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RELIGIOUS LAW AND NATURAL THEOLOGY: TOWARD A COMMON GOOD FOUNDATION FOR RELIGIOUS LEGISLATION

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Abstract
Taiwan has yet to enact a unified Religious Basic Law. The protection of religious freedom relies heavily on the general provisions of Article 13 of the Constitution and fragmented administrative regulations, leaving significant institutional gaps across four core issues: the positive guarantee of religious freedom, the legal autonomy of religious organizations, the constitutional framework governing church-state relations, and the demarcation of boundaries between religious activity and public order. This article invokes Adrian Vermeule's Common Good Constitutionalism (CGC) as the philosophical foundation for the legislative legitimacy of a Religious Basic Law, arguing that the enactment of such legislation is not only constitutionally necessary but demands a normative theory that transcends the negative-liberty framework of liberal constitutionalism. Drawing on the natural law tradition—represented paradigmatically by Aquinas (1947/1265–1274) and Finnis (1980)—the article reconstructs religious freedom as possessing the character of 'ontological freedom': its normative warrant lies not in the safeguarding of individual preferences, but in the institutional recognition of religion as a basic good constitutive of integral human flourishing. The article proposes the concept of 'common good separation of religion and state' as a replacement for Rawlsian neutralist models and derives five legislative principles—integral flourishing, religious autonomy, religious pluralism, transparent accountability, and common good limits—applicable to Taiwan's existing religious law regime.

Keywords: Religious Basic Law, Common Good Constitutionalism, positive duty of religious freedom, common good separation of religion and state, integral human flourishing

Religious Law and Natural Theology: Toward a Common Good Foundation for Religious Legislation

I. Introduction: Taiwan's Religious Law Deficit and the CGC Intervention

Taiwan stands among the most religiously pluralistic societies in East Asia. Buddhism, Daoism, folk religion, Christianity (both Catholic and Protestant), Islam, and hundreds of indigenous new religious movements together constitute an extraordinarily rich religious landscape. Yet confronting this vitality, Taiwan's legal system exhibits a striking normative lacuna: the nation has enacted no unified Religious Basic Law, possesses no specialized legislation systematically governing the legal status of religious juridical persons, and manages religious affairs primarily through administrative rules issued by the Ministry of the Interior, the juridical person provisions of the Civil Code, and the terse guarantee of Article 13 of the Constitution—'The people shall have freedom of religious belief' (Constitution of the Republic of China, 1947). This institutional deficit has been extensively documented in comparative perspective (Chen, 2023; International Center for Not-for-Profit Law [ICNL], 2023; Laliberté, 2023).

This institutional deficit generates cascading difficulties across four dimensions. First, at the level of positive protection, the existing regime lacks any affirmative guarantee mechanism; religious freedom has long been interpreted as a negative right of non-interference, leaving the state's positive obligation to promote the flourishing of religious life virtually unaddressed. Second, at the level of organizational legal status, religious bodies seeking juridical personality must incorporate as foundations or associations under the Civil Code—a framework ill-suited to the distinctive governance structures, property regimes, and self-regulatory norms of

religious communities, producing chronic ambiguity at the boundary between religious autonomy and state supervision. Third, at the level of church-state relations, the interactions between government and religious organizations lack any coherent constitutional framework. Fourth, at the level of delineating the boundaries of religious freedom and public order, the absence of clear definitional standards renders the legal frontier between regulation of fraudulent religious organizations and protection of legitimate religion persistently indeterminate (Chen, 2023).

The Legislative Yuan has introduced Religious Basic Law draft bills in multiple sessions, none of which has completed the legislative process (Legislative Yuan Legislative Information System, 2026). The legislative impasse reflects not merely political contingency but a deeper theoretical problem: What is the normative purpose of a Religious Basic Law? If the stated rationale is merely 'protection of religious freedom,' then Article 13 of the Constitution already provides that guarantee. If the rationale is 'regulation of the religious market,' the legislation risks descending into excessive state interference with religion.

This article seeks to resolve this impasse by constructing a normative framework that transcends the negative-liberty paradigm of liberal constitutionalism. Adrian Vermeule's (2022) Common Good Constitutionalism (CGC) provides the core elements of that framework. CGC's fundamental claim is that the ultimate purpose of law and constitutional interpretation is to promote the common good (bonum commune) of the political community and the integral human flourishing of its members, rather than merely to constrain state power or guarantee individual negative liberty. The legislative legitimacy of a Religious Basic Law lies not in its function of 'setting the boundaries' of religious freedom, but in its affirmative creation of the institutional conditions for religious life to flourish—a legislative responsibility the state must discharge pursuant to its common good obligations (Vermeule, 2022, pp. 57–88).

The article proceeds as follows. Part II clarifies the conceptual character of a religious basic law as a distinctive legislative type. Part III reconstructs the contribution of natural theology and natural law tradition to the ontological foundations of religious freedom. Part IV explicates CGC's theory of positive state obligations. Part V proposes the concept of 'common good separation of religion and state.' Part VI derives five legislative principles for a Religious Basic Law under CGC. Part VII addresses Taiwan's existing legal deficiencies and offers concrete proposals for core provisions. Part VIII concludes.

II. The Concept of a Religious Basic Law: Normative Features of a Distinctive Legislative Type

Typological Distinctions Among Forms of Religious Legislation

From a legal typological standpoint, religion-related legislation may be organized into at least four categories.

The first category is religious organization law—legislation governing the establishment, registration, governance structures, and dissolution of religious juridical persons. The paradigm case is Japan's Religious Corporations Law (Shūkyō Hōjinhō, 1951). Such legislation aims principally to establish the legal personality of religious bodies and to define their relationship with regulatory authorities; its normative center of gravity lies in technical organizational matters rather than the substantive content of religious freedom (Araki, 2018; Hardacre, 2002).

The second category is religious freedom legislation—statutes that, below the level of the Constitution, concretize the content of freedom of religion, the conditions for its limitation, and its remedial mechanisms. The United States Religious Freedom Restoration Act of 1993 (RFRA)

exemplifies this type at the federal level (Brady, 2015).

The third category is church-state relations law—legislation governing the organizational, fiscal, and cooperative relationships between government and religious institutions. Germany's church tax system (Kirchensteuer), grounded in Article 140 of the Basic Law read in conjunction with Article 137(6) of the Weimar Constitution, provides the leading comparative example (von Campenhausen & de Wall, 2006; Korioth & Augsberg, 2010).

The fourth category is religious basic law—legislation that serves as the normative foundation for all other religious legislation, establishing the basic principles governing religious freedom protection, the teleological foundations of religious policy, the limits of state intervention in religious affairs, and the criteria governing the relationship between religious activity and public order. This is the type this article addresses.

The defining characteristic of a religious basic law is its Grundgesetz-character: rather than enacting technical rules for any specific dimension of religious affairs, it establishes the normative-philosophical basis and teleological structure for the entire religious legal order. In terms of legislative hierarchy, a religious basic law typically takes precedence over other religious legislation, and the basic principles it establishes bind the drafting and interpretation of specific religious regulations.

Four Core Legislative Purposes

A religious basic law must address four core legislative purposes, and CGC provides distinctive normative arguments for each.

The first purpose is positive protection of religious freedom—elevating religious freedom from a negative right of non-interference to a positive institutional obligation to enable religious life to flourish. CGC's theory of positive state obligations furnishes direct theoretical support for this purpose (Vermeule, 2022, pp. 57–88; Witte & Nichols, 2022).

The second purpose is legal status and autonomy of religious organizations—establishing the legal personality, autonomy rights, and the boundaries of state supervision for religious bodies. Under CGC, the autonomous space of religious communities derives from the inherent character of religion as a basic good: religious life is essentially a spontaneous communal practice whose authenticity depends on space for self-determination free from external compulsion (Finnis, 1980, pp. 59–99).

The third purpose is the constitutional framework for church-state relations—establishing clear constitutional principles for the relationship between government and religion. The concept of 'common good separation of religion and state' proposed in Part V provides the normative foundation for this framework (Finnis, 2011a).

The fourth purpose is delineating the boundaries between religious freedom and public order. Under CGC, the basis for such limits is not the expression of majority preferences but whether religious activity causes demonstrable harm to the common good of the political community—a limit theory far more substantively moral than the liberal 'harm principle' (Mill, 1859/2002; Vermeule, 2022, pp. 104–120).

III. Natural Theology and the Ontological Foundations of Religious Freedom

Religion as a Basic Good of Integral Human Flourishing

The philosophical argument for the legislative legitimacy of a Religious Basic Law must begin with the ontological foundations of religious freedom: Why does the state bear an obligation to protect and actively promote religious freedom? If religious freedom is merely one expression of individual preference, the priority of its protection is difficult to explain to non-religious citizens; if religious freedom is an expression of a more fundamental form of human flourishing, its

legislative protection acquires an objective normative basis that transcends preference-bargaining.

John Finnis (1980), in Natural Law and Natural Rights, includes 'Religion' among the irreducible basic goods, reasoning that humanity's reflective exploration of the ultimate grounds of its own existence and of cosmic order is an indispensable dimension of rational human life (pp. 85–90). Finnis's argument does not presuppose the truth-claims of any particular religion. It appeals rather to philosophical reflection on human practical reason: regardless of the specific content of an individual's religious beliefs, the serious exploration of questions of ultimate meaning is itself a basic dimension of integral human flourishing, and therefore deserves active legal protection. This Finnisian account has been elaborated further in the context of legal philosophy by George (1999) and has informed the comparative constitutional framework developed by Witte and colleagues (Witte & Nichols, 2022; Witte & Pin, 2026).

This argument finds its grounding in the natural theology tradition. Aquinas (1947/1265–1274) observes in the Summa Theologiae that the human being possesses an inherent 'natural inclination toward God' (inclinatio naturalis ad Deum), which constitutes the ontological basis for religious practice (I-II, Q. 94, art. 2). While Aquinas's account unfolds within a theistic metaphysical framework, it can be reconstructed without presupposing the truth of any specific religion: the rational being possesses an inherent tendency to transcend its own finitude and to explore the ground of existence, a tendency that is a constitutive feature of human nature rather than a product of cultural contingency.

This Thomistic-Finnisian foundation has contemporary constitutional resonance. The German Federal Constitutional Court has consistently grounded religious freedom protection in the dignity of the human person as a self-determining being capable of ultimate commitments (BVerfGE 93, 1, 1995; BVerfGE 108, 282, 2003; Mückl, 2005). The South African Constitutional Court, in its post-apartheid jurisprudence, has similarly recognized religion as constitutive of human identity in ways that justify heightened legislative protection (Government of the Republic of South Africa v. Grootboom, 2001; Roux, 2013). These comparative trajectories suggest that the move from preference-protection to ontological grounding is not merely a theoretical preference but reflects a genuine insight about what religious freedom protects and why.

Religious Freedom as Ontological Freedom, Not Merely Preference Freedom

In the mainstream tradition of liberal legal philosophy, religious freedom is typically interpreted as 'preference freedom' (Präferenzfreiheit)—the state, on grounds of neutrality toward individual choices, remains neutral toward religious belief. Rawls's political liberalism is the philosophical representative of this neutralist position: government should remain neutral among the various religious and secular 'comprehensive doctrines,' and may not invoke any one of them as the basis for legislative legitimacy (Rawls, 2005).

This interpretation faces a fundamental vulnerability: if religious belief is merely one variety of individual preference, its priority of protection relative to other preferences is difficult to defend normatively. Michael Sandel (1996) has pressed this critique with particular force, arguing that if religious freedom is simply preference-protection, its distinctive constitutional priority becomes normatively arbitrary (pp. 65–71). Brian Leiter's (2013) influential critique reinforces this challenge from a different angle, arguing that there is no principled basis for singling out religious conscience as deserving distinctive legal solicitude, as against other forms of deep personal commitment (pp. 68–72). CGC's response is that this critique succeeds against preference-based accounts but fails against the ontological account: if religion is a basic good of integral human flourishing, the state's affirmative obligations with respect to religion are grounded in objective features of human nature, not in the arbitrary

privileging of one preference type over others (George, 1999, pp. 203–228).

Against the neutralist view, the argument grounded in natural theology and natural law tradition holds that religious freedom possesses the character of 'ontological freedom' (ontologische Freiheit): it is not the protection of a contingent preference but the institutional recognition of a basic dimension of the rational human being. This character places religious freedom at a higher level of protection than ordinary consumer preferences, and warrants a more affirmatively protective legislative posture than ordinary individual choice freedoms (Maritain, 1966; Finnis, 1980, pp. 59–99).

This ontological interpretation has direct implications for the design of a Religious Basic Law. The object of legal protection is not merely the individual's act of religious choice but the entire ensemble of social conditions enabling religious life to flourish authentically—the integrity of religious communities, the continuity of religious transmission, the material conditions of religious practice, and the capacity of religion to participate in public dialogue. This expansive understanding resonates with the European Court of Human Rights' (ECtHR) evolving 'institutional protection' approach in Hasan and Chaush v. Bulgaria (2000).

The Ontological Challenge of Religious Pluralism

Taiwan's condition of religious pluralism poses an important qualifying challenge to the foregoing ontological argument. If the ontological basis of religious freedom derives from an objective understanding of integral human flourishing, how, in circumstances where different religious traditions offer different interpretations of 'integral flourishing,' can one establish a normative foundation adequate to encompass religious diversity?

This article proposes that the ontological foundation of a Religious Basic Law need not presuppose the metaphysical truth of any single religious tradition. It requires only the establishment of an 'open teleology'—an acknowledgment that each serious religious tradition is, in its distinctive way, responding to the ultimate questions that the rational human being faces, and that this response itself carries ontological significance for the promotion of integral flourishing (Taylor, 2007, pp. 430–437). This concept builds productively on John Hick's (2004) pluralist hypothesis, which posits that diverse religious traditions represent different human responses to the same transcendent reality, without requiring adjudication among their truth-claims.

Taiwan's indigenous religious traditions—Buddhist 'Pure Land in the Human Realm' (人間淨土), Daoist 'Unity of Heaven and Humanity' (天人合一), and the relational ethics of folk religious practice—contain rich resources for understanding community flourishing that parallel CGC's integral human flourishing concept (Shih, 2011; Jochim, 1990). A genuinely dialogical application of CGC to Taiwan's constitutional context would excavate these indigenous normative resources rather than treating CGC as a unidirectional transplant.

IV. Common Good Constitutionalism: The Theory of Positive State Obligations

CGC's Critique of Negative Constitutionalism

Adrian Vermeule's (2022) Common Good Constitutionalism targets what he calls 'negative constitutionalism'—the ideological conviction that the primary function of constitutional law is to constrain state power and protect individuals from state interference, rather than to actively guide the state toward promoting the comprehensive flourishing of the people (pp. 1–30). Vermeule argues that negative constitutionalism is rooted in the Hobbesian-Lockean concept of the 'protective state' in which political organization is a contractual product created by individuals to protect their pre-political natural rights (Hobbes, 1651/1994; Locke, 1689/2003).

Against this, CGC is rooted in the Aristotelian-Thomistic concept of the 'political community' (communitas politica): the purpose of political

organization is not to protect pre-political individuals but to enable human beings to realize their inherent social nature and to live a virtuous public life (Aristotle, 1998; Aquinas, 1947/1265–1274; MacIntyre, 1988). In this tradition, the state bears not merely the obligation not to violate citizens' freedom but the positive obligation to create the social conditions enabling citizens to live well. This teleological account of political authority is not a theocratic imposition but a recovery of insights present across multiple constitutional traditions (Vermeule, 2022, pp. 104–120).

It is important to distinguish Vermeule's CGC from competing theories with which it is sometimes confused. CGC is not integralism—it does not hold that temporal authority must be subordinated to ecclesiastical authority or that the state's obligation is to promote a specific religion's truth-claims (Vermeule, 2022, pp. 55–56; cf. Pink, 2013). Nor is it mere majoritarianism—the common good it invokes is substantive, not simply whatever the majority happens to prefer. Critics such as Schwartzman and Schragger (2022) and the Harvard Law Review (2023) have raised important challenges to CGC's constitutional methodology; this article engages with these critiques by deploying CGC's normative core—positive state obligations toward human flourishing—at the level of legislative design rather than constitutional interpretation.

Positive Promotion Obligations in the Context of Religious Basic Law

CGC's theory of positive state obligations has several specific institutional implications in the context of a Religious Basic Law. The first implication is the positive creation of the institutional conditions for religious life. Negative religious freedom protection requires only that the state refrain from interfering with religious activity; positive protection requires the state to actively create the institutional environment for religious life to flourish, including reasonable protection of religious property, institutional support for religious education, and land-use protection for religious sites (Vermeule, 2022, pp. 57–88; Second Vatican Council, 1965, Gaudium et Spes, no. 26; Brugger & Karayanni, 2007).

The second implication is the active maintenance of religious pluralism. In a religiously pluralistic society, affirmative protection means not only protecting the freedom of individual religious believers but actively maintaining religious pluralism itself—preventing any single religion or secular ideology from monopolizing public space. CGC's common good framework provides crucial normative guidance here: religious pluralism is an important condition for the integral flourishing of the political community, and therefore its active maintenance is the state's common good obligation (Maritain, 1966, pp. 47–76; Vermeule, 2022, pp. 69–103).

The third implication is institutional support for religious organizational capacity. The flourishing of religious life depends not only on individual freedom of belief but on the organizational capacity of religious communities—the transmission of religious education, the operation of religious charity, the preservation of religious culture. A Religious Basic Law guided by CGC's affirmative obligation theory should provide institutional support for the organizational capacity of religious bodies while preventing state supervision from inappropriately curtailing that capacity (Brady, 2015, pp. 45–78).

The Limits of CGC's Positive Obligation Theory: Avoiding Theocracy

Critics of CGC frequently invoke the specter of theocracy as a refutation: if the state bears positive obligations to promote religious life, does this not imply favoritism toward particular religions, and ultimately the restoration of the confessional state? (Leiter, 2013; Smith, 2010). CGC's answer is that the object of positive promotion obligations is the integral flourishing of religious life as a basic condition of human flourishing—not the truth-claims of any particular religion. Vermeule (2022) invokes the principle of subsidiarity (subsidiaritas) from Catholic social teaching to articulate the proper limits of state engagement: the state's affirmative intervention

should support rather than replace the autonomous practices of lower-order communities (pp. 69–103; Pope Pius XI, 1931, Quadragesimo Anno, nos. 79–80). In the context of religious law, subsidiarity means the state should create the conditions for religious communities to operate autonomously rather than, in the name of 'promoting religious flourishing,' over-regulating religious organizations.

V. Common Good Separation of Religion and State: Beyond Liberal Neutralism

Liberal Neutralist Church-State Separation and Its Difficulties

In the mainstream framework of liberal constitutional theory, separation of church and state is typically interpreted as 'strict neutrality': the state should favor no religion, and should neither specially support nor restrict religious activity, except where religious activity violates others' rights or disrupts public order (Rawls, 2005, pp. 441–490). Neutralist church-state separation faces fundamental difficulties at both the theoretical and practical levels.

At the theoretical level, critics—including MacIntyre (1988), Taylor (2007), and Sandel (1996)—argue that complete religious neutrality is itself a specific position of secular ideology, one that systematically marginalizes religious discourse in public life and treats secular individualist values as the default framework for public deliberation (Habermas, 2008). The American experience illustrates the point: the Establishment Clause jurisprudence, from Lemon v. Kurtzman (1971) through the Roberts Court's abandonment of the Lemon test in Kennedy v. Bremerton School District (2022), demonstrates the incoherence of a purely neutralist approach when confronted with the concrete texture of religious life in a pluralistic democracy (Garnett, 2007; Witte, Nichols, & Garnett, 2022).

At the practical level, strict neutralism plunges government into a normative vacuum when confronting religion-related policy questions: if religious subsidies (such as tax exemptions for religious sites) constitute special favoritism toward religion, does non-subsidy constitute favoritism toward secular institutions? Neutralism cannot provide clear normative guidance on these questions; the result is policy arbitrariness and litigation burdens.

Constructing the Concept of Common Good Separation of Religion and State

This article proposes the concept of 'Common Good Separation of Religion and State' (bonum commune separatio) to replace the neutralist church-state separation model. The core claim of common good separation is that the purpose of church-state separation is not the state's indifferent neutrality toward religious affairs, but ensuring that religious pluralism can flourish together within a common good framework while preventing any single religion or secular ideology from monopolizing public life.

Common good separation encompasses three interrelated normative principles. The first is the Non-establishment Principle: the state may not establish an official religion and may not invoke the truth-claims of any religion as the basis for political legitimacy. CGC's non-establishment principle is grounded not in the neutral protection of individual religious choice but in the affirmative maintenance of religious pluralism as a condition of the common good (Vermeule, 2022, pp. 104–120; Finnis, 2011a, pp. 134–155).

The second principle is the Positive Accommodation Principle: the state should actively accommodate—rather than merely passively tolerate—the existence of religious life in public space, including the visibility of religious symbols in the public domain, the participation of religious organizations in the provision of public services, and the status of religious arguments in public deliberation. This principle corresponds to CGC's affirmative promotion obligations (Finnis, 2011a, pp. 134–155).

The third principle is the Common Good Limit Principle: the legitimate basis for limiting religious activity is its substantive harm to the common good of

the political community, not the expression of majority preferences or abstract maintenance of public order. Comparative ECtHR jurisprudence—particularly S.A.S. v. France (2014) and Refah Partisi v. Turkey (2003)—illustrates the shift from formal 'public order' review toward more substantive proportionality review in religious freedom limitation cases (Finnis, 1980, pp. 218–221; Vermeule, 2022, pp. 104–120).

Taiwan's Church-State Relations and the Common Good Reconstruction

Taiwan's existing church-state relations lack a coherent constitutional framework, exhibiting in practice an ambiguous alternation between neutralism and pragmatism. On one side, government claims strict neutrality in religious affairs; on the other, government in fact provides extensive implicit subsidies to specific religious bodies through tax preferences and land-use concessions, and widely relies on religious organizations to provide social services (ICNL, 2023).

The Kirchensteuer model in Germany provides an instructive comparative reference. Operating under the 'cooperative separation' (kooperative Trennung) framework established by Article 140 of the Basic Law in conjunction with the Weimar Constitution, the German state and religious bodies are institutionally separate but cooperate in domains of public interest, with the normative basis for cooperation grounded in the religious community's substantive contribution to the public good (Gemeinwohl; von Campenhausen & de Wall, 2006; Korioth & Augsberg, 2010). A similar cooperative architecture, grounded in the concept of common good separation, would provide Taiwan's religious subsidies and state-religion cooperation with the normative legitimacy they currently lack.

VI. Five Common Good Legislative Principles for a Religious Basic Law

On the basis of the theoretical construction in the preceding parts, this article proposes five common good legislative principles that a Religious Basic Law should establish under the CGC framework. These five principles form the normative core of the legislative purpose of a Religious Basic Law and should be systematically institutionalized in the drafting of legal provisions (Vermeule, 2022, pp. 57–120; Second Vatican Council, 1965, Gaudium et Spes, no. 26).

The Principle of Integral Human Flourishing

The first principle is the Principle of Integral Human Flourishing: the foundational legislative purpose of a Religious Basic Law is to create the institutional conditions for the integral flourishing of all members of Taiwan's political community, with the pluralistic flourishing of religious life constituting one important dimension of this purpose (Pope Paul VI, 1967, Populorum Progressio, no. 14; Pope John Paul II, 1991, Centesimus Annus, no. 29; Finnis, 1980, pp. 85–90).

The institutional implications of this principle include, first, that the state bears positive obligations to promote religious life rather than merely negative non-interference obligations; second, that religious policy-making should adopt 'whether the pluralistic flourishing of religious life is promoted' as its primary evaluative criterion; and third, that the protective scope of religious freedom should extend to all the institutional conditions enabling authentic religious flourishing. In comparative constitutional terms, a parallel may be drawn with the tripartite framework of 'human dignity, equality, and freedom' established in Section 1 of the South African Constitution: the South African Constitutional Court has consistently invoked human dignity as the normative integrating foundation for all other rights (Government of the Republic of South Africa v. Grootboom, 2001; Roux, 2013, pp. 188–221).

The Principle of Religious Autonomy

The second principle is the Principle of Religious Autonomy: the authentic flourishing of religious life depends on the autonomous space of religious communities, and the state may not, in the name of promoting religious flourishing, intervene in the internal governance of religious organizations, the

interpretation of religious doctrine, or the form of religious practice. The Principle of Religious Autonomy is grounded in CGC's principle of subsidiarity: the autonomous practice of religious communities is an irreplaceable condition of integral flourishing (Vermeule, 2022, pp. 69–103; Pope Pius XI, 1931, nos. 79–80).

American doctrine provides important comparative reference. In Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (2012), a unanimous Supreme Court established the 'ministerial exception' principle, recognizing that religious organizations enjoy broad autonomous space in the appointment and dismissal of ministerial employees, free from general labor law regulation. The subsequent Our Lady of Guadalupe School v. Morrissey-Berru (2020) further extended this principle. The European Court of Human Rights has similarly recognized, in its jurisprudence under Article 9 of the ECHR, that the internal governance of religious communities falls within a protected sphere of religious self-determination (Hasan and Chaush v. Bulgaria, 2000, para. 62).

The Principle of Religious Autonomy is not absolute, however. When the internal affairs of a religious organization involve serious violations of the fundamental personal dignity of its members, or when they cause demonstrable common good harm to third parties, the protection of religious autonomy should be correspondingly limited.

The Principle of Religious Pluralism

The third principle is the Principle of Religious Pluralism: the state should actively maintain Taiwan's religious pluralism, preventing any single religion or secular ideology from monopolizing public space, and providing equal institutional protection for each religious tradition. The normative foundation of the Principle of Religious Pluralism lies in CGC's concept of the common good: religious pluralism is an important condition for the integral flourishing of Taiwan's political community. Jacques Maritain's (1966) personalist account of the common good is instructive here: the common good is not the sum of individual preferences but the conditions enabling diverse communities to flourish in their own right (pp. 47–76).

In terms of legislative design, the Principle of Religious Pluralism requires a Religious Basic Law to provide equal legal protection for each religious tradition regardless of size or historical depth, and to adopt a neutral standard based on public contribution rather than differential treatment based on religious identity—a principle recently affirmed in the American context by Espinoza v. Montana Department of Revenue (2020) and Carson v. Makin (2022).

The Principle of Transparent Accountability

The fourth principle is the Principle of Transparent Accountability: while religious organizations enjoy the institutional benefits provided by the state (such as tax exemption, juridical person status, and public subsidies), they should bear information transparency obligations proportionate to the public benefits they receive, to ensure they conform to the common good legislative purpose. The normative basis is 'proportionate accountability': the intensity of accountability obligations should be proportionate to the degree to which a religious organization benefits from public resources (Garnett, 2007).

Japan's experience following the 1995 Aum Shinrikyo incident provides a cautionary comparative reference. The amendments to the Religious Corporations Law introduced information disclosure obligations (Article 25) and reporting authority (Article 78-2) for the regulatory authority, creating a textbook case of institutional tension: how to strengthen public accountability while preventing regulatory mechanisms from becoming tools for suppressing legitimate religious autonomy (Hardacre, 2002, pp. 190–215).

The Principle of Common Good Limits

The fifth principle is the Principle of Common Good Limits: the legitimate basis for state limitation of

religious freedom must be demonstrable substantive harm by religious activity to the common good of the political community—not the expression of majority preferences, the maintenance of mainstream culture, or abstract considerations of order (Vermeule, 2022, pp. 104–120; Finnis, 1980, pp. 218–221).

The Principle of Common Good Limits in a Religious Basic Law should be accompanied by the following institutional safeguards. First, the burden of proving limitation should fall on the state (not the religious organization), and the standard of proof should be higher than that for ordinary administrative limitation. Second, the proportionality of limitation measures should be subject to strict judicial review. Third, an independent religious affairs advisory body should be established to provide non-binding professional opinions on questions of the boundary between religion and public order (Davie, 2015, pp. 145–168).

The parallel in American law is the 'compelling interest' standard of the Religious Freedom Restoration Act (1993): the government bears the burden of demonstrating that its substantial burden on religious exercise furthers a compelling governmental interest and is the least restrictive means of achieving that interest (Burwell v. Hobby Lobby Stores, Inc., 2014). Taiwan's Religious Basic Law could adapt this framework to its civil law constitutional context, grounding the compelling interest standard in the common good theory of CGC rather than in the individual-rights framework of American First Amendment doctrine.

VII. Taiwan's Religious Basic Law: Structural Deficiencies and Core Provisions

Structural Deficiencies in the Existing Legal Regime

Taiwan's existing religious legal regime exhibits structural deficiencies that can be analyzed against each of the five CGC principles.

Against the Principle of Integral Human Flourishing: the existing regime lacks any institutional mechanism actively promoting the flourishing of religious life. Article 13 of the Constitution's guarantee has long been interpreted as a negative right of immunity from interference. The Constitutional Court has addressed religious freedom in a number of interpretations, but its jurisprudence has not yet articulated a positive dimension to the state's constitutional obligations in this domain (Judicial Yuan Interpretation No. 490, 1999).

Against the Principle of Religious Autonomy: religious bodies lack an independent religious juridical person status; they are compelled to use the Civil Code foundation or association framework, a design that fails to accommodate the distinctive needs of religious governance structures, property management and self-regulatory norms. The result is persistent ambiguity at the boundary between religious self-determination and state supervision (ICNL, 2023).

Against the Principle of Religious Pluralism: the existing regime provides manifestly insufficient protection for new religious movements and minority religions. Administrative agencies' informal recognition standards for 'normal religion' lack legal basis, generating implicit discrimination against minority religions. The absence of clear criteria for distinguishing religious fraud from legitimate heterodox practice leaves regulatory authority dangerously unconstrained (Chen, 2023).

Against the Principle of Transparent Accountability: the tax benefits enjoyed by religious organizations—particularly the complete exemption from land value tax for religious premises under Article 8 of the Land Tax Reduction and Exemption Rules, and the exemption from house tax under Article 15(1)(3) of the House Tax Act—lack corresponding financial transparency obligations, constituting an unaccountable output of public resources.

Against the Principle of Common Good Limits: the limitation of religious activity by government lacks unified legal standards; in practice it relies on the case-

by-case discretion of administrative agencies, lacking clear normative foundations and judicial review mechanisms. This creates both under-enforcement against genuinely harmful organizations and the risk of discriminatory over-enforcement against minority religions (Chen, 2023; ICNL, 2023).

Core Provision Recommendations for a Religious Basic Law

On the basis of the foregoing analysis, this article recommends that Taiwan's Religious Basic Law include the following core provision architecture.

Legislative Purpose Clause: 'This Law is enacted to promote the pluralistic flourishing of religious life in Taiwan's society, to guarantee the affirmative realization of the people's freedom of religious belief, to establish the legal status and autonomy protection of religious organizations, to regulate the relationship between government and religion, and to maintain the balance between religious activity and public order. The interpretation and application of this Law shall adopt the promotion of the common good of the political community and the integral flourishing of the people as the primary criterion.'

Affirmative Protection Clause: 'The State shall actively create an institutional environment for the pluralistic flourishing of religious life, including but not limited to: (1) protecting the transmission of religious cultural heritage; (2) supporting the reasonable conduct of religious education; (3) protecting the land use of religious sites; (4) encouraging religious organizations to participate in social services.'

Religious Juridical Person Clause: A religious juridical person type independent of the existing Civil Code juridical person system should be established, with a list of autonomous matters for religious juridical persons and the scope boundary of state supervision defined. The establishment and registration of religious juridical persons should adopt a notification system rather than an approval system; however, religious juridical persons enjoying tax benefits should bear corresponding financial transparency obligations.

Church-State Relations Clause: The principle of 'positive accommodation' rather than 'strict separation' in church-state relations should be explicitly established. The justification for government support of religious organizations (including tax preferences, public subsidies, and cooperative services) is their substantive contribution to public interests, with a religiously neutral evaluation standard adopted. At the same time, it should be explicitly stipulated that the government may not take a religious organization's doctrinal position as the basis for differential treatment.

Common Good Limits Clause: 'The State's limitation of religious activity must be based on demonstrable substantive harm by the religious activity to the common good of the political community, comply with the principle of proportionality, and bear the burden of proof. The State shall establish an independent religious affairs advisory committee to provide professional opinions on the boundary between religious activities and public order.'

Comparative Context: Korea and Japan

Taiwan's legislative task can be illuminated by comparison with its East Asian neighbors. South Korea enacted the Act on Promotion of the Activities of Religious Organizations in 2023, establishing a framework for state support of religious organizations' social service activities based on public contribution criteria—a partial instantiation of the positive accommodation principle without the deeper philosophical grounding of CGC (Park, 2024).

Japan's Religious Corporations Law provides a model for the organizational legal status dimension but lacks the positive promotion architecture and the common good limit framework that CGC requires. Japan's post-1995 experience demonstrates both the necessity of accountability mechanisms and the risk of security-driven administrative overreach when such

mechanisms lack principled normative constraints (Hardacre, 2002).

Germany's 'cooperative separation' model, grounded in the public good contribution of religious communities, comes closest to the common good separation architecture proposed in this article. Taiwan's Religious Basic Law could profitably adapt the German framework's structure while anchoring it explicitly in the common good theory of CGC (von Campenhausen & de Wall, 2006).

VIII. Conclusion: CGC as Creative Constitutional Dialogue

This article has argued that the enactment of a Religious Basic Law in Taiwan is constitutionally necessary and that its legislative legitimacy requires a normative theory that transcends the negative-liberty framework of liberal constitutionalism. Common Good Constitutionalism—grounded in the natural law tradition's account of religion as a basic good of integral human flourishing, articulated through CGC's theory of positive state obligations, and implemented through the concept of common good separation of religion and state—provides that theory (Vermeule, 2022; Finnis, 1980; Aquinas, 1947/1265–1274).

The five legislative principles derived from CGC—Integral Human Flourishing, Religious Autonomy, Religious Pluralism, Transparent Accountability, and Common Good Limits—address the structural deficiencies of Taiwan's existing religious legal regime while providing a coherent normative architecture for a Religious Basic Law that is simultaneously philosophically grounded, institutionally workable, and sensitive to Taiwan's distinctive social and religious context.

Several important questions require further research. First, how is the operationalization of 'demonstrable substantive harm to the common good' to be achieved at the level of constitutional adjudication? The Constitutional Court's developing proportionality jurisprudence provides a point of departure (Judicial Yuan Constitutional Court Judgment 111-Hsien-P-1, 2022), but the distinctively substantive character of the common good standard—as against the preference-aggregating character of proportionality analysis in its liberal form—requires further theoretical elaboration.

Second, CGC's natural law tradition is primarily rooted in Western philosophy and Catholic theology. How Taiwan's Buddhist, Daoist, and folk religious traditions can provide normative resources paralleling CGC's concept of integral flourishing is the most important theoretical challenge when applying CGC to Taiwan's constitutional context. Research in Taiwan's religious studies on the communal ethics and political philosophy embedded in Buddhist concepts of the 'Pure Land in the Human Realm,' Daoist thought on 'Unity of Heaven and Humanity,' and folk religious relational ethics may provide important intellectual resources for the indigenization of CGC (Shih, 2011; Liu, 1998; Jochim, 1990).

This article concludes by insisting that the introduction of CGC into Taiwan's constitutional discourse should not be understood as a unilateral transplantation of Western theory. Taiwan's exceptional religious pluralism, the deep participation of religious organizations in social services, and the profound emphasis in indigenous religious traditions on 'communal harmony' and 'shared flourishing' all resonate deeply with the common good political philosophy that CGC champions. The encounter between CGC and Taiwan's constitutional culture offers the possibility of genuine mutual enrichment—a creative dialogue rather than a one-sided borrowing—and it is in that spirit that this article has been written.

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