
Christianity Is Not Merely Another Identity: The Case of Shurtleff v. City of Boston

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The Supreme Court recently held that the city of Boston violated a Christian organization's rights under the free speech clause of the First Amendment. Boston had rejected the organization's application to fly a "Christian flag" on a flagpole in front of city hall. The Court held that the refusal amounted to unlawful "viewpoint discrimination" because the city allowed other private groups to raise their own flags.

Put briefly, the facts of the case, *Shurtleff v. City of Boston*, are as follows. Boston runs a program in which community groups may apply to fly a flag of their choice on one of the three flag poles in front of city hall. The purpose of the program is to "commemorate flags from many . . . communities," to "create an environment in the City where everyone feels included, and is treated with respect," and to "foster diversity and build and strengthen connections among Boston's many communities."

Boston had approved dozens of flags to fly over city hall, including an LGBT flag and the flags of Cuba and China. It had never denied a group's request to fly a flag until a local organization, Camp Constitution, asked to fly what it described as a "Christian flag." In its court filings, the city explained that it rejected the application because it does not want to "display flags deemed to be inappropriate or offensive in nature or those supporting discrimination, prejudice, or religious movements."

Clearly, if the city is fine with ideological secular flags or the flags of foreign countries, then to exclude flags with religious symbolism is unconstitutionally discriminatory toward Camp Constitution's Christian viewpoint. While the presumably intelligent judges of the lower courts disagreed, the Court's decision in this case was unsurprising given these facts. So, *Shurtleff* is a victory for religion in the public square, right?

Not really. The petitioner's brief argued that the purpose of seeking to fly a "Christian flag" in Boston's program was to "commemorate the contributions of one of Boston's diverse communities to the City and the Commonwealth," which "fit perfectly with the City's permitted subject matters according to the City's purposes for allowing flag raisings." This flattens Christianity and reduces it to one "community" among others, including those centered on nationality, language, and even sexual proclivities. With due respect to the petitioner's able attorneys, let's be frank and admit that it is absurd, even tragic, that Christianity's advocates are today reduced to seeking inclusion by

describing their church as “one of Boston’s diverse communities” which has made “contributions . . . to the City and the Commonwealth.”

At this juncture we might remind ourselves that, in 1620, beginning “in the name of God,” Christians established the American political order in Massachusetts with these words:

Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid.

We need no reminding, of course, that the American political order’s connection to this covenant has grown tenuous. The folks who tried to get city hall to fly a “Christian flag” among the other flags of Boston’s “diverse communities” surely didn’t imagine that doing so would help reorient the city’s political order toward the divine. They did hope at least to “feel included,” to be “treated with respect.”

But truth does not seek to “feel included” with falsehood. It does not seek to be “treated with respect,” as falsehood is respected. The nature of truth is such that if we live in accord with it, if we orient ourselves and our polity toward it, we gain happiness. And if we do not, our affairs suffer. We participate in it to our benefit, and disassociate from it to our peril.

I am not a Christian. I am a Muslim. I believe the idea that God is triune is a repudiation of God’s absolute oneness. But I do not want to live in a country where the price of religion’s participation in the public square is the renunciation of its truth claims. And I recognize, as the founders did, that without an attachment to America’s founding premises, the country cannot long endure.

More importantly, I believe in the Christian tenets that grounded the American political order: that God created mankind with dignity, rights, and duties, and that law and political order must reflect this created nature. This truth is superior to the idolatrous lie that man is the measure of all things. Consider the words of Abu Jafar Al-Tahawi, a seminal tenth-century Islamic theologian from Egypt. He had this to say about Christians and Jews, despite their disagreements with Islam on central matters:

The People of the Book are those with whom we agree in faith in that which they believe from the Books of God Almighty which He sent down to His prophets. And we and they believe in the resurrection after death, and those others do not believe in anything of that. And we and those of the Book are one hand in fighting the worshippers of idols: and victory is ours, because we are superior to them. And they (the People of the Book) follow us in that.

Notwithstanding Al-Tahawi’s battle metaphor, I am not implying that atheists or secularists should be second-class citizens in America. Rather, inasmuch as political order is necessarily founded on truth claims—even when, as in the case of liberalism, it pretends not to be—I recognize the truth in

the premises of the American founding and hold that such truth should prevail over falsehood as the source of our political order.

Compare that truth as expressed in the Mayflower Compact, or in its arguably milder restatement in the Declaration of Independence, with the arguments in Shurtleff. The petitioner and the Court accepted the premises of the contemporary grievance-oriented mode of the modern liberal order: Christianity is an identity group competing for recognition among other identity groups, rather than a bearer of a radical truth claim.

Unfortunately, this case is part of a trend in religious freedom legal advocacy that, while well-intentioned, tends to accelerate the tenuousness of our connection to America's founding covenants. For another example, see the Supreme Court's holding in *American Legion v. American Humanist Association*, in which the Court held that Maryland did not need to destroy a century-old cross monument on public land. This was a good decision in many respects, and it preserved a meaningful historical monument. But the opinion in *American Legion* made some unfortunate concessions to secularizing arguments advanced by the State of Maryland, one of the monument's defenders:

Even if the original purpose of a monument was infused with religion, the passage of time may obscure that sentiment. As our society becomes more and more religiously diverse, a community may preserve such monuments, symbols, and practices for the sake of their historical significance or their place in a common cultural heritage. . . With sufficient time, religiously expressive monuments, symbols, and practices can become embedded features of a community's landscape and identity. The community may come to value them without necessarily embracing their religious roots.

In other words, as in Shurtleff, an object with religious symbolism is rendered constitutionally inoffensive to the extent that it loses its religious symbolism over time. Atheists need not be offended because the cross signifies not truth but a "cultural heritage." Again, this is not a victory. It is the acceptance of the premise that religious truth claims do not belong on public land, and a frank acknowledgment of what Matthew Arnold described as faith's

melancholy, long, withdrawing roar,
Retreating, to the breath
Of the night-wind, down the vast edges drear
And naked shingles of the world.

Which is to say that those seeking to restore America's connection to its founding covenants must avoid unwittingly accepting the relativism of our contemporary cultural worldview. Advocacy that implicitly repackages Christianity—or Islam or Judaism—as merely an aggrieved identity group, even for strategic reasons, must be rejected, as it will only bleed religion of spiritual content and negate its truth claims.

Of course, generally speaking, government should be challenged when it singles out religion for special burdens, penalties, or civil disabilities. An example is *Carson v. Makin*, a case pending before the Supreme Court challenging Maine's policy of providing financial assistance to all students lacking access to a local secondary school except for those who want to attend "sectarian" schools. But to

the extent that this is the point the petitioner in Shurtleff and his advocates were trying to make, these were not the facts and ideological premises upon which to make it.

On a deeper level, decisions like Shurtleff and American Legion indicate that the work of reorienting America toward its founding premises grounded in divine truth needs to be done not only in the courts, but also in families and religious institutions. Without this, documents like the Mayflower Compact and Declaration of Independence will become increasingly incomprehensible to the people, and the chance of recovery increasingly distant.

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