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Anabaptist Relations with the State: 
Forms for the Coexistence of 
Sovereignties

by

Ryan George Rempel

A thesis submitted in conformity with the 
requirements of the degree of Master of Laws, 
Faculty of Law, University of Toronto

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Anabaptist Relations with the State: Forms for the Coexistence of Sovereignties

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Master of Laws, 1998
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Abstract

Anabaptists and the state each lay claim to sovereign authority, one on behalf of God, the other on behalf of the people. In what form is it possible for such claims to coexist? Political liberalism would require a focal conception of justice to structure relations between the two. Yet this is not to be expected here. Another approach would examine the conformity of each institution's set of norms with the other's. Yet each pursues interests that go beyond conformity or nonconformity with particular norms. Those interests are: faithfulness, autonomy, transformation and the creation of shared spaces. It is possible to structure relations between Anabaptists and the state so that their pursuit of these interests is mutually supportive. In this way, the self-government of Anabaptists can be channeled towards the common good.
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I. Introduction

Both Anabaptists and the state lay claim to sovereign authority, Anabaptists on behalf of God, and the state on behalf of the people. How are institutions making these claims to relate to each other? What forces and principles and interests regulate their interaction? What is the appropriate stance for each to take with regard to the other?

The answer to these questions begins with an exploration of the theoretical roots underlying the claims of Anabaptists and the state. What is the Anabaptist theology of God's sovereignty? What role does it assign church and state? What is the political understanding of the state's authority? What role does political theory assign to a church?

One finds that Anabaptists assign a normative function for the church that is similar to the authority claimed by the state. Each is engaged in the enterprise of creating, revising and administering normative commitments across the full range of human activities. What separates the function of the church and the function of the state is not that they are engaged in a different enterprise, but that they go about that enterprise with different understandings. The church is conscious of the demands of God's coming kingdom, whereas the state is not.

This raises the question of how two such normative authorities, distinguished by their different understandings, can coexist. If each normative authority allowed no role for the other, the question would be a difficult one indeed. On the other hand, if each allowed a role for the other that matched the other's self-conception, then the question of coexistence would be trivial.

The actual situation is somewhere in-between. Both Anabaptists and the state allow a normative role for the other. Yet neither entirely matches
the other's self-conception. The state, \textit{ex hypothesi} unconscious of God's demands, cannot be expected to view its own role in the way that the church views the state. Likewise, political views of the church tend to be inconsistent with the self-image of Anabaptists. Three ways in which political theory allows a role for the church are freedom of religion, multicultural accommodation, and political liberalism. None of these matches the self-conception of Anabaptists. Freedom of religion is often applied in a way that denies the comprehensive character of Anabaptist claims. Multicultural accommodation focuses on cultural differences rather than differences in understandings. Political liberalism seeks a common political conception that the church, in its consciousness of God's demands, cannot fully ascribe to.

The question is, therefore, not merely the coexistence of normative authorities. That question is familiar enough, since one of the purposes of any political system is to distribute normative authority amongst a variety of institutions. Instead, the question is the coexistence of normative authorities that recognize the authority of each other, yet cannot agree on its fundamental basis. It is, in this sense, the question of relations between coexisting sovereign authorities.

One answer might be that even if Anabaptists and the state cannot agree on the basis for each other's authority, they can still agree with particular norms held by the other. The relationship would then be structured by an evaluation of Anabaptist norms for conformity with state norms, and state norms for conformity with Anabaptist norms. The dynamics of the relationship could be accounted for by discovering where the norms held by each institution agree or disagree.

This turns out to be an incomplete picture of the relationship, for several reasons. There is a distinction, for Anabaptists, between social and
legal conformity. There are dynamics in the relationship between Anabaptists and the state which can turn conformity into nonconformity and vice versa. There are also other interests pursued by Anabaptists even where there is conformity amongst Anabaptist norms and state norms.

This picture also does not account for all of the interests pursued by the state in relating to Anabaptists. Anabaptist norms can, and have been, evaluated for conformity with political theory—in particular, conformity with liberalism. However, those evaluations tend to misunderstand the normative significance of Anabaptist claims, and thus tell us little about the reconciliation of Anabaptist authority with state authority. Many of the cases in which the state reacts to Anabaptist claims on what appear to be liberal grounds turn out, on closer examination, to have more to do with the question of fair relations between communities than the evaluation of Anabaptist claims for conformity with liberalism.

What is required, therefore, is a more complex model to understand the interests pursued by Anabaptists and the state in their relations with each other. The beginning of that model is the observation that Anabaptists pursue four distinct interests in their relations with the state: faithfulness, autonomy, transformation, and the creation of shared spaces. These interests are not wholly compatible with each other, which helps explain why there are differences in the ways that various Anabaptist groups respond to the same questions.

The interests pursued by the state in relating to Anabaptists turn out to be comparable to the interests pursued by Anabaptists. The state, too, wishes to be faithful, to protect its autonomy, and to create shared spaces. The question is how the pursuit of those interests can coexist with the Anabaptist pursuit of comparable interests. This can be a difficult question, because there are ways of conceiving of Anabaptist autonomy and state
autonomy such that the tools used to protect one come into conflict with the tools used to protect the other.

Yet it is also possible to construct, within the national self-image, a commitment to facilitating the autonomy of groups like the Anabaptists. Shared spaces can be created for the protection of a group’s autonomy inside the institutions of the state. In this way, both Anabaptist autonomy and state autonomy can be protected. This has implications for resource sharing, authority sharing, constitutional authority and social identity. In each context, a kind of balance can be struck between Anabaptist autonomy and state autonomy that allows them to be mutually supportive.

This provides a form of answer to the question of coexisting sovereign authorities. The interests of Anabaptists and the state are such that it is possible to construct, not a single shared understanding, but a web of partially shared understandings that is sometimes sufficient to bind them together in shared spaces that can support both sets of interests in balance. There is no fixed formula to apply, or ideal set of institutions that will meet every case. It is, instead, a matter of discerning dangers and opportunities, on both sides, in each interaction.
II. Coexisting claims to sovereign authority

One way to conceive of relations between church and state would be to construct a conception of the distinct enterprises in which each is engaged. This would by no means eliminate all sources of conflict between the two institutions. In pursuing the religious enterprise, a church might tangentially bump into interests pursued by the state in its political enterprise. Yet these points of tension would arise in the context of a relationship in which church and state each knew their own distinct function and recognized the function of the other.

We will find that what is remarkable about the Anabaptist understanding of church and state is the extent to which the functions of those two institutions are not distinct. Anabaptists consider it to be the function of both church and state to create and administer normative commitments across the full range of human activities. The difference between church and state is not that they perform distinct functions, but that they perform their functions with distinct understandings. The church acts in the knowledge of the demands of God’s coming kingdom. The state acts while unconscious of these demands. Thus the central question will emerge from within Anabaptist theology itself. How can we have two coexisting normative authorities, whose authority governs the same people, the same territory, and the same subject matter?

That question will be given additional depth when we consider the matter from the state’s point of view—that is, from the point of view of political theory. The state, we will find, does not conceive of its own authority in the same way that Anabaptists conceive of the state. Indeed, it could not, for Anabaptists conceive of the state in terms of God’s graciousness to a fallen humanity, and yet acknowledge that the state is
unconscious of God’s demands. That the state should consider itself autonomous is thus inevitable even within Anabaptist conceptions of the matter.

Likewise, we will find that the state does not conceive of the authority of religion in the same way that Anabaptists conceive of themselves. Freedom of religion is often pictured in terms of a boundary dividing the secular and the religious. Yet Anabaptists understand the demands of religion to be comprehensive in their application to all areas of life. Thus Anabaptists do not consider the church’s authority to be defined by a shared conception of the boundaries between the religious and the secular. If freedom of religion does not articulate such a shared conception, it plays a role very different from the usual conception of fundamental freedoms.

Multicultural accommodation theory, as exemplified by Will Kymlicka’s writings, presents the possibility of protecting areas beyond the common conception of the religious. Yet multicultural accommodation focuses on differences created by immigration and colonization, rather than differences created by distinct understandings. The authority claimed by Anabaptists ultimately flows from distinct understandings, not distinct cultures.

Political liberalism recognizes the comprehensive nature of Anabaptist claims, as well as their source in distinct understandings rather than cultural differences. For this reason it comes closer to posing the question raised by the relations of Anabaptists and the state. However, political liberalism seeks a shared political conception to structure the relations of comprehensive views. Yet Anabaptists are unable to ascribe to the state’s political conception of justice.

The question posed by relations between Anabaptists and the state is, therefore, not just the coexistence of distinct normative authorities. It is,
instead, how distinct normative authorities can coexist without a shared understanding of the relations between those two authorities. It is, in this sense, the question of the coexistence of sovereign authorities.

A. Anabaptists consider church and state to form coexisting normative communities

To begin from the point of view of Anabaptists: how can we specify the general themes that come into play in analyzing the relations of church and state? What role does Anabaptist theology assign to the church? What role does it assign to the state? Which conceptual resources does Anabaptist theology apply to conceive of their relations?

Anabaptists claim for the church a normative authority similar to the law-making authority of the state. The authority of religion applies comprehensively, to all areas of the lives of its adherents. It requires commitment, in preference to the claims of all others. Its demands are discerned in deliberation among each other.

If the functions of church and state are not distinct, then one might fear that the church’s function is meant to supersede the state’s. Yet this is not exactly how Anabaptists see the matter. While Anabaptists mean to live under God’s kingdom, they acknowledge that God’s kingdom is not yet fully established in the world. The state’s normative authority represents God’s gracious response to the fallenness of the world, while the church’s authority represents God’s redeeming work. Both church and state authority are, therefore, mandated by God.

The question thus arises initially in the context of Anabaptist self-understandings. How can we have two coexisting normative authorities, both legitimate, both exercising authority over the same areas of life, and neither wholly subject to the other?
1. Anabaptists form normative communities

Jesus' ethic is the ethic of the Kingdom of God. As such, it is a description of the character of the community which is ruled by God's love and through which God's love becomes empirical reality shaping the actual interpersonal relations of human beings here on earth.¹

What is it about Anabaptist theology that creates peculiar difficulties and opportunities in relating to the state? That the theme of God's sovereignty is important in Anabaptist theology does not wholly explain the matter. The sovereignty of God is a common theme in Christian theology. Christians also generally believe, in some form, in characteristic Anabaptist themes such as peace, forgiveness and love. Thus, neither the idea that God is sovereign nor the Anabaptist understanding of God's ultimate will is distinctive to Anabaptists.

What is different about Anabaptist theology is its understanding of the church. For Anabaptists, the church is a community in which normative standards are created and revised, and normative commitments are made and performed. The church is a normative community in which God is sovereign. The Anabaptist understanding of the church can be elaborated through three themes. Anabaptists consider God's sovereignty to be comprehensive. They commit themselves to live under the demands of God's sovereignty. They discover what those demands are in deliberation within the church.

Anabaptist theology relates God's sovereignty to the lives of its adherents in a comprehensive manner. All adherents are called to follow the example of Christ, to deal with every aspect of their lives in the way that Christ would have done. This means that Anabaptists do not accept that

there are areas of life, or vocations, or roles, which permit Christians to do less than follow the example of Christ.

Mennonites have always understood the Christian faith to call for a revolution in the whole of life, not to simply be an ordering of one dimension (the religious) in it.\(^2\)

Since the demands of God’s sovereignty are comprehensive, Anabaptists reject the idea that some Christians are called to the example of Christ, while others are called to a lesser standard.\(^3\) Anabaptists also reject the idea that Christians are called to the example of Christ in some aspects of life, but a lesser standard in other aspects.\(^4\) This means that there is little scope to define a realm for the application of state authority that is outside the demands of the sovereignty of God.

If the claim that God’s sovereignty is comprehensive were mainly a matter of intellect or faith, then the tension between that claim and the authority of the state could be minimized. However, Anabaptists understand God’s sovereignty to demand a high degree of commitment. Adherents are meant to actually follow the example of Christ in discipleship. Furthermore, following Christ’s example in discipleship is not simply a matter of living up to the kind of common-sense ethical standards that are widely shared in society. Instead, when the Christ of the New Testament calls us to love our enemies, turn the other cheek, and go the extra mile, Anabaptists interpret this to mean that we should love our enemies, turn the other cheek, and go the extra mile. God’s sovereignty demands that we follow Christ’s example.

Thus the demand laid upon us is absolute. We must be willing to give up any and every tie to human values and goods for God’s kingdom.\(^5\)

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\(^2\) Ibid., at 112.


\(^4\) Ibid., at 62-63.

The call for this kind of commitment has several implications for institutional arrangements within the church. For Anabaptists, the church is composed of those who would voluntarily undertake the commitment to live by Christ's example. This is understood to be a difficult commitment, to be undertaken with the knowledge of its implications. Thus, voluntary adult baptism is a defining characteristic of Anabaptists.

Anabaptists consider that the church is meant to facilitate the leading of lives in which Christ's example is "faithfully obeyed." This requires mutual discernment and accountability for and to each other. To live a Christian life requires community relations of love, trust, and mutual support. Anabaptists believe that they are bound together in a disciplined and disciplining community. They are responsible for each other, members of each other. Anabaptists enter into mutual covenants of discernment and accountability.

The "absolute demand" of commitment leaves little room for acquiescence in the authority of the state where that authority would interfere with following Christ's example. Furthermore, the community relations which Anabaptists consider necessary to live the Christian life create an attachment to the church that can come into conflict with attachments to the wider society.

A further source of difficulty is that the norms which Anabaptists follow in their commitment to God's comprehensive sovereignty are not a fixed set of norms. They vary between Anabaptist communities, and vary over time.

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6 Yoder, The Christian Witness to the State, supra note 3, at 11.
7 Kaufman, Nonresistance and Responsibility, supra note 1, at 35-36.
Anabaptists hold that God's will is found through study and discussion within the church. The church, for Anabaptists, is a "deliberative assembly." Its understanding of the demands of God's sovereignty can be consciously and deliberately changed.

Decisions in the church are, or at least should be, the expression of a convinced consensus arrived at freely as the result of common study within the fellowship of believers. Anabaptists, therefore, do not merely claim fidelity to some fixed set of normative standards. Instead, they claim a creative power to establish norms. This creative power is more like the law-making power claimed by the state than it is like the organic process through which moral standards develop and change. It is laws, and not morals, that are subject to deliberate change. Furthermore, laws are expected to make arbitrary distinctions in a way that morals are not. For instance, in World War I, Mennonite and Amish youth were required to serve in the American military, but were permitted a vaguely defined conscientious objector status. Considerable difficulty arose in determining which of the duties assigned to them they could perform. Some Amish youth said, "We don't know how far to go because our church hasn't defined our privilege yet." In other words, the church had not yet exercised its law-making power.

In each of these three themes—God's comprehensive sovereignty, commitments within the church, and the church as a deliberative assembly—Anabaptist theology claims for the church a role that the state also claims for itself. In fact, given the Anabaptist position on these themes,

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8 Yoder, The Christian Witness to the State, supra note 3, at 18.
9 Ibid., at 19.
11 Ibid., at 224.
one might wonder whether Anabaptists see any need for the state in human affairs. Since the claims of religion are comprehensive for Anabaptists, there is no subject area which is reserved for the state. Since the claims of religion require commitment and discipline for Anabaptists, there is little room for simple acquiescence in conflicts with the state. Since Anabaptists work out the demands of religion in discussion amongst themselves, democratic participation in the wider society has less relevance than it might for others. Yet Anabaptist theology does include a role for the state.

2. The role of the state

... the Christian church knows why the state exists—knows, in fact, better than the state itself—and that this understanding provides both the justification for her speaking and the standards which she will apply in evaluating the way in which the authorities exercise their function.\(^{13}\)

While God is ultimately sovereign, Anabaptists recognize that God's sovereignty is not fully acknowledged in the world as yet. God is redeeming the world, but the work of redemption is not yet finished. There is at present a coexistence of the ages.\(^{14}\) However, the church is called upon to live under the sovereignty of God already: "The church points forward as the social manifestation of the ultimately triumphant redemptive work of God ..."\(^{15}\) Thus, Anabaptists aspire to exhibit in their social relations a sign of the ultimate sovereignty of God, while acknowledging that this sovereignty is not yet fully established in human relations.

This lays a different set of demands on the Church and on the state. The Church, as a foretaste of God's Kingdom, is called to live by the standards of that Kingdom. This is a high standard, and Anabaptists do not

\(^{13}\) Yoder, The Christian Witness to the State, supra note 3, at 16.
\(^{14}\) Ibid., at 9.
\(^{15}\) Ibid., at 10.
expect the state or society at large to live by it.\textsuperscript{16} This is not because God has two standards of justice, but because the higher standard of justice can only be achieved in the context of the practices which make up the church.

Christian ethics is for the Christian, who—if he will—disposes of the resources of love, repentance, the willingness to sacrifice, and the enabling power of the holy spirit, within the supporting fellowship of the church. Whether or not, or in what sense, non-Christians or non-Christian society should love, forgive, and otherwise behave like Christians is a speculative question. The spiritual resources for making such redeemed behaviour a real possibility are lacking.\textsuperscript{17}

The state thus plays a dual role for Anabaptists. On the one hand, it creates a context in which the church can do its work, through the pursuit of justice.

The interplay of violence upon violence, vengeance upon vengeance, whether in international wars such as Isaiah 10 had in mind or in the relatively more regulated processes of the state's judiciary and police machinery, has the ultimate purpose of preserving the fabric of the human community as the context within which the church's work can be carried on.\textsuperscript{18}

On the other hand, the state mitigates the consequences of sin. When humans choose not to live according to the Kingdom of God, they are permitted the institution of the state in order to avoid the full consequences of that choice.\textsuperscript{19} "But it also expresses God's love, as it shows that God does not wish to lead man to the ultimate consequences of sin, but wants order and peace even among a rebellious and sinful mankind."\textsuperscript{20}

This means that for Anabaptists, while the state's function is distinct from the church's function, both are nevertheless within God's plan.\textsuperscript{21} The state is working on God's behalf.

\begin{flushright}
\textsuperscript{16} Ibid., at 6-7.
\textsuperscript{17} Ibid., at 29.
\textsuperscript{18} Ibid., at 11.
\textsuperscript{19} Ibid., at 83.
\textsuperscript{20} Hans Hillerbrand, "The Anabaptist View of the State" (1958) 32 M.Q.R. 83 at 86.
\textsuperscript{21} Yoder, The Christian Witness to the State, supra note 3, at 13.
\end{flushright}
... the bearers of political authority are in spite of themselves agents of divine economy, being used whether in rebellion or submission as agents of God's purpose. It is, thus, not as though the church is defined as that which is faithful to God and the state as that which is unfaithful. The church is not necessarily faithful, and indeed has often been unfaithful. The difference is that the church is conscious that it is subject to God, while the state is unconscious of being subject to God.

This means that, for Anabaptists, the church and the state both exercise quite legitimate normative authority. It is part of God's purpose that the state should enforce justice. This is so even though the state's laws will not be perfectly just, since the state is unconscious of God's demands. Anabaptists, therefore, are not revolutionaries. Yet neither do they believe that the state's justice is ultimately consistent with God's will.

A good government is therefore never so "good" that it conforms to God's ultimate revelation in Jesus Christ; and a "bad" government, on the other hand, is never so bad that it would cease to be a servant of God.

There is, of course, a sense in which the normative authority of the church is considered to be higher than that of the state. Yet the church must always submit to the state's authority even where it cannot follow the state's law. The submission can be in the form of disobeying and accepting punishment. Thus even where the church finds that it cannot obey the state, the state's law still has validity and effect within the church.

22 Ibid., at 12.
23 Kaufman, Nonresistance and Responsibility, supra note 1, at 56-57.
26 Yoder, The Christian Witness to the State, supra note 3, at 75.
3. The question of coexisting normative authorities

The Anabaptist understanding of the relationship between church and state has curious features, and suggests several puzzling questions. Both church and state are said to be engaged in the same kind of enterprise—the creation and revision of normative standards, the formation and administration of normative commitments. Both exercise authority over the full range of human activities. Both seek the commitment of their members to their norms. Both deliberate as to the content of those norms. Both aim at the same goals—order, peace and justice.

The critical difference is that they do so with different understandings. The church is conscious of the demands of God's coming kingdom. The state is not. The question is: how are two authorities distinguished in this way to relate to each other?

B. Anabaptist claims from the state's point of view

The discussion so far has focused on Anabaptist theology. We have found for Anabaptists the church and state have an interlocking role. Each performs a similar function—the creation and administration of normative commitments. Yet the church does so in the context of God's coming kingdom, not yet fully realized, while the state does so while unconscious of God's demands.

What do these claims look like from the state's point of view? Does the state conceive of itself in a way that is consistent with the Anabaptist conception of the state? Does the state conceive of religious groups in a way that is consistent with the self-conception of Anabaptists?
The exploration of these matters from the point of view of the state is complicated by the absence of any canonical political theory of the state.\textsuperscript{27} A choice is required as to which understandings of the state to pursue. This discussion will focus on two sources of political theory. The first is the understandings of the state which can be discerned from within the historical encounters of Anabaptists and the state. The second is the encounter of Anabaptists with liberalism, in both its political and comprehensive modes. The primary source for the former will be the writings of John Rawls, and for the latter, of Will Kymlicka.

1. The self-image of the state

How does the self-image of the state fit with the role that Anabaptists would assign to it? It turns out that the state's self-image does not precisely match the Anabaptist conception of the state, but it is still the self-image that Anabaptists would expect the state to adopt.

The overlapping role of the church and the state is illustrated by the breadth of activities undertaken by the modern state. The institutions of the modern state reach broadly into areas of life that were once considered the work of the church, such as welfare, education, and health care.\textsuperscript{28} This has intensified conflicts between the state and some Anabaptist groups, such as the Amish. The source of the conflict is, paradoxically enough, not that the state is trying to do evil, but that it is trying to do good.

Conflicts between the Amish and government agencies proliferated as the state's regulatory power, usually based on noble ideals, intruded into terrain that the Amish considered religious.\textsuperscript{29}

\textsuperscript{27} Of course, there is no unanimity in Anabaptist theology either, but at this level of generality certain themes can be identified with considerable safety.


\textsuperscript{29} Donald Kraybill, "Negotiating with Caesar" in *The Amish and the State* (John Hopkins University Press: 1993) at 4.
What the state is often doing is enforcing cooperation amongst its citizens for the better achievement of certain basic purposes.

In a reasonable society ... all have their own rational ends they hope to advance, and all stand ready to propose fair terms that others may be reasonably expected to accept, so that all may benefit and improve upon what everyone can do on their own.30

Anabaptists might have less conflict with a state which conceived of itself as having a smaller role, of merely enforcing certain minimal standards of justice and security without enforcing the cooperation of citizens to seek certain goods. Such a state would merely create a stable framework in which a variety of religious groups might pursue the higher end of perfecting social relations within human communities.

This would fulfill one part of the role assigned by Anabaptists to the state. It would create a stable context in which the church can do its work. Yet it would not respond to the state’s other role, to be an instrument of God’s grace. To suppose that the state has no business in areas once run by the church, such as welfare, health care, and education, would be inconsistent with the view that the state has a role in mitigating the consequences of human disobedience.

Thus while the scope of the state’s claims can create problems for Anabaptists, there is a real sense in which Anabaptist theology would not have it otherwise. This paradox extends not only to the breadth of the state’s activities, but also to what one might call their depth, that is, their normative justification. The state, perhaps especially the liberal state, is committed to the normative justification of its practices as morally justified. It does not see its laws and its administration of justice as second-best to some other form of social organization.

In this respect, the state’s self-image does not quite match the Anabaptist image of the state. Anabaptists consider the state’s practices to be justified only in the context of God’s graciousness towards a disordered and disobedient humanity. The practices of the state are not ultimately justified—they do not ultimately conform to God’s will.

Yet once again there is a sense in which Anabaptist theology would not have the state think otherwise about itself. Anabaptists conceive of the state as a normative authority which is unconscious of being subject to God’s demands. Since it is unconscious of God’s demands, the state will have to develop some autonomous means of determining what is normative for it. That the state should over-reach itself, and justify its practices without reference to God’s demands, is therefore a possibility encoded into the Anabaptist conception of the state.

Consider the kind of autonomy that Rawls claims for the political conception of justice:

But to attain such a shared reason, the conception of justice should be, as far as possible, independent of the opposing and conflicting philosophical and religious doctrines that citizens affirm.31

Anabaptists would not deny this. Since the state is unconscious of God’s demands, it cannot be expected to derive its normative commitments from the same sources the church does. Yet Anabaptists do deny Rawls’ further claim that a well-ordered society based on the political conception of justice is, and should be recognized as, fully just.

To say that a society is well-ordered conveys three things: first (and implied by the idea of a publicly recognized conception of justice), it is a society in which everyone accepts, and knows that everyone else accepts, the very same principles of justice; and second (implied by the idea of the effective regulation of such a conception), its basic structure—that is, its main political and social institutions and how they fit together as one system of cooperation—is publicly known, or with good reason believed, to satisfy these principles. And third, its citizens have a normally effective sense of justice

31 Ibid., at 9.
and so they generally comply with society's basic institutions, which they regard as just. In such a society the publicly recognized conception of justice establishes a shared point of view from which citizens' claims on society can be adjudicated.\textsuperscript{32}

Thus Anabaptists both acknowledge that the state must seek autonomous forms of justification for its practices, and deny that those justifications will render its practices wholly just.

2. \textbf{Liberal theories of religion}

There is, therefore, a kind of paradoxical conformity between the Anabaptist image of the state and the state's self image. What of the conformity between the state's view of religious groups and the Anabaptist self-conception? Just as Anabaptists make room within their self-understanding for the state to play a role, so the state makes room within its own self-understanding for a role to be played by religious groups.

Yet finding continuity between state's understanding of religion and Anabaptist self-perception is a difficult matter. Common applications of freedom of religion deny the comprehensive character of Anabaptist authority. Theories of multicultural accommodation focus on cultural differences rather than differences in understandings. Political liberalism seeks the affirmation of a shared political conception that Anabaptists cannot give.

\textbf{a. Freedom of religion}

The liberal state is committed to freedom of religion, and this is a matter of considerable importance for Anabaptists, an importance which will be explored further at a later stage of the discussion. Yet to account for Anabaptist self-perceptions, freedom of religion would need to play a role that is unusual for such freedoms.

\textsuperscript{32} \textit{Ibid.}, at 35.
Consider this picture of freedom of religion. The protection of freedom of religion implies that there are parts of life which pertain to religion, and that those parts of life should be free of state intrusion. This defines an area of freedom, but it also defines another area in which the state can regulate—the area of life which does not pertain to religion. This picture would assign distinct subject matters to state authority and religious authority. This division between the religious and the secular would clash with the comprehensive nature of Anabaptist claims. We ought, therefore, to expect that the application of this picture of freedom of religion would deny religious significance to some of the claims made by Anabaptists. This is, in fact, exactly what we do find.

For instance, a Mennonite leader once explained to the Saskatchewan premier that public education was a matter of religion for his community. The Premier responded in this way:

The sending of children to school where they will acquire a proper education cannot in any way interfere with your religion.\(^{33}\)

It is the use of the word "cannot" that is significant here. An inquiry into the specific normative commitments of the Mennonites was not required for the Premier. He knew that public education could not interfere with religion.

Government officials responded in a similar way to claims that religion required a certain pattern of land-holding, somewhat different from the homesteading system.\(^{34}\)

The giving of public land is not a matter of religion but of law and fair play ... I have to deal with all the people in the same way.\(^{35}\)


\(^{34}\) *Ibid.*, at 59.

\(^{35}\) *Ibid.*, at 55.
When some Virginia Mennonites refused to salute the American flag, local opinion held that this could not be for religious reasons. Since the flag represents the constitution, and the constitution protects all religions, it cannot violate religion to salute the flag.

As far as the patriots were concerned, the flag salute was a secular ceremony intended to include all Americans regardless of their religious convictions. To claim that it somehow violated one’s religious beliefs was either misguided fanaticism or spurious reasoning.36

In considering whether Alberta legislation restricting the use of land for communal purposes was a matter relating to landholding (provincial jurisdiction) or religious freedom (federal jurisdiction), the Supreme Court held that the Hutterites’ idiosyncratic understanding of the scope of religion did not determine the matter.

Religion, as the subject matter of legislation, wherever the jurisdiction may lie, must mean religion in the sense that it is generally understood in Canada. It involves matters of faith and worship, and freedom of religion involves freedom in connection with the profession and discrimination of religious faith and the exercise of religious worship. But it does not mean freedom from compliance with provincial laws relating to the matter of property holding.37

In this picture of freedom of religion, there are two critical points. First, there is a boundary between the free area encompassed by religion and the area which the state is free to regulate. Second, the fixing of this boundary is a matter of shared understandings, not the idiosyncratic beliefs of particular religions. This means that the problem with this picture of freedom of religion is not simply that it gives more protection to religious beliefs than religious practices. Freedom of religion could protect religious practices within this picture. However, this would still require a distinction between practices which are religious and practices which are not religious.


and would still require the delineation of a shared understanding of where to draw the line. For instance, when the American Supreme Court considered whether the government could require attendance at public schools rather than private religious schools, the focus was on the shared understanding of the community, not the understandings of a particular religious group.

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only.\(^{38}\)

It is true that even within this picture of freedom of religion, the point is to permit variation in religious understandings, rather than to seek uniformity. This can, however, be reconciled with the view that what is sought is a shared understanding of the boundaries of religion. Consider the matter of freedom of expression. It too is meant to permit a diversity of expression. Yet the question of what counts as expression is a matter for shared understandings, not diversity. It is not up to each person who claims the benefit of freedom of expression to determine what constitutes expression.

Of course, Anabaptists can participate in the shared construction of an understanding of freedom of religion. For instance, Anabaptists might convince the state that a particular practice has religious implications. Yet this is inevitably a moving target, since Anabaptists claim that all of life has religious implications. As Tribe points out, even a broadened understanding of religion still implies boundaries.

Although the Court has abandoned its narrow, theistic view of religion in free exercise analysis, it has not escaped the necessity of drawing some boundary around religion. Indeed, avoiding that task would violate the principles underlying the clause.\(^{39}\)


Thus, the fact that religion is often defined more narrowly than Anabaptists would like is only part of the problem. The real problem is the distinction between the religious and the secular itself.

Thus in order to truly recognize the comprehensive character of religion for Anabaptists, the basic logic of freedom of religion would have to be reinterpreted. Freedom of religion would no longer define a boundary. Instead, it would be more like a power than a freedom. It would be a power to make law. For it is not only the comprehensive nature of Anabaptist claims that create difficulties for this picture of freedom of religion. It is also the deliberative nature of Anabaptist understandings. This was recognized by the Court which considered the claim of a different group that compulsory public education was a violation of their religion.

This clearly to my mind involves the claim that a religious sect may makes rules for the conduct of any part of human activities and that these rules thereby become for all the world a part of that sect's religion. This cannot be so.40

Fundamental freedoms are not typically considered to confer law-making powers. Suppose that a group of journalists were to develop an idiosyncratic understanding of freedom of expression. For instance, journalists have sometimes been willing to go to jail rather than reveal the name of a source. When the matter comes before the court for consideration, the fact that journalists have this belief about the scope of freedom of expression has no independent significance. It is simply an argument about what freedom of expression means, and the court's task is to construct and apply a shared understanding of that concept. Freedom of expression is not generally understood to give journalists a law-making

power. Yet that is exactly what freedom of religion would have to do for Anabaptists in order to fit their self-perceptions.

It is precisely for these kinds of reasons that the American Supreme Court has drawn back from jurisprudence which had suggested that a compelling state interest was required to forbid conduct that is motivated by religion. In Employment Division v. Smith, the Court held that the state’s criminal prohibition of peyote applied to a religious group using peyote for sacramental purposes. To the proposition that there ought to be a balancing between the state’s interest in regulating peyote and the group’s interest in their religious practice, the Court responded that balancing was only appropriate between conflicting interests of general application, not between general interests and idiosyncratic opinions.

What it produces in those other fields—equality of treatment and an unrestricted flow of contending speech—are constitutional norms; what it would produce here—a private right to ignore generally applicable laws—is a constitutional anomaly.

None of this shows that there is no conception of freedom of religion which might fit with Anabaptist self-perceptions, or that freedom of religion plays no useful role in the relations between Anabaptists and the state. Indeed, it plays an extremely useful role, and more will be said about this later. However, common applications of the logic of freedom of religion do not fit the nature of Anabaptist claims.

b. Multicultural claims to community custom

If part of the problem with at least one picture of freedom of religion is that it confines religion to too narrow a scope, then one remedy would be to focus on Anabaptists as examples of cultural or ethnic communities. Culture is often considered to have a wider scope than religion. The proper

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42 Ibid., at 885-86.
response by the state to the claims of its many cultural communities has been the subject of considerable recent scholarship. Will Kymlicka is a leading liberal theorist sympathetic to some claims of cultural communities. He argues that liberalism can and should take account of the importance of culture in providing a context of choice which underlies the ability of individuals to create and revise conceptions of the good.

For Kymlicka, the key distinction in evaluating the claims of cultural communities is the distinction between national minorities and polyethnic minorities. National minorities are those who have been colonized or conquered. They should be allowed to preserve, or recreate, a "societal culture," institutionally complete, including forms of self-government. Polyethnic minorities, on the other hand, are formed when members of a nation emigrate individually to another nation. They should be allowed to integrate into the new society with some accommodations for their original culture, but not forms of self-government. 43

How, then, do Anabaptists fit into this framework? Are they national minorities or polyethnic minorities? The question is a difficult one on the terms in which Kymlicka puts it. Anabaptist groups have obtained legal exemptions of a kind that would fit Kymlicka's notion of polyethnic rights. Yet the logic of polyethnic rights is foreign to the nature of the Anabaptist claims. Consider this characterization of polyethnic rights:

Polyethnic rights protect specific religious and cultural practices which might not be adequately supported through the market (e.g. funding immigrant language programs or arts groups), or which are disadvantaged (often unintentionally) by existing legislation (e.g. exemption from Sunday closing legislation or dress codes that conflict with religious beliefs). 44

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44 Ibid., at 38.
The problem here is the word "specific." Anabaptist claims with respect to the state are not confined to specific practices. The Anabaptist view of the church as a deliberative assembly permits change in the understanding of the demands of God’s sovereignty. Thus the church may come to understand that new practices are required. For instance, the specific privileges negotiated by Mennonite immigrants to Canada in the 1870s covered many, but not all, of the subsequent disputes that arose.45

Of course, the state can extend polyethnic rights to cover those new practices. However, it is then no longer clear why we are calling these polyethnic rights as opposed to rights of self-government. For the state has, in effect, allowed the group to govern itself, to develop a new practice which will now be respected in law.

Another way of asking the question is to consider whether Anabaptists should be considered immigrants or colonists. Kymlicka contrasts the expectations of immigrants and colonists in this way:

It is an essential feature of colonization, as distinct from individual emigration, that it aims to create an institutionally complete society. It would, in principle, be possible to allow or encourage immigrants today to view themselves as colonists, if they had extensive government support in terms of settlement, language rights, and the creation of new political units. But immigrants have not asked for or received such support.46

It is clear that some Anabaptist groups considered themselves to be colonists when immigrating to North America. Consider this characterization of the immigration of Russian Mennonites to Kansas in the 1870s.

The immigration of the Mennonites was a political act. It had to do with power. It had to do with the ability of these people to keep control over their own lives, their language, their education, their practice of nonresistance, and in fact their entire way of life. The Mennonites wanted autonomy. The freedom they sought was not the freedom of each individual to choose his

own values and do his own thing. They sought freedom as the power to maintain their distinctive and severely disciplined communities.\(^{47}\)

The goals pursued in immigrating included goals related to self-government. Nationalist reforms in Russia had required the use of the Russian language in schools, created new administrative districts in which the Mennonites would be a minority, and removed their exemption from military service.\(^{48}\) The Mennonite colonies had been answerable to a central governmental body, and now they were to be placed under ordinary municipal and provincial authority.\(^{19}\) The Russian Mennonites who settled in Manitoba in the 1870s set up the village government system they had used in Russia. Taxes were assessed, roads built, schools started, relief for widows and orphans administered, all within a year of settlement.\(^{50}\) This was all done before any framework of municipal law was set up by the province.

It therefore seems that at least some Anabaptist groups have considered themselves to be colonists, not immigrants, when arriving in North America. Kymlicka acknowledges that the Hutterites considered themselves to be colonists.\(^{51}\) Yet should they have been considered colonists, and thus given the rights of national minorities? In answering this question, Kymlicka distinguishes between voluntary and involuntary immigrants. Voluntary immigrants need not be given the rights of national minorities, since they could have chosen to remain in their own cultures.\(^{52}\) He


\(^{52}\) *Ibid.*, at 96.
acknowledges that for refugees, this was not an option. However, the injustice in such cases is the responsibility of the original government, not the receiving government.\textsuperscript{53}

Thus Kymlicka's whole analysis of the claims of cultural communities is rooted in the question of immigration. Kymlicka defines minority ethnicity as being created by immigration from another nation.\textsuperscript{54} To grant national minority status to cultural communities is problematic precisely because North America has experienced so much immigration.

In a country built primarily on immigration, with immigrants from virtually every linguistic and cultural group around the world, any serious attempt to define ethnic groups as national minorities would undermine the very fabric of society.\textsuperscript{55}

Thus the solution to the puzzling status of certain Anabaptist groups is to adopt better immigration policy.

The hard cases which exist today have often arisen as a result of past injustices and inconsistencies. I believe that a fairer and more consistent immigration policy will work, over time, to prevent such hard cases.\textsuperscript{56}

Yet Anabaptist claims are not ultimately rooted in the fact of immigration. Anabaptists are always minorities in every state. Their minority status, unlike many minorities, was not produced because they emigrated from a nation where they were a majority culture,\textsuperscript{57} or because they were conquered or colonized. As a factual matter, Anabaptists immigrated to North America, and that provided an opportunity to make certain claims and arrangements. But the fact of immigration was not the justification for the claims. The claims would have been made had

\footnotesize{\textsuperscript{53} Ibid., at 98-99.  
\textsuperscript{54} Ibid., at 18.  
\textsuperscript{55} Ibid., at 63-64.  
\textsuperscript{56} Ibid., at 25-26.  
\textsuperscript{57} Juhnke, A People of Two Kingdoms, supra note 47, at vi.}
Anabaptists emerged out of the North American nations, as they did out of the European nations of the 16th century.

Thus immigration policy cannot be expected to solve the question of the status of Anabaptist groups in society. The religious impulse that created groups like the Hutterites is capable of arising within any society. Anabaptist groups originally arose in Europe due to different views on religious and political issues, not as a result of immigration. Mennonite communities around the world have been created by missionaries who export ideas, not people. Thus, the claims of Anabaptists need to be dealt with as religious and political claims, not as problems to be avoided through immigration policy.

**c. Political liberalism**

In looking at one picture of freedom of religion, we saw that it did not account for the comprehensive nature of Anabaptist claims. Looking at Kymlicka's theory of multicultural accommodation, we saw that it failed to account for the political significance of Anabaptist claims. In each case the problem is that the theory does not address the problem that Anabaptists present.

An alternative that comes closer to addressing the relevant problem is the political liberalism articulated by John Rawls. The central question posed by political liberalism is the coexistence of multiple comprehensive views in the context of a single state.

How is it possible that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime? What is the structure and content of a political conception that can gain the support of such an overlapping consensus?[^58]

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[^58]: Rawls, *Political Liberalism*, supra note 30, at xx [emphasis added].
Thus Rawls expects groups like the Anabaptists to have a comprehensive view on the ordering of social relations. He also acknowledges that disagreement between comprehensive views is an ordinary result of the application of human reason, not merely a problem created by immigration. The structure of the problem constructed by Rawls is, therefore, similar to the problem Anabaptists actually present.

Similar, but not quite the same. Note that Rawls does not merely ask how opposing comprehensive views can live with each other. Instead, he asks how they can live with each other and "all affirm the political conception of a constitutional regime?" This second question implies an answer to the first: that to live together, comprehensive views must all affirm the same political conception. We saw earlier that this is the goal Rawls sets out for a well-ordered society.

The problem is that Anabaptists do not, and can not, affirm the state's political conception of justice. Anabaptists understand that the state will adopt autonomous forms of normative reasoning, since the state is meant to pursue normative commitments yet is unconscious of being subject to God's demands. Anabaptists thus acknowledge the autonomous existence of state authority. However, they do not thereby accept the state's political conception of justice.

Anabaptists do not affirm the state's political conception of justice as a guide for their own actions. Rawls argues that comprehensive views should value the political conception of justice sufficiently to override conflicting values.

First, questions about constitutional essentials and matters of basic justice are so far as possible to be settled by appeal to political values alone. Second, again with respect to these same fundamental questions, the political values
expressed by its principles and ideas normally have sufficient weight to override all other values that may come into conflict with them.\footnote{59}{\em Ibid.}, at 137-38.

Yet Anabaptists deny the claim that there are spheres, including the political, in which autonomous modes of reasoning can instruct Christians to act in ways contrary to the practices taught by Christ.

They claim that within the realm of the state’s responsibility there are insights or understandings or principles or ways of working at problems which have the same kind of authority over men including Christians, that Christ himself claims, yet which call men to do things that Christ (as we know Him from the New Testament) does not call men to do.\footnote{60}{Yoder, \textit{The Christian Witness to the State}, \textit{supra} note 3, at 81.}

Anabaptists also do not ultimately affirm the state’s political conception of justice as a guide for state actions. It is true that the state cannot be expected to act as the church does, since the state is unconscious of God’s demands and does not have the resources for following the way of Christ that the church offers. However, that does not mean that what the state does is beyond criticism. Even though Anabaptists cannot make the state understand the ultimate nature of God’s demands, they can always show the state something a little better than the state currently knows.\footnote{61}{\em Ibid.}, at 73.

Of course, criticism of state actions, and even a refusal to follow certain laws, can be consistent with a shared political conception of justice. Rawls makes this point in a discussion of Quaker relations with the state.

So Quakers, being pacifist, refuse to engage in war, yet they also support a constitutional regime and accept the legitimacy of majority or other plurality rule. While they refuse to serve in a war that a democratic people may reasonably desire to wage, they will still affirm democratic institutions and the basic values that they represent. They do not think that the possibility of a people’s voting to go to war is a sufficient reason for opposing democratic government.

One might ask why the Quaker’s religious doctrine prohibiting their engaging in war does not put their allegiance in doubt. Yet our religion may enjoin many things. It may require our support of constitutional government as that which, of all feasible political regimes, is most in accord with the religious injunction to be equally concerned with the basic rights and

\footnote{59}{\em Ibid.}, at 137-38.
\footnote{60}{Yoder, \textit{The Christian Witness to the State}, \textit{supra} note 3, at 81.}
\footnote{61}{\em Ibid.}, at 73.
fundamental interests of others as well as our own. As with any reasonable doctrine, many political and nonpolitical values are represented and ordered within it. With that granted, allegiance to a just and enduring constitutional government may win out within the religious doctrine. This illustrates how political values can be overriding in upholding the constitutional system itself, even if particular reasonable statutes and decisions may be rejected, and as necessary protested by civil disobedience or conscientious refusal.  

Whether or not Rawls has analyzed the Quaker point of view correctly, his analysis does not apply to Anabaptist relations to the state. Rawls presents the problem as though the religious group analyzes what the proper political conception of the state should be, and then considers the risk that this kind of state may require it to do things it is unwilling to do. However, the reason Anabaptists acknowledge the state's authority is not because it fits the Anabaptist conception of what political justice ought to be. Anabaptists do not have a particular political theory to which the state ought to conform. When Anabaptists criticize the state, it is because it does not live up to God's demands, not the demands of political theory.

The question of pacifism also has a deeper significance for Anabaptists than Rawls suggests. Rawls supposes that the decision by the state to engage in a war is one possibility amongst many. Yet for Anabaptists, it is practically the defining feature of the state that it employs violent force. The undoubted virtues of democracy, for instance, are less salient for Anabaptists than the fact that even a democratic government justifies the use of violent force.

It will have to suffice here to indicate that, however broadly it may be believed, the thesis of the fundamental novelty of democratic government is neither historically nor theologically convincing. It is still the fact that some men exercise power over others, with a view partly to personal benefit and partly to less selfish purposes. In many kinds of society democracy is

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64 Of course, to make the state understand the criticism, some connection needs to be sought between God's demands and the resources provided by political theory. Yet this is, for Anabaptists, a question of translation, not an affirmation of the political theory.
preferable to any other form of government; this does not change the fact that even in such societies some men wield the sword and others do not.\textsuperscript{65}

In fact, Yoder defines the state as the "fundamental phenomenon that society is organized by the appeal to force as ultimate authority."\textsuperscript{66} This is, by itself, something of an exaggeration. There are very few forms of government that appeal to force as an authority. Liberal democracy certainly does not do so. Force is what needs to be authorized by political theory—it is not the source of authority. Furthermore, the state does not actually in its daily routine rely on force to a great degree.\textsuperscript{67}

Yet it is true that at its most basic levels, the political conception of justice is meant to be able to justify the use of violent force where necessary. Rawls acknowledges this connection:

To begin, in a democratic society public reason is the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution.\textsuperscript{68}

Thus when Anabaptists reject the use of force, they also inevitably reject the political conception of justice at its deepest levels. For that conception of justice is meant to be able to justify force, a practice which Anabaptists will not engage in.

Of course, this does not mean that Anabaptists need be wholly antagonistic to the state. Far from it. Anabaptists can agree with many state actions, and even agree with parts of the self-image of the state. Some of the implications of this will receive more discussion below. However, the critical division between the willingness to use force and the unwillingness to use force means that Anabaptists cannot affirm the political conception of justice.

\textsuperscript{65} Yoder,\textit{ The Christian Witness to the State}, supra note 3, at 26.
\textsuperscript{66} \textit{Ibid.}, at 12.
\textsuperscript{67} Leslie Green,\textit{ The Authority of the State} (Oxford University Press: 1988) at 71.
\textsuperscript{68} Rawls, \textit{Political Liberalism}, supra note 30, at 214.
The problem presented by the relations of Anabaptists to the state is thus closely related to the problem Rawls states, but it is not the same problem. Rawls asks how comprehensive views can affirm the same political conception of justice in order to safely disagree about more specific questions. The question of Anabaptist-state relations is: how can coexisting authorities order their relations with respect to the specific questions without ultimate agreement with respect to conceptions of justice?

C. Sovereignty is the question

The method of the discussion so far has been to elaborate the self-perceptions and other-perceptions of Anabaptists and the state. In examining Anabaptist perceptions, we saw that a question emerges: how can the normative authority of the church and the normative authority of the state, both grounded in God’s will, coexist? If church and state perceived of their own role (and each others’) in the same way, then the question might admit of an easy answer. However, Anabaptist theology itself acknowledges that the state will employ an autonomous reason that cannot be expected to match the church’s perception of the root of its authority.

Turning to the state’s perception, we encountered considerable difficulty in fitting Anabaptist claims into the state’s perception of religious groups. In the process, however, we illuminated the nature of the question at stake. Given that church and state agree that each has legitimate normative authority, and yet cannot be expected to agree on the ultimate basis for that authority, how can their authority coexist?

The suggestion has already been made that this is a question about sovereignty. The ways in which the functions of church and state overlap in Anabaptist understandings have been explored. The logic of church authority as a law-making power has been examined. However, it is not just
that Anabaptists and the state are both exercising forms of authority. That is a question often settled within common understandings of the sources of the authority. In some cases, the state overtly structures the exercise of law-making and law-enforcing authority by particular institutions. Professional associations are good examples. Law societies, medical associations, and teacher’s colleges all generate and enforce normative commitments for their members. The state facilitates this by requiring membership for those wishing to engage in the activity, and providing a legislative framework for the community’s normative work.

The difference with respect to Anabaptist claims is that the coexistence of authorities must be pursued without a common understanding of the source of that authority. Both Anabaptists and the state can recognize the normative authority of the other, but they cannot share a common understanding of the basis for that authority. Each claim is, therefore, a claim to sovereignty, in the sense that the authority each claims is not derived from the authority of the other.

This dimension of Anabaptist claims has sometimes been partially recognized by the state. For instance, the 1873 agreement between Russian Mennonites and the Canadian government has sometimes been referred to as a treaty69 (though not recognized as such by the courts).70 In 1917, the Prime Minister responded to pressure to reneg on that agreement by explaining that it ought to be considered a treaty.

The rights granted to the Mennonites under the orders-in-council must be respected, for we could not afford to convert what was really a treaty into a scrap of paper.71

69 Janzen, Limits on Liberty, supra note 33, at 98, 181.
70 Ibid., at 95.
71 Ens, Subjects or Citizens?, supra note 49, at 180-81.
The government was willing to recognize the negotiated rights for the original immigrants and their descendants.\textsuperscript{72} The inclusion of descendants is consistent with the characterization of the agreement as a treaty, and difficult to reconcile with the notion that the agreement was purely contractual or declaratory.

The treaty characterization raises the analogy of aboriginal claims to sovereignty. Both aboriginal and Anabaptist groups claim a kind of law-making authority, and seek a form of recognition of that authority by others with similar types of authority.

Indian government is a means by which indigenous peoples can assert some degree of control over the form, content and direction of their distinct individual and collective identities. In this sense, Indian government does not differ from other manifestations of sovereign authority on the continent. A plethora of institutional actors in North America exercise either inherent or delegated sovereign authority. Indian government thus represents one strand in a larger web of entities exercising some degree of sovereign authority over land and/or people.\textsuperscript{73}

In fact, there may be a deeper connection between the question presented by Anabaptists and that presented by aboriginals. Some form of coexisting authority between aboriginal governments and state governments seems inevitable. Yet it is quite possible that aboriginals and the state may be unable to agree on the same conception of the source of each other's authority. The conflict between inherent and delegated authority comes to mind in this context. The question this raises is similar in form to the question raised by Anabaptists: how can claims to sovereign authority coexist without consensus on their ultimate basis?


III. Conformity or nonconformity?

First, the Mennonites inhabit an ongoing nomos that must be marked off by a normative boundary from the realm of civil coercion, just as the wielders of state power must establish their boundary with a religious community's resistance and autonomy. Each group must accommodate in its own normative world the objective reality of the other. There may or may not be synchronization or convergence in their respective understandings about the normative boundary and what it implies. But from a position that starts as neutral—that is, nonstatist—in its understanding of law, the interpretations offered by judges are not necessarily superior. The Mennonites are not simply advocates, for they are prepared to live and do live by their proclaimed understanding of the Constitution. Moreover, they live within the complex encodings of commitments—their sacred narratives—that ground the understanding of the law that they offer.74

Anabaptists and the state each have a theory as to the proper function of their own authority and the authority of the other. Yet these conceptions do not agree. One question that could be raised in this context is which conception is right. Are Anabaptists correct about the role of a religious group? Do they assign the right status to the authority of the state? Is the state's conception of its own authority correct? Does it assign the correct role to the authority of a religious group? To settle these questions would be a matter of considerable intellectual interest. Yet the more pressing question is what form relations between Anabaptists and the state can take without settling these questions. As Cover so nicely puts it, "Each group must accommodate in its own normative world the objective reality of the other."75 Thus our central question: how can claims to sovereign authority coexist without agreement as to their ultimate basis?

We will explore this question by first proposing a simple model and exploring its deficiencies. The simple model conceives of relations between Anabaptists and the state as involving a choice between conformity and nonconformity. While Anabaptists and the state do not agree on the basis

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74 Robert Cover, "Nomos and Narrative" (1983) 97 Harv. L. Rev. 4 at 28-29.
75 Ibid., at 28-29.
for the authority exercised by each other, they can still sometimes agree on the content of particular norms. Anabaptists can test particular state norms and practices for conformity with Anabaptist norms. The state can test particular Anabaptist norms and practices for conformity with state norms. Where conformity is found, relations between church and state can be mutually supportive. Otherwise, their interests will clash.

By exploring the reasons why the choice between conformity and nonconformity is insufficient to model the relationship of Anabaptists and the state, we will develop considerations that can be used to construct a more complex model of the interests pursued by Anabaptists and the state in relating to each other. That will comprise the final part of this discussion.

A. Evaluating state norms for conformity with Anabaptist norms

The interests pursued by Anabaptists in relating to the state go beyond the evaluation of state norms for conformity with Anabaptist norms. This can be illustrated in several ways. There is a kind of fluidity between conformity and nonconformity. Social nonconformity can be pursued through legal conformity and vice versa. Furthermore, the response by the state to claims made by Anabaptists can turn expressions of nonconformity into a kind of conformity. Finally, there are interests pursued by Anabaptists in their relations with the state that simply are not captured by the logic of conformity and nonconformity.

1. Social and legal conformity are distinct

In assessing the conformity or nonconformity between Anabaptist groups and the state, a distinction needs to be drawn between the social and legal aspects of the question. Social nonconformity can be pursued through legal conformity, and social conformity pursued through legal nonconformity.
Hutterite property law is an example of social nonconformity pursued through legal conformity. Hutterites hold property in common. Upon joining a Hutterite colony, an adherent commits to a system in which the colony holds all property for the collective use of all members of the colony. No member is to accumulate personal property. Everything is the property of the colony as a whole. Now, does this regime count as conformity or nonconformity with the normative commitments of the wider society? Are the Hutterites, in holding property in common, participating in or objecting to the ways of the wider society? The answer depends on whether you approach the matter from a social or a legal point of view.

From a social point of view, the Hutterite law of property is an objection to the practices of the surrounding community. The Hutterites are trying to live differently. They disagree with the way that property is held in the wider society. Yet, in terms of the legal order, Hutterite property law is implemented through ordinary instruments of contract, trust, and corporate law. The Hutterites are taking advantage of one permissible form of legal ordering recognized and enforced by the state. As Weisbrod points out with respect to American communal societies similar to the Hutterites, the legal arrangements necessary for this alternate way of life can be defended "on the basis of entirely familiar legal ideas."76

Whether Hutterite property law represents conformity or nonconformity with the state’s normative commitments is therefore a tricky question. From a social point of view, it is a nonconformity, while from a legal point of view it is conformity. The same ambiguity arises in determining whether the Hutterites are participating in or separating from the wider society. There is clearly some separation intended by the

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Hutterites. Yet in legal terms, such societies live in "continuous relation to the outside world."\textsuperscript{77}

Perhaps because the utopians set out to be separate from the political world, they are often perceived as existing in isolation from it, largely free of the laws and institutions of the surrounding society. In fact, the communities functioned inside the American system, visibly sanctioned by its laws.\textsuperscript{78}

What this shows is that social nonconformity can be accomplished through legal conformity. The converse is also true. Social conformity can be pursued through legal nonconformity. The participation of Anabaptist groups in the public school system is a good example. Some Anabaptist groups have wanted to operate their own schools. Others have wished to participate in public schools. Those participating in public schools have sometimes had to question the legal requirements imposed on that participation. For instance, Mennonites in Virginia objected to a rule requiring schoolchildren to salute the flag. This was an objection to the governing legal regime. Yet it was done for the purpose of being able to participate in shared institutions. Had the Virginia Mennonites wanted to start their own schools, they could have done so.\textsuperscript{79}

\textbf{2. Conformity and nonconformity are dynamic}

The fact that social nonconformity can be pursued through legal conformity and vice versa suggests that conformity and nonconformity interact in a fluid manner. This interaction is also characteristic of the responses of one normative community to the claims of the other. Consider the example of conscientious objection legislation.

The need for conscientious objection legislation arises because the church and the state have inconsistent norms relating to military service.

\begin{flushleft}
\textsuperscript{77} Ibid., at xvi.
\textsuperscript{78} Ibid., at 208.
\textsuperscript{79} Zercher, "Between Two Kingdoms," supra note 36, at 177.
\end{flushleft}
The state considers itself entitled to call upon its members to perform military service. The church considers military service to be wrong for its adherents. There are opposing norms. The state may well imprison conscientious objectors for failing to perform military service.

Thus far, we have a case of nonconformity. The Anabaptists object to the requirement for military service and the state objects to the Anabaptist refusal to perform military service. This nonconformity leads to a very tangible clash of interests. Yet where the state responds with legislation that permits conscientious objection, it becomes more difficult to characterize the matter as a simple case of nonconformity. For by claiming conscientious objector status under the relevant legislation, the Anabaptist adherent is, in one sense, conforming with the state's law relating to military service.

Not all conscientious objectors are willing to do this. Some Doukhobors, for instance, refused to claim conscientious objector status even when they were assured that they would qualify.\(^{80}\) Even where Anabaptists have been willing to claim conscientious objector status, there has been considerable discussion as to whether they should participate in specific parts of the process for making such claims. In the 1916 registration process, some Canadian Mennonite groups were reluctant to register at all.\(^{81}\) Some American Mennonites refused to register for conscientious objector status in the Vietnam war.\(^{82}\)

A case which illustrates these issues, though not in the context of Anabaptist groups, is *R. v. Jones*.\(^{83}\) In that case, a parent wished to educate

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\(^{80}\) William Janzen, *Limits on Liberty*, *supra* note 33, at 230-34.

\(^{81}\) Ibid., at 170.


his children at home. Provincial legislation permitted this so long as the parent applied for an exemption and met provincial standards. The parent had no objection to the provincial standards. However, he would not make the application, because to do so would acknowledge the Board's authority to decide the question.

To accept that the Board can grant him permission to carry out his God given duty would be, he submits, to accept the converse, i.e. that it can also refuse him such permission. He cannot in conscience recognize the Board's authority in this regard; he will not make the necessary application.84

Thus, while the government was willing to provide an exemption, for which the parent appears to have qualified, he was unable in conscience to claim it and was convicted.

While the parent in Jones was not willing to apply to the Board for a legislative exemption, he was willing to apply to the Court for a constitutional exemption. Even here there is an element of conformity in the pursuit of nonconformity. In claiming a constitutional right, there is both nonconformity to the norm said to violate the constitution, and conformity to the constitutional norm. So the Amish, for instance, will generally not bring constitutional challenges in the courts, because to do so amounts to participation in an adversarial procedure which they reject.85

So where the state permits nonconformity by providing for exemptions, for Anabaptists to claim that exemption represents a kind of conformity. These examples illustrate the fact that the conformity involved in claiming a right to nonconformity is not a wholly trivial matter. It is a kind of conformity that some are unwilling to perform.

84 at 310.
The characterization of what the state has done in providing for conscientious objection is equally ambiguous. It is not as though the state now agrees with Anabaptists that military service should not be required. The state has not adopted the Anabaptist norm. Instead, it has merely exempted the Anabaptist, and by so doing created a space in the wider society in which Anabaptists do not have to fear imprisonment for following this particular norm. It is not as though the state has cooperated because it agrees with the Anabaptist norm.

3. Interests not captured by the distinction between conformity and nonconformity

There are also aspects of the Anabaptist response to the state that go beyond questions of conformity and nonconformity. An example is the reaction of the Amish and some conservative Mennonites to the introduction of the Canada Pension Plan.

The Amish wanted to be exempt from the Canada Pension Plan. One might surmise that they disagreed with the underlying normative commitment it represented. Yet this is not so. The Amish agreed that the elderly, widows and orphans should be cared for. In fact, they already had systems in place to achieve this purpose. The Amish wanted an exemption not because they disagreed with the norm, but because they wanted to administer it themselves. They argued that they could not delegate this responsibility to the government. It would weaken community bonds to do so.86 The Amish had been historically opposed to all forms of insurance for this reason.87

We see the social security programs as a direct threat to our religion. To be forced to accept such programs is to be compelled to substitute a government welfare program for a church centered program. We fear that

86 Jamzen, Limits on Liberty, supra note 33, at 248.
87 Ibid., at 253.
such publicly sponsored programs will over a period of time, divert the loyalties of our people away from the church and toward dependence upon government. 88

The government initially responded that the Amish could simply refuse to accept the benefits, or accept them and turn them over to the church. Yet for the Amish, this missed the point. They considered that they should depend on each other, not on the government, for care. To have the right to the government’s care would mean that they would no longer, in fact, be depending on each other. Their dependence on each other within the community would no longer have an air of reality. They would no longer have the same kind of stakes in their community relations.

On the surface, it appears that the Amish were objecting to the state’s norms. Yet this is not exactly the case. The Amish agreed with the norm underlying the Canada Pension Plan. They agreed that the elderly, widows and orphans ought to be cared for. The Amish, therefore, were acting to protect an interest which is not captured by testing state norms for conformity with Anabaptist norms. That interest is an interest in autonomy, the implications of which we will explore further below.

B. Evaluating the conformity of Anabaptist practices with liberal norms

We have seen that the model by which Anabaptists relate to the state by testing state norms for conformity to Anabaptist norms is incomplete. It does not account for all of the interests pursued by Anabaptists in relation to the state. Furthermore, there is a dynamic relationship between conformity and nonconformity that is not captured by supposing that it is possible simply to choose one or the other.

88 Ibid., at 256.
Turning to the point of view of the state, we can test the equivalent model. Let us suppose that the state judges its response to Anabaptists norms and practices by testing their conformity to state norms. The state could ask, for instance, whether those claims and practices are in conformity with liberalism. If so, the interests of church and state would be mutually supportive. Otherwise, they would clash.

The difficulties with this picture of the matter are comparable to the difficulties we have just considered from the Anabaptist point of view. Considerable conceptual confusion can be found in typical attempts to evaluate Anabaptist claims and practices for conformity to liberalism. It is not as though Anabaptist norms are never illiberal, but charges of illiberality are often misplaced and confused. This suggests that evaluating Anabaptist claims for conformity with liberalism is not a full account of the interests pursued by the state in relating to Anabaptists. It is, in fact, harder than one might think to find clear examples of cases where the state has determined its response to Anabaptist claims on the basis of whether they conform with liberalism. For the state, as well as for Anabaptists, additional interests come into play that need to be accounted for.

1. Confusion in the liberal evaluation of Anabaptist claims

There is no doubt that some Anabaptist claims and practices are quite properly judged to be illiberal. It used to be the case that many Mennonite groups did not permit women to take leadership roles in the church, and some groups still follow this practice. Hutterite colonies do not allow women members to vote in colony meetings. So the evaluation of Anabaptist practices for their consistency with liberalism is by no means to be considered futile.
Yet it is common for liberal critics to misunderstand the practices they criticize. Hutterite property law is criticized as interfering with the re-evaluation of normative commitments. Amish education law is criticized as inhibiting the acquisition of normative commitments. In each case, the confusion concerns the relationship between communities and individuals. The criticisms deny normative authority to the community. In doing so, liberal critics do not answer the question of the coexistence of normative communities. Instead, they would simply deny the normative significance of Anabaptist communities.

a. Re-evaluating normative commitments

A core theme of liberalism is that conceptions of the good must be revisable, that they must remain open to re-evaluation. Our interest is in actually living the good life, not what we might currently think it is. Furthermore, this must be done with authenticity. We must lead our lives from the inside. Even if it were possible to force a person to live according to the good life, this would not make that person’s life more valuable. The choice to live that way must be freely made.

At this level of generality, Anabaptists can readily agree. Anabaptists understand that conceptions of the good are limited and finite, and always need to be open to re-evaluation. There is much in our nature that tends towards sin and destruction, rather than the good life. Thus considerable effort in revising our thoughts and actions is necessary simply to remain faithful to the conception of the good life which we have, let alone develop a better one.

90 Ibid., at 12-13.
Anabaptists understand that God has given humans free will so that an authentic choice to follow God’s ways is possible. The 16th century Anabaptists pioneered the view that church membership should be a choice freely made by adults. It was the Catholics and Protestants who used violence against the Anabaptists to try to make them change their ways, not vice versa. In modern times the Anabaptist commitment to pacifism continues to be an expression of the need for others to freely choose their ways of life.

Yet liberals often criticize Anabaptist groups for denying to their adherents the ability to re-evaluate conceptions of the good. A case in point is the question of distributing the assets of Hutterite colonies to those who leave the colony.

Hutterite colonies hold property in common for the benefit of the entire colony. When a colony member leaves the colony, either voluntarily or due to expulsion, they are not entitled to any of the assets of the colony. The legal implementation of this norm was tested in Hofer v. Hofer.\(^1\) A group of Hutterites joined a non-Hutterite church, and were for this reason expelled from the colony. The dissidents claimed an entitlement to a share of the colony’s assets. That claim was ultimately denied.

Is the denial of a share of the colony’s assets to dissidents who leave the colony consistent with liberalism? The dissenting judge in the Supreme Court thought not. He held that freedom of religion “includes the right for each individual to change his religion at will.”\(^2\) Will Kymlicka makes a similar argument.

People should be free, not just to act in accordance with their current religious beliefs, for example, but also to question those beliefs, and to adopt

\(^2\) Ibid., at 984.
other beliefs, without being deprived of their liberties or their resources, without being penalized or discriminated against by society.\textsuperscript{93}

Yet there is a very real paradox here. For if we grant Kymlicka's second claim—that people should be able to change their religious commitments with no economic consequences—then we deny, in part, his first claim—that people should be able to "act in accordance with their current religious beliefs." The dissidents who eventually called for a distribution of the colony's assets had, at one time, made a religious commitment to the holding of property in common with the other colony members. In making that commitment, the dissidents acted on their then-current religious beliefs. Yet if the law is such that they can still call for a distribution of those assets at some later time, then no actual commitment was ever made. It is, therefore, not possible in this context to simply add the ability to freely question beliefs to the ability to act on current beliefs. The two are not wholly consistent.

This paradox is not, as is sometimes thought,\textsuperscript{94} about freedom for the individual as opposed to freedom for the community. The paradox arises even if it is only the interests of the dissidents who are considered. If the law will not recognize their commitment to the colony, then the law does not recognize their ability to act in accordance with their beliefs.

It has been said that one of the liberties chiefly prized by a normal man is the liberty to bind himself. Unless the members are free to enter into contracts of the sort set out in the Articles of Association, it is difficult to see how the Hutterian Brethren could carry on the form of religious life which they believe to be the right one.\textsuperscript{95}

Kymlicka implies that the refusal to distribute assets to dissidents is not really a matter of the normative commitments of Hutterites, but merely

\textsuperscript{93} Kymlicka, \textit{Liberalism, Community and Culture}, supra note 89, at 164.
\textsuperscript{95} \textit{Hofer v. Hofer}, supra note 91, at 963.
a device to make it difficult for people to leave. Yet this is implausible. The collective ownership of property is central to Hutterite theology. To allow a distribution of assets would mean that there was no longer a collective ownership of those assets. It would change the meaning of relationships among all Hutterites, not just the ones who wanted to leave. Weisbrod notes the same consequences in the context of distributions to those who left other utopian societies.

Not only would it weaken the bond of the community, but it would tend to defeat the religious idea of union and equality on which the community was built, for to permit withdrawal of property brought in would have had the effect of maintaining, in communities dedicated to the eradication of economic inequalities, the values and distinctions of the outside world.

In the case of Hutterites the question is not so much the inequalities of property brought in, since most Hutterite members are raised within colonies. The general point, however, is equally valid. To permit withdrawal of property would change the nature of the relations within the colony. In fact, in doing so, the law would be respecting one part of the Hutterite normative commitment without the other. It would be respecting the equality implicit in the Hutterite scheme without the requirement that the property stay within the community. The property is required to meet the commitment to care for each other's needs within the community. Resources must be built up for the care of the old, sick, or disabled. The refusal to distribute assets is, therefore, not a device to make it difficult to leave, but rather a core part of the Hutterite enterprise.

Thus the problem is not that Hutterites deny the liberal truth that we must revise our normative beliefs. Hutterites agree with that. Indeed, one part of the church's mission is to help people revise their normative beliefs.

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96 Kymlicka, Multicultural Citizenship, supra note 43, at 162.
97 Weisbrod, The Boundaries of Utopia, supra note 76, at 72.
98 Ibid., at 119-20.
The problem is that Hutterites believe that we ought to be able to make normative commitments and be held to them by our normative community. What Kymlicka's criticism misunderstands is the enterprise of being a normative community.

b. Acquiring normative commitments

Another core element of liberalism is that a liberal society must make available the tools required to form a conception of the good life. Kymlicka explains that this contributes to the liberal concern with education.

And individuals must have the cultural conditions conducive to acquiring an awareness of different views about the good life, and to acquiring an ability to intelligently examine and re-examine these views. Hence the equally traditional liberal concern for education, freedom of expression, freedom of the press, artistic freedom, etc. These liberties enable us to judge what is valuable in life by the only way we can judge such things—i.e. by exploring different aspects of our collective cultural heritage.99

Kymlicka argues that people need the social conditions that encourage deliberation about the good life, rather than mindless conformity.100 Once again, Anabaptists can agree. The church is meant to be a setting which encourages deliberation about the good life, rather than mindlessly going along with what everyone in society does. To live in Anabaptist communities is to engage in a practice of deliberation about how to live. It is not a matter of conformity to fixed practices. This is more, not less, true of conservative groups like the Amish. Such groups require more deliberation about which of the practices of the wider community to adopt and which to resist, not less.

Yet liberals often accuse Anabaptist groups of failing to provide the conditions that permit children to explore the possibilities offered by the

99 Kymlicka, Liberalism, Community and Culture, supra note 89, at 13.
100 Ibid., at 18.
outside world. For instance, Kymlicka criticizes the Amish for putting limits on the participation of children in school system:

The Amish, like the Hutterites in Canada, tried to make it difficult for their members to leave the group, albeit in a different way. They wanted to withdraw their children from school before the age of 16, so as to limit severely the extent to which the children learn about the outside world. And they too defended this by arguing that freedom of religion protects a group's freedom to live in accordance with its doctrine even if this limits the individual freedom of children.\textsuperscript{101}

The question, for Kymlicka, has the same structure as that of distributions to Hutterite dissidents. The motive for the practice is to prevent people from leaving the community. The conflicting interests are the freedom of the individual as opposed to the freedom of the group. Once again, what Kymlicka's criticism of the practice misses is the normative character of the Amish community.

The Amish believe that many of the ways of the wider society are wrong. The wider society believes that many of the ways of the Amish are wrong. How should we expect such communities who believe each other's ways to be wrong to teach their children about each other? Consider first the manner in which liberal parents will teach their children about Amish ways.

Liberal parents will, no doubt, hope that their children will grow up to have liberal views. This is not simply because they want to perpetuate the liberal community. It is because they believe they have something to offer that is of value for their children. Now liberal parents would also want to leave open to their children the freedom to become Amish. In fact, liberal parents would have to teach their children about the Amish in order to make this possibility real.

\textsuperscript{101} Kymlicka, \textit{Multicultural Citizenship}, \textit{supra} note 43, at 162.
How is this different for the Amish parent? Amish parents hope that their children grow up to adopt Amish ways. This is not simply to perpetuate the Amish community, but because the parents believe that Amish ways offer something of great value for their children. Amish parents must also leave open their children the freedom to leave the Amish community. Otherwise, the commitment to adopt Amish ways would not be made freely, as it must be. Amish parents must, therefore, teach their children about the ways of the outside world. Of course, Amish parents will let their children know that the ways of the outside world are wrong. Yet this is hardly surprising, and it is no more than the liberal parent would do in teaching liberal children about Amish ways.

If the interests of Amish parents and liberal parents are truly parallel, then why do they differ in their reaction to the public school system? There are several potential reasons. Different communities can value a different kind of education. For instance, the Amish withdrawal of children from public school before the age of 16 does not mean their education is at an end. Instead, Amish children enter a system of apprenticeship that prepares them for a variety of trades.\textsuperscript{102} In some cases, Anabaptist groups have wanted their own schools because they valued education more than the surrounding society did, not less.\textsuperscript{103}

Anabaptists groups can also have real concerns about the actual content of the public school system. Public schools are not always shining examples of liberal theory in practice. In some times and places, public schools have been used to indoctrinate children with nationalism, and hold militaristic exercises.\textsuperscript{104}

\textsuperscript{102} Wisconsin v. Yoder, 406 U.S. 205 at 223 (1972).

\textsuperscript{103} Juhnke, A People of Two Kingdoms, supra note 47, at 36.

\textsuperscript{104} Janzen, Limits on Liberty, supra note 33, at 128.
Finally, public schools do not fulfil the obligation of liberal parents to teach their children about the Amish in the same way that they fulfil the obligation of Amish parents to teach their children about liberals. No matter how fairly the public school teaches liberal children about the Amish, it keeps the liberal children in the context of the system of the wider society while doing so. If, to be truly liberal, Amish parents must expose their children to the ways of the wider society by sending them to the schools of the wider society, wouldn’t we have to say that liberal parents must expose their children to Amish ways by sending them to Amish schools? Yet no such obligation is recognized by liberal theorists.

Thus, it is quite in order for liberals to ask that the Amish expose their children to the ways of the outside world, so that they can make a free choice whether to remain Amish or join the wider society. Amish parents need to do no less in order to remain consistent with Amish beliefs. Yet there can still be good reasons for this obligation to be fulfilled through means other than participation in the public school system.

**c. Communities and individuals**

What we have seen in the discussion of liberal concerns with revisability and exposure is a misunderstanding of the normative function of Anabaptist communities. This raises fundamental questions about the nature of the relationship between individuals and communities.

Why, for liberals, do we need community or culture? Will Kymlicka is a liberal theorist with an appreciation for the importance of community and culture. Yet not only does Kymlicka tend to miss the normative dimension of some cultures, he barely acknowledges any character for a culture at all. Consider this characterization of the relations between individual judgment and an individual’s culture.
People should be able to decide what is best from within their own culture, and to integrate into their culture whatever they find admirable in other cultures.\textsuperscript{105}

What is odd about this is that the idea of culture as any kind of objective, shared reality is missing. It certainly is possible for people to integrate into their lifestyle things they admire in other cultures, but how do people integrate those things into their culture?

The character of a person's culture is not wholly up to that person. It is a shared reality. Of course, if there are things a person admires in other cultures, or things that they find deficient in their own culture, a person can try to change their culture. This can involve changing their lifestyle, and it can involve advocacy and deliberation with others who share their culture. In the end, it may well involve starting a new sub-culture along with like-minded people. In any event, integrating admirable elements into a person's culture is not something that a person can do at will.

This denial that a culture will have some definite character or identity can be found at several points in Kymlicka's analysis. Kymlicka argues that the common good of a community should be adjusted to fit the pattern of its members' just preferences. It should not be considered a substantive good defining the community's "way of life."\textsuperscript{106} Yet this again denies a normative function for the community. If the community's character is just the sum of the preferences of its members, how can the community perform a normative function for its members?

When Kymlicka considers the question of collective rights, he divides them into two categories: internal restrictions and external protections. Internal restrictions are said to be "intended to protect the group from the

\textsuperscript{105} Kymlicka, \textit{Multicultural Citizenship, supra} note 43, at 104-5.

\textsuperscript{106} Kymlicka, \textit{Liberalism, Community and Culture, supra} note 89, at 77.
destabilizing impact of internal dissent" while external protections are "intended to protect the group from the impact of external decisions." There is no doubt that communities can seek internal restrictions and external protections as Kymlicka defines them. However, these are not exhaustive categories for normative communities. It is a part of the normal function of normative communities to collectively set normative standards for their members. It is not necessarily a matter of controlling dissent or of protecting from external control. It is simply what normative communities do.

But why, the liberal might ask, should communities have a normative function with respect to their members? Even granted that Anabaptist communities are voluntarily formed for that purpose, why is that purpose a laudable one? For Anabaptists, one part of the answer is that God's will is found in community deliberation, rather than purely individual judgment. Another is that living according to God's will requires community relations of discernment, admonishment, and encouragement.

Kymlicka does acknowledge the problem that individuals need "social confirmation" of their insights about the good.

To put it melodramatically, the tragedy of the human situation is that we do indeed think of ourselves as morally sovereign—we alone can make these judgments of value, others can't make them for us. But at the same time we can't believe in our judgments unless someone else confirms them for us. No one's life goes well if led according to values she's chosen but doesn't really believe in, and the confirmation of others is needed for firm belief.

Yet Kymlicka presents this problem as a purely psychological one, a question of self-respect. For Anabaptists, the social implications of deliberating about the good life go deeper than the psychological. God's will is found, and lived, in community, not alone. This does not eliminate all

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107 Kymlicka, Multicultural Citizenship, supra note 43, at 35.
108 Kymlicka, Liberalism, Community and Culture, supra note 89, at 61.
room for individual deliberation. Individuals need to deliberate for themselves which community to belong to. There are many varieties of Anabaptist belief closely related to each other. Juhnke notes that even amongst the Mennonites who emigrated from Russia to Kansas, there were five distinct groups. Dissidents from one group would often join another. The three main groups each established colleges within a 20 mile radius.\textsuperscript{109} The Hutterites have three distinct conferences with practices that differ. The Amish have many districts, each of which has different understandings.

Individuals also participate in group deliberation concerning the character of the community. An individual who dissents from the community’s norms has several choices. He can attempt to change the community’s understanding of its normative commitments. This may succeed or fail. If the dissident fails, he may conclude that he was wrong, or wait for a further opportunity. Otherwise, he may join a different group, or attempt to start a new one with like-minded persons.

Thus recognition of the normative authority exercised by Anabaptist communities need not come at the expense of the freedoms valued by liberals. To suppose that the important question is to limit the community’s authority for the sake of individual freedom misses the true nature of the problem—the relations between the community’s authority and the authority of the state.

2. \textbf{Liberalism does not account for the state’s actions}

If liberal critics of Anabaptist claims and practices miss the real question presented by their relation to state authority, we might expect that the state would make the same set of mistakes. Yet the state’s response to Anabaptist claims is not always confined to the considerations put forward

\textsuperscript{109} Juhnke, \textit{A People of Two Kingdoms}, \textit{supra} note 47, at 22-23.
by liberal theorists. Consider the examples given earlier of Anabaptist practices criticized by liberals. The state has enforced Hutterite property law, and denied a distribution of assets to dissidents. The state has allowed the Amish to remove their children from schools before the age of 16. Each of these Anabaptist claims has been allowed by the state despite the arguments of liberal critics.

It is true that the state has sometimes offered resistance to Anabaptist claims on grounds that at first glance appear to be liberal grounds. Yet a closer examination shows that there were other considerations at stake as well. For instance, when the Amish request for exemption from the Canada Pension Plan was initially refused, one reason offered was that the plan was meant to be universal. Yet the question of universality was not merely theoretical in its application to the Amish. It was a live political issue in general when the Canada Pension Plan was introduced. The insurance industry did not want the plan to provide for employer contributions, leaving employer provided pensions to be administered by the private sector. However, this would have left undesirable gaps in the system. To give the Amish an immediate exemption would have weakened the general case for universality. However, once the general question of universality was settled, it became possible to give the Amish an exemption, and it was eventually granted. Therefore, the universality of the Canada Pension Plan was a specific political goal in the context of the wider community, not a theoretical test to be applied to the Amish request.

110 T. D. Regehr, "Relations between the Old Order Amish and the State in Canada" (1995) 69 M.Q.R. 151 at 165.

111 Janzen, Limits on Liberty, supra note 33, at 264-69.
Another example can be found in objections to the accommodations required by certain Anabaptist groups in relation to land tenure. Mennonites and Hutterites who immigrated to Canada in the 1870s wanted to settle in groups, with contiguous ownership of land. Their form of life required close interaction and co-operation, which contiguous land ownership facilitated. This required certain accommodations from the state. The homestead method of land settlement on the prairies did not make provision for reserving land for particular groups of people. Furthermore, odd numbered sections were often granted to the railways, for sale rather than homesteading.

One could characterize the homestead system as being "more individualistic" than the preferred Mennonite pattern of settlement. Yet the particular complaints offered against Mennonite settlement practices were not based on individualism. For instance, English settlers who had settled in areas adjacent to blocks of land set aside for Mennonites complained that they would now be too few in number to be able to establish viable schools and churches for themselves. Some immigrants from Ontario who had settled near the Mennonite reserves complained that the reserves deprived them of the possibility of a "Canadian neighbourhood." A critic of the Hutterites complained of being "deprived of

112 Ibid., at 17.
113 Ibid., at 19.
115 Janzen, Limits on Liberty, supra note 33, at 19.
116 Janzen, Limits on Liberty, supra note 33, at 22. Ens, Subjects or Citizens, supra note 49, at 89.
117 Ens, Subjects or Citizens?, supra note 49, at 27.
certain rights, such as community life, by the encroachment of Hutterite colonies."\textsuperscript{118}

The interest expressed by the neighbours of the Anabaptist settlers was the interest in being able to act communally—to have sufficient people in an area who are willing to create social institutions together. Thus the other settlers were objecting to the reserves for precisely the same reason that the Mennonites and Hutterites wanted the reserves. The interests were exactly the same.

A third example is the state’s response to the preference of Anabaptist groups for particular forms of education for their children. Conflict with respect to education often occurred at the point when the state wished to consolidate smaller rural schools into larger consolidated schools. It was often the case that the Anabaptist groups preferred to keep the smaller schools. The interest protected by the state in this context was not so much the interest in the liberal education of the Anabaptist children, but the more pragmatic interest in having the resources available so that consolidated schools could be established for those who did want them.

Many were concerned that, without Old Order Amish enrollments and tax support, there would not be sufficient funding for the construction of the larger consolidated schools with appropriate laboratory, library and physical education facilities.\textsuperscript{119}

When Alberta established larger school districts in the 1930s, the Hutterites agreed to pay capital costs so that their smaller schools would cost no more to operate than the larger schools.\textsuperscript{120} A similar pattern

\textsuperscript{118}Janzen, \textit{Limits on Liberty}, supra note 33, at 62.

\textsuperscript{119}Regehr, "Relations between the Old Order Amish and the State in Canada," \textit{supra} note 110, at 173.

\textsuperscript{120}Janzen, \textit{Limits on Liberty}, \textit{supra} note 33, at 147-8.
occurred in Saskatchewan in 1952,\textsuperscript{121} and with respect to the Amish in Ontario.\textsuperscript{122}

Thus it appears that the state responds to Anabaptist claims on the basis of interests that are not captured by an evaluation of those claims for their conformity with liberalism. Other considerations appear to have been more important. In our three examples, the key consideration appears to have been the effect of the Anabaptist claims on the interests of the wider community. Could the Amish be exempted from the Canada Pension Plan without threatening the universality of the plan for others? Could blocks of land be reserved to facilitate the establishment of Mennonite and Hutterite communities without threatening the ability of their neighbours to establish their own social institutions? Could the Amish and the Hutterites be educated in a manner acceptable to them while resources were provided to fulfill the educational preferences of others? Each of these questions focuses on the problem of fair relations between communities, not on the conformity of community practices to liberalism.

\textbf{C. A more complex framework}

The question developed in the first part of this discussion was: how can sovereign authorities coexist without agreement on the basis for each other's authority? We have now explored the idea that Anabaptists and the state regulate their coexistence by testing the norms of the other for conformity with their own norms. We have found that this is an inadequate picture. The interaction between conformity and nonconformity is too dynamic to account for the interests pursued by Anabaptists. The evaluation of Anabaptist norms for conformity with liberalism appears, in

\textsuperscript{121} \textit{Ibid.}, at 159.
\textsuperscript{122} Regehr, "Relations between the Old Order Amish and the State in Canada," \textit{supra} note 110 at 173.
practice, to do more to deny the normative authority of Anabaptist groups than regulate its interaction with the state. In any event, it appears that Anabaptists and the state both pursue interests that are not captured by the question of conformity and nonconformity.

What is needed, therefore, is an elaboration of a more complex framework of interests, on the part of Anabaptists and the state, which operate to regulate the coexistence of their claims to sovereign authority. That is the subject of the final part of this discussion.
IV. Shared spaces for the coexistence of sovereignty

Law is a force, like gravity, through which our worlds exercise an influence upon one another, a force that affects the course of these worlds through normative space. And law is that which holds our reality apart from our visions and rescues us from the eschatology that is the collision in this material social world of the constructions of our minds.\(^\text{123}\)

Thus far we have arrived at a more and more detailed understanding of the problem of relations between Anabaptists and the state. Anabaptists and the state both seek to exercise forms of authority over the same subject-matter. The authority claimed by Anabaptists is a law-making authority, as is the state’s. Neither considers its authority to be derived from the authority of the other. Each is, in that sense, claiming a sovereign authority.

How, then, are two such sovereign authorities to coexist? We do know something about the coexistence of sovereign authorities. Federalism, for instance, divides authority between two levels of government, neither of which is derived from the authority of the other. Yet in federalism, there is at least an attempt at dividing the subject matter over which authority is exercised. Furthermore, in federalism, the two levels of government agree, as Rawls might put it, on a political conception of justice. While the authority claimed by each is not thought to be derived from the other, it is derived from a shared understanding.

Yet we have seen that Anabaptists and the state cannot be expected to share a common understanding of the political conception of justice. Anabaptists set their aim on the Kingdom of God. Their understanding of that Kingdom, with its requirement to love enemies, turn the other cheek and go the extra mile, will inevitably seem like foolishness in the eyes of a political conception of justice whose job it is, amongst others, to justify the application of violent force.

\(^{123}\) Cover, "Nomos and Narrative," supra note 74, at 9-10.
So if Anabaptists cannot affirm a common political conception of justice with the state, then the question is how these coexisting sovereign authorities can nevertheless manage their relations. From the abstract, we turned to the particular. Perhaps relations between Anabaptists and the state are structured not by a shared commitment to certain abstract conceptions, but by testing particular norms held by the other for conformity with their own norms. Yet the application of this model failed to account for the dynamic relationship of Anabaptists and the state, turning nonconformity into conformity and vice versa. Furthermore, there were interests seemingly pursued on both sides that were not captured by a choice between conformity and nonconformity.

So we now have at least a picture of the kind of theory we require to account for relations between Anabaptists and the state. It cannot require a fully shared basic understanding. It cannot be limited to the evaluation of conformity with particular norms. It must identify, and explain the interaction of, a wider set of interests in the relations between Anabaptists and the state.

The first step is to define the interests pursued by Anabaptists in their relations with the state. There are four such distinct interests: faithfulness, autonomy, transformation, and the creation of shared spaces. These interests are not wholly consistent with each other. For this reason, differing opinions about the priority of the interests can help explain the differing reactions by Anabaptist groups to the same issues in relations with the state.

Turning to the interests pursued by the state, we find that they can be specified in a manner comparable to those pursued by Anabaptists. Furthermore, the pursuit of these interests by the state is not wholly consistent with the pursuit of comparable interests by Anabaptists. The
reconciliation of Anabaptist autonomy and state autonomy presents particular difficulties, since the tools necessary to protect the one tend to conflict with the tools needed to protect the other.

Yet it is also possible to construct, within the state's self-image, a commitment to the protection of the autonomy of groups like the Anabaptists. By doing so, loyalty to the state and loyalty to the group can be made to coexist. By providing facilities for the exercise of a group's autonomy, the state can ensure that the impulse to protect autonomy is channeled within the state's system, rather than outside of it. In this way, shared spaces can be created for the reconciliation of the group's autonomy and the state's autonomy. These shared spaces encompass resource sharing and authority sharing, and have constitutional and social implications as well. A kind of balance is created in each context where state autonomy and Anabaptist autonomy can be mutually supportive.

Yet the opportunities for Anabaptist interests and state interests to be mutually supportive does not necessarily mean that the interactions will always be successful. It is not a matter of applying a fixed formula or constructing a set of institutions that will meet every case. Instead, it is a matter of discerning dangers and opportunities in each situation. The relationship of Anabaptists and the state is, in this sense, relentlessly historical.

A. Four distinct interests

Let us begin with the interests of Anabaptists in relations with the state. It is possible to identify four distinct interests: faithfulness, autonomy, transformation, and space sharing. Anabaptists have an interest in being faithful to their own law. They also have an interest in being autonomous, in being the kind of community that can continue to generate,
modify and administer its own law. Anabaptists have an interest in transforming the wider society in a redemptive fashion. Finally, Anabaptists have an interest in sharing spaces with the wider community—creating opportunities to function in the wider community while remaining faithful to their own law.

What, precisely, are the distinctions between these four interests? Consider the example of conscientious objection to military service. When relating to the state in the context of this norm, the pursuit of each of the four interests by Anabaptists can be seen.

Anabaptist communities are faithful when they perform the norms to which they have committed themselves, when they live under their own law. So in the context of conscientious objection, Anabaptists are faithful when they refuse to perform military service. This refusal can either be permitted or forbidden by the state. If it is forbidden, then faithfulness may well mean going to jail.

Thus when Anabaptists seek legislative or constitutional exemptions from military service, they are pursuing an interest which is distinct from the interest in being faithful. Faithfulness is possible without an exemption. What an exemption adds to faithfulness is that it protects the ability of Anabaptists to participate in the wider society while remaining faithful to their own laws. By seeking exemptions, Anabaptists are seeking a form of recognition of their norms by the wider community. They seek to create a shared space.

This interest in shared spaces is still yet distinct from the interest in transforming the wider society. One role of the church, for Anabaptists, is to act as a transforming presence: "It is nothing else than the community of
reconciliation through which God's love is penetrating human history.\footnote{124} Yet, in pursuing an exemption from military service, Anabaptists only assert that they may not participate in war. They do not, in seeking an exemption, attempt to transform the state to the view that it, too, should not make war.

In fact, the state may sometimes permit an exemption while resisting efforts at transformation. For instance, the Canadian military censor made the following distinction with respect to certain Mennonite publications in World War I:

While the laws of this country concede certain well defined rights to those who conscientiously object to military service, they provide clear and distinct punishment for those who would appeal to those who are not conscientious objectors to become so at this particular crisis in the country's affairs.\footnote{125}

So the creation of shared spaces is distinct from an interest in redemptive transformation. It is also distinct from the Anabaptist interest in autonomy with respect to their norms. Autonomy is a kind of second-order interest. It is the interest in the administration of norms, as well as their change and evolution. The distinction is something like Hart's distinction between primary rules and secondary rules. Primary rules are those which impose duties and obligations. Secondary rules have to do with the creation, administration and revision of primary rules.\footnote{126} Anabaptists do not only have an interest in being faithful to their primary rules. They also have an interest in the continuing ability to create, revise and administer them.

In the context of conscientious objection, autonomy can be illustrated by asking who administers the norm. At one time, the eligibility of a person for military exemption was determined by a certificate issued by church

\footnote{124}{Kaufman, Nonresistance and Responsibility, supra note 1, at 51.}
\footnote{125}{Ens, Subjects or Citizens?, supra note 49, at 187.}
\footnote{126}{Hart, The Concept of Law, supra note 10, at 79.}
authorities. This was eventually changed so that a government board would determine eligibility. The Anabaptist norm was still recognized by the government, but the administration of the norm was now in the government's hands.

The distinctions between the four interests pursued by Anabaptists in relation to the state can be further illustrated by considering the different choices made by various Anabaptist groups in responding to the same questions. It is often the case that these differences can be understood in terms of the priority assigned to one or another of the interests in the particular circumstances.

The Amish resistance to the Canada Pension Plan illustrates the distinction between faithfulness and autonomy. The Amish could have been faithful to their norm of providing for each other by participating in the Canada Pension Plan. After all, faithfulness to that norm was the point of the Plan. The Amish norm and the norm implemented by the Plan were not different. Yet the Amish sought the administration of their norm. This protects an interest in autonomy. It is, in effect, the same interest that drives the government of Quebec to administer the Quebec Pension Plan instead of participating in the Canada Pension Plan.

Yet it is not only the Amish rejection of the Plan that requires an explanation. The acceptance of the Plan by most Mennonite groups also needs to be accounted for. That acceptance represents an attempt to share resources with the wider community in order to be faithful to the shared norm. Thus the difference between the Amish and the Mennonites is that

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128 Janzen, Limits on Liberty, supra note 33, at 209.
the Amish focused on a threat to their autonomy, while the Mennonites saw an opportunity to create a shared space.

The distinction between autonomy and shared spaces also explains the difference between those who sought separate schools and those willing to send children to public schools. The former focused on the need for autonomy, the latter on the opportunity to share resources. Differences with respect to education can also illustrate the distinction between the interest in autonomy and in transformation. For instance, when some of the Mennonite settlers insisted on retaining the German language for instruction in schools, others thought that use of the English language was a good thing, for social communication and to enable Christian witness.129

The different landholding patterns of Hutterite and Mennonite immigrants in the 1870s illustrate the distinction between faithfulness and shared spaces. Mennonite settlers wanted to settle in blocks, and thus needed certain accommodations with respect to the homestead system, which granted government land to settlers. It would seem that an accommodation was needed from the government in order for the Mennonites to be faithful to their land-holding norms. Yet the Mennonites were not merely seeking to be faithful. They were seeking to be faithful while being able to take advantage of shared resources—the government land being made available under the homestead system. The Hutterites present a contrasting example. They wished to live in colonies, but purchased the required land instead of seeking to use the homestead system.130 While the purchase of land itself represents a form of participation in shared social

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129 Juhnke, A People of Two Kingdoms, supra note 47, at 36-37.
130 Janzen, Limits on Liberty, supra note 33, at 60.
institutions, the Hutterites were able to do so without seeking special accommodations to be faithful to their own norms.

An example which illustrates the distinction between transformation and autonomy is the Mennonite response to the American health care reform debate in the 1990s. The Mennonite Central Committee Washington Office argued that the government should adopt a "single-payer" model, because that would be the most effective in ensuring universal coverage. This represents an application of Mennonite normative commitments to transform the wider community. Yet at the same time, a Mennonite insurance company, Mennonite Mutual Aid, sought an exemption from any single-payer scheme so that it could continue to provide health insurance targeted specifically at Mennonites. This represents an interest in the group's autonomy. Eventually, the two groups issued a joint statement emphasizing points of agreement.\textsuperscript{131} The two groups agreed with respect to the primary normative commitment of caring for each other. They disagreed because they focused on two different interests: transformation, and autonomy.

What these examples show is that the distinction between the four interest pursued by Anabaptists makes a difference. The differing choices made by Anabaptist groups can be understood by way of the priority assigned to the four interests. The distinction, therefore, tells us something useful about the Anabaptists. We shall now explore what it tells us about the state's response to the Anabaptists.

B. The pursuit of shared spaces

What interests can we discern in the state’s response to the claims and practices of Anabaptists? It turns out that the interests pursued by the state in responding to Anabaptist claims are comparable to the interests represented by the claims themselves. Like Anabaptists, the state wishes to be faithful to its norms. Like Anabaptists, the state tries to protect its autonomy in relation to its norms. Like Anabaptists, the state pursues the transformation of other communities. Like Anabaptists, the state seeks the creation of shared spaces in which many communities can participate while being faithful to their norms.

An elaboration of these interests from the state’s point of view adds to the analysis of the problem. We have already seen how the distinct interests of Anabaptists are not wholly compatible with each other. We can now add that these interests are not wholly compatible with the state’s pursuit of its equivalent interests. Anabaptist faithfulness to Anabaptist norms is not necessarily consistent with state faithfulness to state norms. Anabaptist protection of Anabaptist autonomy is not necessarily consistent with state protection of state autonomy.

In each case, however, it is possible to achieve a certain kind of consistency. It is sometimes possible to recognize that Anabaptist norms and state norms have a kind of consistency at a higher level of abstraction. If the state defines its self-image in a way that includes protecting the autonomy of groups like the Anabaptists, then the pursuit of the state’s autonomy need not be inconsistent with the Anabaptists. This adds depth and structure to the idea of shared spaces. The purpose of shared spaces for the state is to permit various normative communities to pursue their interest in faithfulness and autonomy in the context of shared resources and institutions, rather than in opposition to each other.
1. Faithfulness

Let us begin with a consideration of the state’s faithfulness to its own norms. The laws of the state represent normative commitments that it has made and wishes to live by. In responding to Anabaptist claims, the state attempts to achieve faithfulness to its norms. So when the Amish were granted an exemption from the Canada Pension Plan, the exemption was limited to groups that have made reasonable provision for dependent members in view of their general level of living.\(^\text{132}\) This involves a kind of abstraction from the specific provisions of the state’s law to their purposes. The Amish wanted an exemption from the state’s law. The exemption was granted, but only so long as the Amish were faithful to the normative commitment which the law represented.

The American Supreme Court used a similar form of reasoning in permitting the Amish to remove their children from the formal school system before the age set by state law. The Court found that the Amish system of vocational education was consistent with the state’s interest in the education of children.\(^\text{133}\) Thus once again the state could be faithful to the more abstract meaning of its norms while allowing variation in their implementation.

Of course, in Employment Division v. Smith,\(^\text{134}\) the American Supreme Court has since moved away from this kind of analysis in freedom of religion cases. Yet that case itself contains another example of the way this logic can be applied. The concurring judgment of Justice O’Connor joined the majority in denying the claim to sacramental use of peyote, but not on the basis of the majority’s reinterpretation of freedom of religion. Instead, she

\(^{132}\) Janzen, Limits on Liberty, supra note 33, at 264.

\(^{133}\) Wisconsin v. Yoder, supra note 102, at 235-36 (1972).

\(^{134}\) 494 U.S. 872 (1990).
held that in this particular case there was insufficient convergence between the norm of the state—to control the use of drugs—and the norm of the religious community—to permit the sacramental use of peyote. Yet even here there could have been room to find some convergence, as the dissent notes that the religious community forbade the use of peyote outside of sacramental occasions.

2. Autonomy

Just as we found with the Anabaptists, the state's interests do not end with faithfulness to its norms. The state also has an interest in its continuing existence as an autonomous body, with a continuing capacity to form, revise and administer its normative commitments. The autonomy of the state and the autonomy of the church are not, in themselves, necessarily inconsistent with each other. However, the tools used to protect autonomy do carry considerable potential for conflict.

Consider the question of education. The state's concern with the education of children is partially explained by the faithfulness of the state to its normative commitments in relation to children. Yet there is another aspect to the matter. Education is also an important tool for the state to continue to be the kind of community that generates, modifies, and administers normative commitments. Since citizens are to be governed by each other, the education of citizens inevitably takes on political dimensions in a democracy.\(^{135}\)

Thus one reason the state has an interest in public education is to create an appropriate climate for self-government. Anabaptists have an equivalent interest in education—to create an appropriate climate for self-government within the church. These two interests are not always

\(^{135}\) Janzen, Limits on Liberty, supra note 33, at 113.
considered to be wholly consistent with each other. Consider this statement of the Alberta Teacher's federation, arguing against private Mennonite schools.

Education forms the background of society and conditions the manner in which governments function. An adequate system of public education is a prerequisite for a successful democracy. It is the catalyst that resolves the composite sects and racial groups in this country into Canadians.¹³⁶

This statement raises the further question of national identity. Corporate identity for a group is an important aspect of autonomy. Without a sense of solidarity and loyalty to one another, it is difficult to be the kind of community that makes normative commitments and administers them. We have argued earlier that this is true for Anabaptists, and it is also true for the nation.

Groups like the Anabaptists have sometimes been considered an obstacle to building national identity. For instance, the accommodations for Mennonite land-holding norms were criticized as being "a most serious block and impediment to the natural and righteous growth of the country."¹³⁷ Similarly, one of the reasons for the restrictive schools policy adopted in Manitoba beginning in 1915 was the need to build a new nationality.¹³⁸

The need for national identity has both tangible and intangible elements. In fact, tangible threats to national identity are often difficult to see.¹³⁹ Yet the idea of a common citizenship does not just protect tangible interests. It also protects a way of thinking about the nation, a self-image.¹³⁹

¹³⁶ Ibid., at 148.
¹³⁷ Ibid., at 49.
¹³⁸ Ibid., at 93.
¹³⁹ For instance, the Saskatchewan Deputy Minister of Education, could not see the harm done to Canadian citizenship by Mennonite schools. "Those who shout on Saskatchewan platforms about Canadian citizenship being endangered because 800 children in Saskatchewan are being educated in Mennonite schools are hysterical fools." Ibid., at 107.
Where the national self-image is considered to be inconsistent with Anabaptist identity, then there can be a kind of zero-sum contest between the tools used to pursue state autonomy and the tools used to pursue Anabaptist autonomy.

So we can expect that there are conditions under which the state will respond to Anabaptist claims in a way that minimizes the acknowledgment of Anabaptist autonomy. This does not mean that the response will be wholly negative. We saw an example of this above, where in recognizing conscientious objectors, the government moved from recognizing certificates granted by church officials to administering individual claims within state institutions. The claim was recognized, but in a way that minimized the acknowledgment of Anabaptist autonomy.

Exemptions for Anabaptist groups often minimize the acknowledgment of a continuing law-making power in the Anabaptist group. For instance, when the Canadian government amended the Canada Pension Plan to exempt the Amish, the amendment was made to apply only to existing groups. This followed the pattern set by the American legislative exemption from Social Security, which applies only to groups that had been in continuous existence since 1950. Similarly, when the American Supreme Court permitted an exemption from education laws for the Amish, it emphasized that the Amish had not recently invented their norms regarding education.

It cannot be overemphasized that we are not dealing with a way of life and mode of education by a group claiming to have recently discovered some "progressive" or more enlightened process for rearing children for modern life.\footnote{Wisconsin \textit{v.} Yoder, supra note 102, at 235 (1972).}

\footnote{Ibid., at 264.}
Thus even where the state permits the exercise of autonomy by a group, it sometimes attempts to minimize the force of that autonomy. In fact, the state sometimes feels the need to assert its autonomy symbolically even when it is patently ineffective. For instance, some Doukhobors refused even to register for conscientious objector status in Word War II.\textsuperscript{142} There was a plan to enforce the registration laws against them, but it was vetoed by Cabinet as being pointless, since aside from not registering, the Doukhobors were engaged in the work they would have been assigned in any event.\textsuperscript{143} Yet to bring the Doukhobors within the administration of state law, officials granted them mass exemptions without applications having been made.\textsuperscript{144}

So there are conditions under which the pursuit of autonomy by Anabaptists and the state can clash. The tools used to promote Anabaptist autonomy, and the acknowledgment of Anabaptist autonomy, can be considered to interfere with the tools used to promote state autonomy, and the acknowledgment of state autonomy.

3. \textit{Shared spaces}

One conclusion that can be drawn from the discussion so far is that there is nothing inevitable about good relations between Anabaptists and the state. When the issue is faithfulness to the norms of Anabaptists and the state, it may be possible to see a kind of consistency between the norms at an abstract level, but then again it may not. When the issue is the autonomy of Anabaptists and the state, there are ways of constructing a national self-image that make it difficult to pursue both the state's autonomy and the autonomy of Anabaptists.

\textsuperscript{142} Janzen, \textit{Limits on Liberty}, supra note 33, at 230-34.
\textsuperscript{143} \textit{Ibid.}, at 237-238.
\textsuperscript{144} \textit{Ibid.}, at 239-40.
However, it is also possible to articulate a national self-image that permits a kind of convergence between the autonomy of the state and the autonomy of groups within the state. This can be so where the state undertakes the task of protecting the autonomy of groups like the Anabaptists. Consider this vision of the role of a constitution in relation to culture:

There is no irreconcilable conflict between allegiance to the constitution and one's culture or cultures, for the constitution and its public institutions and traditions of interpretation are the protectors, rather than the destroyers, of the cultures and rights of the members.\textsuperscript{145}

The example of the Amish administration of social security takes on a new dimension in this context. While the Amish pursuit of autonomy prevents them from sharing a national identity built on common social programs, the fact that the state allows them to administer their own social programs contributes to another sense of national identity, one in which the nation itself protects the autonomy of the Amish. While allowing the Amish to manage their own social security in one sense weakens their bond with the state, in other sense it strengthens it, by allowing the Amish to identify with the state that permits them the liberties they seek.

Thus the state can reconcile Anabaptist autonomy with state autonomy by constructing shared spaces in which Anabaptist autonomy can be exercised in the context of the state system. The state can provide tools for the exercise of the group's autonomy. Such tools facilitate the group's autonomy, but also that of the state, since the group's autonomy is exercised in the context of the state system. In this way, the state takes the interests of the group and directs them towards shared opportunities.

There are four forms of shared spaces that help reconcile Anabaptist autonomy with state autonomy. They are resource sharing, authority sharing, constitutional space, and social space. In each context, a kind of balance is possible between state autonomy and Anabaptist autonomy.

**a. Resource sharing**

One form of shared space constructed by the state are opportunities for resource sharing. We saw above that when the state considered Amish and Hutterite preferences with respect to education, the question was not so much whether these groups should be allowed to keep smaller schools more oriented to farming and community life. Instead, it was how to harmonize that desire with the desire of others for a broader education, which requires the use of shared resources.

Resource sharing is thus a kind of moral imperative within the state system. Rawls puts it this way:

>*Reasonable persons, we say, are not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept.*

So when the Amish or the Hutterites do not want to fully cooperate in the public school system, the state extracts a kind of compensation from them. It requires them to contribute to the shared resource even where they are unwilling to take full advantage of that resource. This creates a balance between the state’s autonomy and the group’s autonomy. The group can protect its own autonomy by refusing to participate where it feels that its autonomy would be threatened. Yet the state still obtains the resources it needs to administer its own programs.

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146 Rawls, *Political Liberalism*, supra note 30, at 50

147 The balance depends on a fair allocation of the costs of a refusal to participate. For example, we saw above that the Hutterites and Amish agreed to pay for the capital costs of their smaller schools, while the provinces agreed to pay for operating costs.
b. Authority sharing

The state also constructs space in which authority can be shared between Anabaptists and the state. This includes facilities such as contract law and corporate law. These areas of law do not so much impose the normative commitments of the state as they provide a toolkit for the construction of normative commitments.

Instead, they provide individuals with facilities for realizing their wishes, by conferring legal powers upon them to create, by certain specified procedures and subject to certain conditions, structures of rights and duties within the coercive framework of the law.\footnote{Hart, \textit{The Concept of Law}, supra note 10, at 27.}

In providing these facilities, the state is not necessarily fully sympathetic to the uses to which those facilities are put. Weisbrod makes this observation in relation to the American utopian communities:

The communities developed in an environment that was entirely prepared to receive them, not because there was approval of specific programs, but because the environment contained ideas of social and individual freedom that permitted growth of collective forms.\footnote{Weisbrod, \textit{The Boundaries of Utopia}, supra note 76, at 12.}

By making use of these facilities, groups enlist the state's support in the exercise of the community's autonomy.\footnote{Cover, "Nomos and Narrative," \textit{supra} note 74, at 30.} The Hutterites use these facilities in a prominent manner. They have structured their social relations in terms recognizable to contract, trust and corporate law. As Weisbrod says of similar utopian communities, they "validated by the law of the state a legal status simultaneously conforming to their beliefs about themselves and conformable to the legal categories of the outside system."\footnote{Weisbrod, \textit{The Boundaries of Utopia}, supra note 76, at xvi.}

This form of shared space again creates a kind of balance between the state's autonomy and the group's autonomy. The purpose of contract, trust and corporate law is to permit the exercise of autonomy. Yet that exercise is
structured within the institutions of the state, and subject to certain limits, rather than being entirely outside of the state system.

**c. Constitutional space**

The constitution provides another kind of balance between Anabaptist autonomy and state autonomy. By protecting freedom of religion, the constitution gives Anabaptists a kind of authority. However, it does so in the context of authority granted to the state as well. The constitution protects both.

This is not to say that the actual application of the constitution in every case will be satisfactory to Anabaptists. Indeed, it will not. However, the significance of shared constitutional space goes beyond the tangible, legal use of the constitution. Anabaptists groups do not merely use constitutional rights. They form part of their image of what it means to be part of the nation. The constitution has a symbolic function as well as a pragmatic function. It is identity-forming.

Anabaptists sometimes prefer an identity grounded in constitutional rights rather than more specific forms of shared authority. For instance, when Russian Mennonites were considering immigration to Canada or the United States in the 1870s, Canada was prepared to make specific promises respecting matters of importance to the Mennonites—military exemption, schools, land holding, etc. The United States was not willing to make such promises, yet many Mennonites chose the US in any event. One explanation is that the land available in the US was cheaper and better. Yet the Mennonites also were impressed by the US guarantee of freedom of conscience.

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The symbolism of the constitution can work for Anabaptists because it allows both for distinctiveness and inclusion. For instance, in the Virginia flag controversy, one Mennonite leader took the position that while saluting the flag was prohibited due to its military connotations, the pledge of allegiance was permitted, since it showed loyalty to the constitution which protects religious freedom. The explanation of this distinction within the logic of Mennonite norms must not have been wholly convincing, since not all Mennonites were willing to agree with it. Yet the ability to make such a distinction was itself valuable, whatever the internal strength of the explanation offered for it. To allow one form of respect and enjoin another gave the message both of distinctiveness and of belonging.

This symbolic use of the constitution has affective elements. In World War I, Mennonites expressed a kind of affection for the protection offered by the American constitution.

Conference leaders hope that by portraying themselves as weary, homeless wanderers who had finally discovered a “beloved” country, they would receive sympathetic treatment.

This is further illustrated in a study of the rhetoric of American Mennonites in seeking a military exemption during World War I. The Mennonites appealed to the American constitution, but only within the Mennonite community, not without. To question democratic choice in time of war was dangerous. Thus the constitution here had a symbolic value for Mennonites, even where it was thought prudent not to appeal to it overtly.

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155 Ibid., at 188.
157 Ibid., at 298.
The creation of constitutional space is, therefore, capable of building national identity within Anabaptist groups. The constitutional protection of Anabaptist groups can also be identity-forming for outsiders. The Amish, for instance, do not litigate constitutional questions (though they do seek legislative accommodations and will use the constitution to support those efforts). Yet outsiders have sometimes undertaken litigation on behalf of the Amish. This suggests that these outsiders define their identity in terms that supports Amish autonomy.

In addition to these semi-outsiders with a direct affinity to the Amish, other outsiders derive philosophical satisfaction from the survival of Amish society.\(^{158}\)

The American Supreme Court echoes this view of the Amish in Wisconsin v. Yoder: “Even their idiosyncratic separateness exemplifies the diversity we profess to admire and encourage.”\(^{159}\)

Thus the constitution does not merely balance Anabaptist autonomy and state autonomy by tangibly providing for both. Indeed, it will necessarily do so imperfectly. Yet it still structures the exercise of Anabaptist autonomy in a way that can increase, rather than diminish, national identity, both for Anabaptists and for others.

### d. Shared citizenship

When we say ... that not only are citizens normal and fully cooperating members of society, but further they want to be, and to be recognized as, such members, we are saying that they want to realize in their persons, and have it recognized that they realize, that ideal of citizens.\(^{160}\)

One way of summing up the opportunities created by shared resources, shared authority, and constitutional space, is that they allow for a shared citizenship in which Anabaptists can be good Anabaptists and


\(^{159}\) Wisconsin v. Yoder, supra note 102, at 225-26.

\(^{160}\) Rawls, Political Liberalism, supra note 30, at 84.
good citizens. Anabaptists are not merely interested in the protection of their autonomy, but also in being acknowledged as deserving participants in a shared social identity.

For instance, in the Virginia flag-salute controversy, the Mennonites were not only interested in the right to attend schools without saluting the flag. They also wished to show that they could be acceptable as Americans despite this refusal. In this sense, the dispute was as much about the social definition of citizenship as about legal rights.

Religious and legal justifications took a back seat as Mennonite apologists fashioned a vigorous rejoinder arguing that Mennonites were Americans, good Americans—indeed, better Americans than most who saluted the flags. It was on the ground of civic loyalty, more than the ground of constitutionality, that non-saluting Mennonites endeavored to make their stand.161

The Virginia Mennonites did not attempt to persuade others that they, too, should refuse to salute the flag. In this sense, they did not seek the transformation of the surrounding society. Yet they asked for more than a mere preservation of their own norm and their own autonomy. They asked to be accepted as good Americans despite their refusal to salute.

The Mennonites wanted exemption, not transformation; civil acceptance, not religious conversion. While the threat of persecution hung heavy in their minds, the pain of reproach was more acute. Psychologically, the Mennonites yearned for affirmation: the acknowledgment by outsiders that Mennonites were indeed worthy of America.162

This included the privilege of sending children to public schools, while preserving their normative commitments.163 Yet the purpose of the claim was not merely to accomplish this specific goal. “It was the vehicle by which Mennonites could assert their claims of good citizenship, and ultimately their claim to America.”164

161 Zercher, “Between Two Kingdoms,” supra note 36, at 166.
162 Ibid., at 177.
163 Ibid., at 177.
164 Ibid., at 178.
C. Dangers and opportunities

Instead of grand theory, constitutional knowledge appears to be a humble and practical dialogue in which interlocutors from near and far exchange limited descriptions of actual cases, learning as they go along.¹⁶⁵

What does the idea of shared spaces contribute to the understanding of our question: how can there be coexisting claims to sovereign authority that do not share an understanding of the source of each other’s authority? The idea of shared spaces does not tell us that such claims will always coexist in a comfortable, productive manner. The interests of church and state which have been elaborated are more a catalog of opportunities and dangers than they are a formula for success.

One reason for this is that even where Anabaptist groups recognize their interest in shared spaces, that interest simply is not wholly compatible with the protection of Anabaptist autonomy. Choices need to be made in particular circumstances as to which of the interests has priority. Part of what goes into that choice is, no doubt, which of the interests is, in general, more highly valued by a particular group. On might safely say, for instance, that the Amish put a higher relative priority on autonomy than do the Mennonites or the Hutterites. Yet another part of that choice will have to be concerned with the context of particular circumstances. For instance, where a group feels that its autonomy is threatened, it may need to give priority to that interest rather than the interest in shared spaces. On the other hand, where a group feels its autonomy is secure, it can give more weight to other interests.

The interaction of Anabaptists and the state is, therefore, governed by a complex set of considerations applied to specific circumstances. The fact that church and state each have an interest in occupying shared spaces

¹⁶⁵ Tully, Strange Multiplicity, supra note 165, at 185.
does not mean that they will get there in every circumstance. This means that the interaction of Anabaptists and the state is relentlessly historical. It is not a matter of an idealized agreement on a focal political conception. It is a matter of the discernment of opportunities and dangers in particular historical situations.

This process of discernment can be illustrated in three contexts: the relationship between shared spaces and the autonomous life of the community, the relationship between shared spaces and the external recognition of autonomy, and the work required to create shared spaces.

1. **The autonomous life of the community**

The state’s explicit or implicit acknowledgment of a limited sphere of autonomy is understood from within the association to be the state’s accommodation to the extant reality of nomian separation. Such an acknowledgment is welcome as a preventative of suffering, but it does not create the inner world.¹⁶⁶

One danger of occupying shared spaces is that it can weaken the autonomous life of the community. This can be seen in the context of particular norms. Consider the question of social security. Where the administration of a community’s normative commitment is shared with the state, the basis for the commitment may become misunderstood within the community. That is, for instance, one thing the Amish fear about government pensions—that they may come to depend on government rather than each other. For Mennonites who do accept government pensions, it would be important to be periodically reminded that the shared institution of the Canada Pension Plan implements their own normative commitments, not merely the norms of the wider society.

It is generally true that in occupying shared spaces, the community must be careful to do so for reasons that flow from the community’s own

¹⁶⁶ Cover, “Nomos and Narrative,” *supra* note 74, at 32.
commitments. It is easy to simply adopt the viewpoint of the wider society in an attempt to fit in. This was, for instance, one danger of offering arguments for military exemption designed to appeal to the wider community.

The great danger facing those who undertook to defend the Mennonites during the war was that the defense often tended to accept the standards of American nationalism and to abandon the case for Mennonite distinctiveness in its own right. C.B. Schmidt appealed for Mennonite exemption from military service on the grounds that their agricultural production was an essential contribution to the war. Thus he put Mennonites in the position of needing nationalist excuses for obeying what they understood to be the Christian ethic.  

Another example can be found in the Virginia flag salute controversy. Some Mennonites argued that saluting the flag meant showing reverence for an inanimate object. This was meant to appeal to Protestant iconoclasm, even though it was not at the core of what Mennonites objected to.  

Participation in shared political institutions also involves both dangers and opportunities. Some Mennonites have justified participation in elections on the basis that Mennonites should be the “salt of the earth” and a “light to the world.” Yet others have worried that such participation can cause contention and divisions that threaten group identity.

We want to have good government, but we also wish not to defile our consciences with political contentions.

The use of certain shared institutions can threaten the differences which Anabaptist communities are meant to model. For instance, the Amish will not bring, or even defend, litigation. The church is meant to model different ways of settling disputes. It is thought better by some to accept suffering rather than bring disputes before the government to adjudicate.

167 Juhnke, A People of Two Kingdoms, supra note 47, at 107.
169 Juhnke, A People of Two Kingdoms, supra note 47, at 37.
170 Ibid., at 38-39.
171 Ibid., at 38.
172 Yoder, The Christian Witness to the State, supra note 3, at 17.
The Amish have their own internal processes for dealing with disputes amongst members, and these processes are used even in serious cases. Here the mere use of the authority of the state is a challenge to the order which the church is to signify.

The shared symbolism of good citizenship can also create dangers for the community’s identity. Shared conceptions of good citizenship depend on instilling a positive attitude towards Anabaptist groups in the wider society. Yet the admiration of others towards Anabaptists can sometimes be misplaced or distorted. The Amish, for instance, are sometimes admired for values that are not truly theirs.

... Amish society is protected by the tendency of outsiders to project their own values and dreams onto Amish behavior and philosophy. Such misperceptions provide a buffer of tolerance for unconventional Amish behavior because outsiders tend to romanticize the Amish as models of American virtues.

For instance, Amish resistance to some forms of modern technology is not romantic asceticism, as is sometimes thought, but rather a result of deliberation as to which forms of technology will contribute to community life and which will not.

There is, therefore, no simple abstract consistency between the autonomous life of the community and the occupation of shared spaces with the wider society. The reconciliation of those two interests is a matter of discerning the dangers and opportunities present in particular circumstances, and acting to minimize the dangers and take advantage of the opportunities.

175 Ibid., at 216-17.
2. The external recognition of autonomy

There is also no simple consistency between the external recognition of a community’s autonomy and the occupation of shared spaces. This can be illustrated both in the context of shared resources and shared authority.

The sharing of resources can lead to efforts to share control. This has been a point of tension with respect to public schools. When public funding became available for Mennonite schools in Manitoba, some Mennonite teachers, though it initially appointed Mennonites to be the examiners. In fact, the government did begin to examine the qualifications of Mennonite teachers, though it initially appointed Mennonites to be the examiners.

The sharing of authority tends to place limits on the group’s control of the administration of their norms. For instance, when the courts enforce Hutterite contracts, they do so with certain assumptions and implications that may not always fully conform to Hutterite expectations. In Lakeside Colony v. Hofer, the Court insisted on certain implied procedural requirements before it would enforce the expulsion of a member from the colony. The consequences of this interpretation for the colony in this case do not appear to have been particularly serious—the troublesome member was properly expelled in due course. Yet where the community relies on the courts to enforce its normative commitments, there is always the danger that they will be misinterpreted. By invoking the court’s administration of the contracts, limits on autonomy are acknowledged.

177 Ibid., at 63-64.
179 Weisbrod, The Boundaries of Utopia, supra note 76, at 111.
Sharing authority can also diminish the external recognition of a group's autonomy. For instance, Mennonite settlers in 1870s Manitoba established their own system of village government, before municipal institutions were established by the province. The introduction of municipal government in 1880 brought different responses amongst Mennonite groups. Some welcomed municipal government as assisting in local government, especially in enforcing tax collection. Others worried that municipal institutions would diminish the distinctiveness of Mennonite institutions.

Accepting government positions and restructuring their internal administration according to the laws of the land would so blur the distinction between them and the other nations that the government would no longer be able to recognize that they were Mennonites.

Thus groups seeking shared spaces need to be careful not only to preserve their autonomy in doing so, but also to preserve the recognition of their autonomy by others.

3. The construction of shared spaces

In the examples considered thus far, the creation of shared spaces is largely a matter for the intellect. It is a matter of noticing possibilities for converging interests, and assessing the benefits of shared spaces as against their potential dangers. There are, however, other examples where the creation of shared spaces can require considerable tangible effort.

Consider the question of the exemption from military service. There is no easy convergence at an intellectual level between the normative commitments of the state and the Anabaptists with regard to military service. The state has a normative commitment to the duty of citizens to sacrifice their safety and security in the defence of the nation. The

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180 Ens, Subjects or Citizens?, supra note 49, at 68.
181 Ibid., at 76.
Anabaptists have a normative commitment to non-violence that does not permit them to participate in this effort.

It is difficult to see how these two commitments can be reconciled at some more abstract level, so that Anabaptists can be considered (and consider themselves) to be fulfilling both their religious and civic duties. Part of the problem is that Anabaptists do genuinely share elements of the symbolism of citizenship and freedom with their fellow citizens, but Anabaptists do not share the dominant beliefs about how that freedom must be protected.

For there was a fundamental contradiction between the peculiar Mennonite distinctiveness and the demands of American nationalism. When Americans fought and died for their country, the Mennonites could not avoid looking like parasites who laid claim to extraordinary freedom at the very moment when freedom must be limited in order that it be made secure.\(^{182}\)

The desire to fulfill both sets of duties was evident at a Mennonite conference during World War I, where one of the topics on the agenda was: "In what way can we give expression to our loyalty to our country in case of war without violating our doctrine of non-resistance.\(^{183}\)

The crucial problem of Mennonites in World War I was not the physical threat of mob violence but rather the moral agony of discovering that they were not acceptable as American citizens.\(^{184}\)

One method of coping was to try to find an outlet for good citizenship that would correspond in some way with the war effort.

It was not possible for a Mennonite to survive the war with a clean conscience, for there was no way to fulfill one's responsibilities to both God and country. The community could not fully overcome the crisis of conscience without some visible means of expiation. There must be some community act which engaged the attention and efforts of the entire membership to reestablish their worth as citizens, Christians, and human beings. The political realm offered no opportunity for such a community act; there was no political instrument or institution at hand whereby an embattled minority group could assert itself by a contribution to the public welfare. The Mennonites had been politically alienated through their stand

\(^{182}\) Juhnke, A People of Two Kingdoms, supra note 47, at 109.

\(^{183}\) Ibid., at 95.

\(^{184}\) Ibid., at 106.
on the war, and the prospects for their involvement in politics had been
dimmed by their wartime difficulties with the broader political community.  

This led to the creation of Mennonite Central Committee and other
Mennonite relief organizations. The idea of service flows naturally enough
from the normative commitments of Mennonites. Yet the emerging
prominence of relief work at this time was also a kind of acculturation to the
broader community.  

World War I, as no previous war, established the right and responsibility of
nations to mobilize the energies of their entire populations and to demand
unconditional commitments and sacrifices for the achievement of national
goals.  

Benevolent enterprises became an important badge of civic identity for
Mennonites.  

The Mennonite practice of invariably referring to their benevolent enterprises
in their petitions to government confirms the suggestion that Mennonite
relief programs were essential to their civic identity. It was one method for
them to establish their right to speak to the government and to demand
special privileges.  

The Anabaptist response to conscription is, therefore, not simply a
matter of the rejection of the state's norm and the application of the
Anabaptist norm. Instead, an attempt is made to be faithful, in some sense,
to the norm of the state, by generalizing it, and constructing a means of
meeting it that is consistent with Anabaptist norms. The result is not simply
argument, but action.  

**D. The structure of the relationship**

It would be possible (and useful) to specify more and more precisely
the relationships and interactions between the interests pursued by

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185 Ibid., at 113.  
186 Ibid., at 113-15.  
187 Ibid., at 115.  
188 Ibid., at 147.
Anabaptists and the interests pursued by the state. The key points can, however, be stated shortly.

Anabaptists and the state are engaged in the same kind of enterprise, the enterprise of governing. Each pursues a comparable set of interests in that enterprise: faithfulness to its norms, protection of its autonomy, transformation of others, and the creation of and participation in shared spaces. There are techniques for sharing authority, resources, and identity which can permit the pursuit of these interests by Anabaptists and the state to be mutually supportive. However, those techniques do not eliminate the potential for conflict between these interests. The relationship, therefore, requires both Anabaptists and the state to discern dangers and opportunities in each interaction.
V. Conclusion

This discussion has pursued the question of the form of a specific relationship—the relations of Anabaptists and the modern, liberal, democratic state. The problem arises first within the particularity of Anabaptist theology. Anabaptists consider both church and state to have authority derived from God. The authority of the church is comprehensive, requires commitment, and is exercised in deliberation among its members. The church is, therefore, an enterprise of governance. Yet Anabaptists consider the state to exercise legitimate authority as well. The difference between the authority of the church and the authority of the state is a difference of understandings. The church is conscious of the demands of God’s coming kingdom, while the state is not.

The difficulty here is the nature of the distinction between the two authorities. We do not usually divide governing authority on the basis of a difference in understandings. We more often divide authority on the basis of subject matter. Freedom of religion divides authority as between the religious and the secular. Federalism gives a province authority over certain subjects and the federal government authority over others. The authority claimed by Anabaptists does not divide along these lines.

So the question is how institutions whose normative authority is divided not by subject matter, but by understandings, can relate to each other. Political liberalism provides one kind of answer—the search for a focal political conception of justice that all can affirm alongside their other understandings. Yet we saw that the difference in understandings between Anabaptists and the state is such that they cannot be expected to affirm the same political conception of justice. Another potential answer was to suppose that each institution tests the norms of the other for conformity.
with its own norms. Yet we found that this picture was inadequate to explain the dynamics of the relationship between Anabaptists and the state.

The answer turned on the identification of a more complex set of interests pursued by Anabaptists and the state. Those interests are what one might, in retrospect, expect of institutions whose authority is divided by different understandings: faithfulness to its own norms, protection of its autonomy, transformation of the other, and the construction of shared spaces. We saw how the pursuit of these interests by Anabaptists was capable of clashing with the pursuit of these interests by the state. Yet there were also opportunities for them to be mutually supportive, for the creation of shared spaces in which the interests could be balanced and a shared social identity created.

While this answer emerges from considering the particular encounter of Anabaptists and the state, it has general implications for the nature of the state. It appears that the enterprise of governing is not unique to the state. It is capable of arising spontaneously in the community, and is not limited to the familiar units of political geography. What is special to the state is the responsibility for managing the products of this spontaneous self-government. The state exists not only to provide government, but also to channel the resources of self-government to the common good. If shared spaces can be created in which the energy of Anabaptist self-government can be channeled towards the common good, what other opportunities for spontaneous self-government might be found if we but looked for them?
VI. Bibliography

A. Books and Articles


**B. Cases**


