to lodge with them in their filthy Smoakie holes . . . to gaine their Tounge etc.”¹⁶

When Williams arrived as a refugee, then, his dealings with the Indians had long prepared the way for a fruitful relationship. Chiefs Masasoit and Canonicus welcomed him like an old friend, because he had befriended them before he needed them and had given them lots of gifts for many years. He was already known as a good public debater in the Indian languages, “and there fore with them held as a Sachim.”¹⁷ 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 and, when granted, applauded, noting that hostility to the Indians “hath hietherto bene . . . practiced to our Continuall and great grievance and disturbance.”¹⁸ Throughout his life, Williams continued these friendships. 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.” The Indians’ behavior, for Williams, expressed the Christian spirit of love more truly than did the severities of Massachusetts. He was fond of noting examples of Indians’ decency and honesty, contrasting their behavior with that of the English, or his Massachusetts neighbors.¹⁹ Near the end of his life, he recalled that he never denied to Canonicus or (his successor) Miantonomi “whatever they desired of me as to goods or gifts or use of my boats or pinnace, and the travel [i.e. travails] of my own person, day and night, which, though men know not, nor care to know, yet the all-seeing Eye hath seen it, and his all-powerful hand hath helped me.”²⁰ Significantly, then, he imagines God as pleased by his generosity to “Barbarians.”

Williams’s experience of finding integrity, dignity, and goodness outside the parameters of orthodoxy surely shaped his evolving views of Conscience. But there was already something antinomian about Williams, something that led him to those “smoakie holes” in the first place, a respectful curiosity about the varieties of humanity that is the paradigm of something deep in our history as a nation of strangers and immigrants.

15. *Id.* at 750.

16. *Id.*

17. *Id.* at 751.

18. *See, e.g., id.* at 535.

19. *See, e.g., id.* at 534 (complaining about the refusal of the English to pay his emissary that “these very Barbarians when they send forth a publike messenger they furnish him out, they defray all paymts, they gratifie him with Rewards, and if he prove lame and sick and not able to returne, they visit him and bring him home upon their shoulders (and that many Scores of miles) with all Care and Tendernes”).

20. *Id.* at 754.

Williams immediately provided for religious liberty in the new colony. The majority would make policy, but “only in civil things.” Broad liberty of conscience was officially guaranteed. Rhode Island rapidly became a haven for people who were in trouble elsewhere; other settlements were founded. Baptists, Quakers, and other dissidents joined the Puritan dissenters. In 1658 fifteen Portuguese Jewish families arrived in Newport. Although the Touro Synagogue—America’s oldest surviving Jewish synagogue²¹ and its first Sephardic synagogue—was not dedicated until 1763, Jews enjoyed the same religious liberty granted to others—a fact that is astonishing when we note that 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, and while in England he wrote *The Bloody Tenent of Persecution*.²² A democratic charter was obtained, and the colony proclaimed liberty of conscience. In 1652, Rhode Island passed the first law in North America making slavery illegal.²³ By this time, Williams had been won over by the Baptists’ arguments in favor of adult baptism; he was (re)baptized in 1639 and referred to himself from that time on as a “Seeker.” 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 (during another visit of Williams’s to England), 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*.²⁴

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. Williams notes that the Barbados already permitted religious liberty, by omission and policy rather than by explicit royal guarantee. “[B]ut our Graunt . . . is

21. In 1730, a synagogue was founded in Manhattan.

22. ROGER WILLIAMS, *THE BLOODY TENENT OF PERSECUTION* (1644), reprinted in 3 *THE COMPLETE WRITINGS OF ROGER WILLIAMS* (1963) [hereinafter *THE BLOODY TENENT*].

23. *Slavery and the Slave Trade in Rhode Island*, in *EXHIBITION ON SLAVERY AND JUSTICE*, http://www.brown.edu/Facilities/John_Carter_Brown_Library/jcbexhibit/Pages/exhibiSlavery.html (last visited May 20, 2008).

24. ROGER WILLIAMS, *THE BLOODY TENENT YET MORE BLOODY: BY MR COTTONS ENDEVOUR 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* (1652), reprinted in 4 *THE COMPLETE WRITINGS OF ROGER WILLIAMS* (1963) [hereinafter *THE BLOODY TENENT YET MORE BLOODY*].

Crowned with the Kings extraordinary favour to this Colony . . . In wch his Matie declar'd himselfe that he would experimnt whether Civill Govrmt Could consist with such a Libertie of Conscience."²⁵ With amusement he describes the shocked reaction of the King's ministers when they read the unorthodox document — "but fearing the Lyons roaring, they coucht agnst their Wills in Obedience to his Maties pleasure."²⁶

The Charter was shocking indeed—not only in its odd provision regarding 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 concernments, 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.

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." In the above epigraph, for example, taken from the introduction of *The Bloudy Tenent*, "consciences and worships" are all permitted. Elsewhere, he uses phrases such as "for either professing doctrine, or practicing worship," "doctrine or practice," "holdeth or practiseth," "doctrines and worships," and "to subscribe to doctrines, or practise worships."²⁷ It is a bit 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.

25. CORRESPONDENCE II, *supra* note 14, at 616. "Matie" is Williams's abbreviation for "Majesty."

26. *Id.* at 617.

27. THE BLOODY TENENT, *supra* note 22, at 63.

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 a 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 nonapplicable in your case. In other words, it would appear that Williams has forged the concept of accommodation, which soon became widely accepted in the colonies. Laws of general applicability have force only up to the point where they threaten religious liberty (and public order and safety are not at stake).

This was not mere talk. Williams was notoriously skeptical about Sunday as the chosen day for no work. He had considerable sympathy with the theological arguments of the seventh-day Baptists. More generally, he saw the burden that comes with imposing a majority practice on all. Rhode Island had no Sunday law during his lifetime.

III. "THIS CONSCIENCE IS FOUND IN ALL MANKINDE"²⁸: WILLIAMS'S DEFENSE OF RELIGIOUS LIBERTY

Behind this staggering political achievement is a body of thought as rich, on these issues, as that of John 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. Williams defines conscience as "holy Light" and as "a perswasion fixed in the minde and heart of a man, which inforceth him to judge . . . and to doe so and so, with respect to God, his worship, etc."²⁹ It is "indeed the man."³⁰

Williams has his own very intense religious beliefs, and these beliefs 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 mankind, more or lesse, in Jewes, Turkes, Papists, Protestants, Pagans, etc."³¹ And even though one thing that is precious about the conscience is its ability, ultimately, to find the truth, that is not what Williams emphasizes: what he reveres is the committed search, the sincere quest for meaning. "I commend that Man whether Jew or Turke, or Papist, or who ever that steeres no otherwise then his Conscience dares For Neighbour you shall find it rare, to meete

28. CORRESPONDENCE I, *supra* note 4, at 340.

29. *Id.*

30. THE BLOODY TENENT YET MORE BLOODY, *supra* note 24, at 440.

31. CORRESPONDENCE I, *supra* note 4, at 340.

with Men of Conscience.”³² One cannot help thinking of Williams’s respect for his Indian friends when one reads passages like this. Furthermore, since he says that “men of conscience” are rare but that conscience itself is in everyone, he clearly holds that the precious faculty of conscience exists even in less virtuous people, and that all deserve basic human respect.

So: everyone has inside him or herself 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 space to unfold itself, to pursue its own way. To respect human beings is therefore to accord that sort of space to each and every one of them. He expresses indignation that someone

that speakes 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 Consciences, at home and abroad, fuell onely for a prison, for a whip, for a stake, for a Gallowes? Are no Consciences to breath the Aire, but such as suit and sample his?³³

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. There are so many of them in prison, all over the world. But all alike should have breathing space. Williams has the very keenest sensitivity to any damage to this precious thing, comparing persecution repeatedly to “spirituall and soule rape.”³⁴ 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 (what ever his doctrine or practice be true or false) suffereth persecution for conscience.”³⁵ This 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. Indeed, persecution is a doctrine “which no Uncleannes, no Adulterie, Incest, Sodomie, or Beastialitie can equall, this ravishing and forcing (explicitly or implicitly) the very Soules and Consciences of all the Nations and Inhabitants of the World.”³⁶ 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.”³⁷

32. CORRESPONDENCE II, *supra* note 14, at 586 (citation omitted).

33. CORRESPONDENCE I, *supra* note 4, at 338.

34. THE BLOODY TENENT, *supra* note 22, at 219.

35. *Id.* at 63.

36. THE BLOODY TENENT YET MORE BLOODY, *supra* note 24, at 495.

37. *Id.* at 12.

Conscience, then, is not invulnerable to worldly conditions: it can be imprisoned (prevented from carrying out its search in action), and it can even be raped (damaged or defiled).

One of Williams's reasons for abhorring persecution is instrumental: if you force someone, it hardens their opposition, thus preventing their voluntary conversion and 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 is an intrinsic wrong, a horrible desecration of what is most precious about a human life.

Moreover, he insists repeatedly 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 Ballance."³⁸ How "will this appear to be equall in the very eye of Common peace and righteousness?"³⁹ His own marginal summaries of his argument, particularly in the later work, keep recurring to this theme, referring to persecution as "unchristian partiality,"⁴⁰ "Gross partiality to private interests,"⁴¹ and "Gross partiality the bloody doctrine of persecution."⁴²

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 (my second epigraph), 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."⁴³ It is for this "one commoditie" that "most of Gods children in N. England have run their mighty hazards."⁴⁴ The proponent of liberty does not indulge in special pleading. Even though he believes that he is right, he doesn't puff himself up, for he knows how difficult his quest is. He remembers God's mercy to him, and he has mercy on those whom he be-

38. THE BLOODY TENENT, *supra* note 22, at 401.

39. *Id.* at 402.

40. THE BLOODY TENENT YET MORE BLOODY, *supra* note 24, at 55.

41. *Id.* at 113.

42. *Id.* at 290.

43. *E.g., id.* at 30.

44. *Id.*

lieves in error. He also 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.”⁴⁵ 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 love and gentleness, combined with the spirit of fair play, are 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 sense of his own religion is deeply subjective and passionate. Nonetheless, it is plausible to compare his core ideas to those that will animate the philosophy of Immanuel Kant a century later. (I should add that both owe a large debt to the Stoics, a topic for another time.) At the heart of the thought of both men are two ideas: 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. Kant’s “Categorical Imperative” 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. This test shows us whether we have been partial to our own case. 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 freedom of conscience (which could pass the Kantian test) as a universal law.

Kant’s second test for our ethical principles is one that he calls the Formula of Humanity: he asks us to test our principle by seeing whether it treats humanity as an end: we are to ask whether we are really showing respect to the dignity of human beings, or whether we are just using them as objects in the pursuit of our own selfish ends. This complaint, too, is a constant theme in Williams’s writing: the conscience is precious, but people use other people’s consciences to serve their own anxious and greedy ends.

Kant’s third way of testing principles invokes the idea of autonomy. We are to ask ourselves whether we can view our principle as a law that we could give to ourselves. There is no precise echo of this part of Kant in Williams’s writings, but Williams’s insistence on the deeply subjective quest of the individual conscience, and the priceless value of freedom in this quest, is in great sympathy with Kant’s way of thinking. For both, the source of moral principles, and of all moral worth, is ultimately in our own freedom, and that freedom must be respected. For both, doing the right thing because of obedience to a law imposed from outside has no

45. THE BLOODY TENENT, *supra* note 22, at 201.

moral worth at all. Finally, Kant speaks of good principles as constituting a “realm of ends,” a virtual society of free beings who respect one another as equals. I believe that this idea is very much what Williams is after when he says that persecution takes “the world out of the world”: it destroys the basis of human fellowship in respect, freedom, and civility.⁴⁶

Williams, then, lies at the beginning of a distinctive tradition of thought about religious fairness that resonates to the present day (in John Rawls’s work on liberty and equal respect). Compared to both Kant and Rawls, Williams has an extra measure of psychological insight, helping us see why persecution is so attractive and what emotional attitudes might be required to resist it.

IV. A “MODEL OF CHURCH AND CIVIL POWER”⁴⁷

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 and still offers helpful 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 the Cotton manuscript, and reads from it the claim that the Church must hold high authority in the civil realm, and should be superior to all civil magistrates, if the peace is to be preserved.⁴⁸ 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.⁴⁹ The civil law applies to all, including members of the clergy.⁵⁰ The foundation of civil authority lies in the people, and it is the people who are entitled, democratically, to choose civil magistrates.⁵¹

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

46. See also JOHN RAWLS, A THEORY OF JUSTICE (1971) (arguing that the foundation for a just society must involve both impartiality and respect and advancing a test for political principles that has a close relationship to Kant’s thought).

47. THE BLOODY TENENT, *supra* note 22, at 221.

48. *Id.* at 221–22.

49. *Id.* at 148; THE BLOODY TENENT YET MORE BLOODY, *supra* note 24, at 188.

50. THE BLOODY TENENT, *supra* note 22, at 268.

51. *Id.* at 249.

governed by persuasion only.⁵² Churches and their officers have this sphere as their jurisdiction,⁵³ 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.⁵⁴ 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)."⁵⁵ Such protective laws are not only permitted, they are extremely important, "the Magna Charta of highest liberties."⁵⁶

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."⁵⁷

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: 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."⁵⁸

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

52. *Id.* at 148.

53. THE BLOODY TENENT YET MORE BLOODY, *supra* note 24, at 188.

54. THE BLOODY TENENT, *supra* note 22, at 224–25; THE BLOODY TENENT YET MORE BLOODY, *supra* note 24, at 40.

55. THE BLOODY TENENT, *supra* note 22, at 252.

56. *Id.* at 220.

57. *Id.* at 253.

58. *Id.* at 79 *passim*.

the world, he says, and there are “divers sorts of goodness” corresponding to these different sorts of thing. He illustrates this point at length, talking about the goodness of artifacts, plants, animals, and so on.⁵⁹ 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.”⁶⁰ 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.”⁶¹ For many activities in human life, 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.”⁶² Particularly surprising is his casual mention of “father” as one of those roles whose duties can be faithfully and 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,⁶³ but so far as the moral sphere itself goes, orthodox and dissenter, religious and nonreligious, 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.”⁶⁴ 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, “free-standing,” that is, not requiring the acceptance of a religious orthodoxy.⁶⁵ So we

59. *Id.* at 245–46.

60. *Id.* at 246.

61. *Id.* at 398.

62. *Id.* at 398–99.

63. *Id.* at 399.

64. See JOHN RAWLS, *POLITICAL LIBERALISM* 10–13 (discussing “freestanding basis”); see *id.* at 133–72 (discussing overlapping consensus).

65. See *id.*

don't have, exactly, a "wall of separation," between people's religions and their political principles. (Recall that 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 doesn't have anything to do with the deep ethical matters that are so central to 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 the wilderness of 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 this, 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.

Looking back at history, we ought to agree with Williams and his fellow colonists. In fact, I believe that we do by and large agree with him. We usually are ready to separate the specificity of a person's religion from the kind of goodness we look for in a doctor, a lawyer, a teacher, even a political leader. Even state adoption agencies do not require religion, or any particular religion, of prospective parents. It is only when we are afraid that we start talking differently—associating Roman Catholics with groveling obedience to Rome, Mormons with wild sex orgies, Muslims with terrorism.

V. "TRUTH AND PEACE, THEIR MEETINGS SELDOM AND SHORT"⁶⁶

Looking back from our own time to the Founding, we often associate the constitutional idea of freedom of conscience, and the related idea

66. THE BLOODY TENENT YET MORE BLOODY, *supra* note 24, at 501.

of non-establishment, more with Enlightenment rationalism and Deism than with their seventeenth-century precursors. But Williams's version of doctrines that later became part of the Enlightenment is distinctive in a number of ways, ways that continued to exert a deep influence on American thought and life, and that are valuable to us today. First of all, Williams speaks as an intensely religious person. Skepticism about religion is no part of his brief for religious liberty—as it is for Jefferson, who often said things about religion that seem dismissive or scoffing. Many Americans who have a hard time identifying with Jefferson's rather smug disdain for religiosity can find their own concerns well represented in Williams's fervent spiritual quest. His arguments show us that one may be a deeply committed religious person while yet believing that fairness, and the worth of the individual conscience, require a wide and equal religious liberty and a ban on religious establishment. Truth and Peace love one another—although their meetings, as he ruefully says at the end of his second treatise, are “seldome and short.”

Second, Williams's romantic and deeply emotional picture of the conscience, as a lonely and vulnerable traveler in life's great wilderness, is the source of a distinctively American set of religious attitudes that are attractive starting points for political thought. Our tradition is very different from that of France and even England, much more skeptical of any kind of public orthodoxy or homogeneity. Williams's idea of conscience explains the roots of this tradition and shows why it is compelling. If we see things Williams's way, we will be strongly inclined to a delicate accommodation of even eccentric religious needs in all citizens, as well as to scrupulous fairness and constant self-criticism in our pursuit of civil peace.

Truth and Peace don't meet often. So often (they comment to each other) they meet up lovingly, only to be parted by the persecutor's sword, by hypocrisy and selfish partiality. But they have a surprise ally. At the end of *The Bloody Tenent*, 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.”⁶⁷

Patience utters not a single word, but she is clearly there. The year before, in his *Key to the Languages of North 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 . . .”⁶⁸ To his impatient world, Williams commended this example. Now, at the close of his great dialogue, Patience is represented

67. THE BLOODY TENENT, *supra* note 22, at 424.

68. DELBANCO, *supra* note 6, at 166 (citing ROGER WILLIAMS, THE KEY INTO THE LANGUAGE OF AMERICA 134 (1643)).

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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.

