In 2014, the United States Supreme Court ruled that a company, Hobby Lobby, did not have to provide contraceptive coverage to its employees because of the religious beliefs held by its owners. In the arguments, the Court cited the 1993 Religious Freedom Restoration Act, a federal law that states that the government shall not "substantially burden a person's exercise of religion." This Act was originally introduced to help protect the rights of Native Americans when it came to practicing their traditions on sacred lands and using sacred materials, but since the Act's inception, it has been applied to any number of other cases.

I'm interested in this Hobby Lobby case in particular today not because of the question of contraception and reproductive rights – that is for another Sunday. Today I am interested in the Hobby Lobby case because of what it says about how our government views the free exercise of religion and the right of conscience in general. In this ruling, the Court seemed to say that a for-profit company could be said to have a religious conscience in the same way that an individual person does, and that they would constitutionally protected, provided that their beliefs are “sincere and religious in nature”. This ruling, that a corporation could have sincere religious beliefs, perked up my ears.

After all, I’m in the religion business. What the government says and does in regards to religion is not only important to me on a philosophical level, it also has practical implications about how we operate here at the Unitarian Society. And it touches directly on some of the principles that we uphold as Unitarian Universalists - “the right of conscience” as well as “the free and responsible search for truth and meaning.” Both imply a certain commitment to religious freedom. So you can see why I might be interested in anything the Supreme Court has to say about the free exercise of religion and conscience. We Unitarians have a long tradition of being invested in the separation of Church and State, and so any governmental shift in that relationship is of interest.

Following this court case has led me back all the way to the Puritans, and to questions that are fundamental to both who we are as a nation and who we are as a faith tradition, and the way those two things are intertwined. In the process, I have come to question some of my own longstanding assumptions about what the relationship between church and state should be, and I find that I have even more questions about what a path forward might be, in a nation that seems increasingly divided along ideological lines.

One of the foundational stories of the United States is that the Puritans fled England looking for religious freedom. As with many stories, the reality is more complicated than that. Yes, the Puritans were seeking a place where they could practice their nonconformist faith in freedom, however, they did not necessarily extend that religious freedom to everyone else.

The earliest colonies were still, essentially, theocracies. In Massachusetts, for example, everyone was required to attend church on Sundays, and there was an official Massachusetts state religion until 1833, when the “Parish Tax” that funded the Congregational churches was finally abolished. This was also the time during which the
Unitarians officially split off from the Congregationalists, who decided they would rather have no state religion than have the Unitarians in power. When I learned this I was a bit perplexed – didn't the Constitution prohibit the establishment of any one religion over and above any others? Well, yes, and no. At that time, the Supreme Court had ruled that the Constitution forbade the federal government from establishing a religion, but that it said nothing about the states, and left them to decide for themselves about whether to institute a religion or not. Some states, like Massachusetts, had a religious mandate, and others, like Rhode Island, proclaimed itself free of any particular religious affiliation. One of Thomas Jefferson's proudest achievements, it turns out, was writing the Virginia Statute for Religious Freedom, winning out over Patrick Henry, who wanted to collect taxes to support several Protestant churches.¹

Although the Puritans were theologically, well, Puritanical, they were also fundamentally democratic. They believed that a congregation was held together not by the word of a far-off bishop or king, but rather by the agreement of the people who gathered together, people who chose their own leaders based on a shared vision of what kind of community they wanted to be. It was a natural leap from a democratically run congregation to a democratically run nation. It was John Winthrop, whose words we read earlier, who invoked the biblical imagery of a “city on a hill” as a metaphor for America, a phrase that has been picked up by countless politicians ever since, from John F. Kennedy to Ronald Reagan to Barack Obama.

The reading from John Winthrop describes the very essence of that early covenantal community;

“We must delight in each other; make others’ conditions our own; rejoice together, mourn together, labor and suffer together, always having before our eyes our commission and community in the work, as members of the same body. So shall we keep the unity of the spirit in the bond of peace.”

I don't know about you, but I don't usually think of Puritans “delighting in each other” – it’s nice to remember that they were human, too, not just stern sourpusses. Winthrop makes it clear that it is the bonds of community, and the covenant of shared responsibility, that will enable to survival of the colony. We Unitarians may not have inherited Puritan theology, but we did inherit the idea that covenant, rather than creed or any external authority, is the basis for our congregational life.

But this idea of covenant was not just about life in a congregational setting. It also became the basis for the political ideals of America.

Marcia Pally, a professor at New York University, points out that much of the American political landscape is grounded in the covenantal political theology of the early Reformed Protestant tradition.²

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² [http://www.abc.net.au/religion/articles/2017/06/08/4682778.htm](http://www.abc.net.au/religion/articles/2017/06/08/4682778.htm)
The language of the Constitution reflect this heritage; “We the people, in order to form a
more perfect union, establish Justice, insure domestic Tranquility, provide for the common
defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and
our Posterity, do ordain and establish this Constitution for the United States of America.”

This is covenantal language, through and through. When people ask me what a covenant is,
I describe it as an agreement about how we want to be together. It doesn’t describe what
we believe, so much as how we will behave. The Constitution is an agreement about how
we, as a nation, will behave. It articulates the boundaries of what the state can and can’t do,
and it pointedly does not mention any personal belief in any particular deity.

So what is the relationship between John Winthrop, our covenantal Protestant heritage,
separation of church and state, and the Hobby Lobby decision?

It turns out that the separation of church and state as it is practiced here in the United
States is a thoroughly Protestant idea.

I had always assumed that the separation of church and state was a legacy of the
Enlightenment rather than the Reformation. But as the historian Molly Worthan points out,
it is actually part and parcel of the Protestant bias of the American public sphere. Religion
in the Protestant understanding is personal - belief is internal, in your heart, and not just
something you “do” in public. And if this is assumed to be the case, then it means that
internal conviction could be separated from public argument. Many other traditions do
not always accept the same bright distinctions between personal belief and the public square.
Religion, as it is conceived of in Islamic, Jewish, Catholic, and many non-western traditions,
is as much lived as it is believed, and the lines of separation between internal and external
religious life are not so clear.

The political scientist Elizabeth Shakman Hurd calls what we do here in the United States
“Christian secularism - a political stance premised on a chiefly Protestant notion of religion
understood as a private assent to a set of propositional beliefs”. How you behave publically
might be determined by your internal beliefs; that is to say that in this system, good
behavior may be an indicator of good faith, but the two things, behavior and belief, can be
separated into public and private spheres. Covenant, in this tradition, is a public agreement,
but it is not about belief but rather about behavior, and so it can be secularized. The
contents of the Covenant may come out of a person’s belief, but is it not the same thing as
the belief itself. In the Protestant tradition, belief is personal and covenant is relational.

And so it turns out that the push for a strong separation between church and state in the
U.S. was not about protecting pluralism and religious freedom as I had thought, but mostly
it was about anti-Catholicism, and it was often rooted in a fear of immigrant populations
who were coming from Catholic, Jewish, or other backgrounds. In fact, the organization that
is now known as Americans United for the Separation of Church and State, formed in 1947,
was originally named “Protestants and Other Americans United for the Separation of
Church and State” and was created primarily to challenge public funding for parochial
schools, and was expressly concerned with rooting out any undue influence from the
Vatican in American life.
It is amazing how long fear gets kept in our cultural DNA – the early nonconformist Puritans fled persecution and oppression, and 300 years later we are still carrying the fear of external religious domination in our systems. Think about how hard John F. Kennedy had to work to convince the public that he was going to be American first and Catholic second.

Uncovering the history of the separation of church and state was eye opening for me. I had thought that my personal belief in the freedom of religion was grounded in a sense of universal human rights, but it turns out to be part of a very specific Protestant heritage. I had thought my support for the separation of church and state was a personal decision on my part, independent and rational and not religious in origin, but it turns out that it was handed down to me as part of a much larger system. I don't consider myself to be theologically Christian, but more and more I am realizing that I have to understand the Protestant Christian context underneath the secularism that lies at the root of so much of my culture.

This is not to say that freedom of religion isn't universal, but rather that perhaps there are other ways to express religious freedom that we have not yet explored. Other ways to express support for a pluralistic society that are not so deeply tied to a Protestant worldview.

Maybe religious liberty is not all about individual conscience.

Which brings me full circle back to the Hobby Lobby case. The court decision in favor of Hobby Lobby was about protecting the right of conscience from what the court judged to be an undue burden imposed by the state. The court explicitly said that it is not there to judge whether a belief held by an individual is true, but rather only that it is sincere, and based in a religious commitment.

This is where I start to get tied in knots. After all, Unitarian Universalists have been defending people's rights to their own individual beliefs for centuries. For example, it was Unitarian Universalists who stood up for the Pentecostals in West Virginia when the state wanted to make snake handling in churches illegal. Not because we shared their beliefs, but because we believed they had the right to practice them.

And in general, I still agree with this broad understanding of protecting the free exercise of religion.

But where it gets difficult is when the state has to decide whether a religious belief is sincerely held, internally and privately, by someone. How can we know what is in someone's heart? And how do we judge that belief when it comes into conflict with someone else's sincerely held belief? Is the person who is most sincere the one who wins?

How do you know when someone sincerely believes something? This is why, when it comes to civic matters and the separation of church and state, am I gravitating back toward covenant as the standard, rather than trying to judge an individual conscience. Covenant, explicit and articulated behavior in service to explicit and articulated ideals, is a much clearer standard than a test of faith or belief.
I think our court, and perhaps the ethic of our nation at large, has started to stray down a difficult path, away from the communal, covenantal values of the constitution and into the attempt to discern what people's individual consciences and private beliefs might be. Given the challenges that face us today, and the rifts of individual beliefs that are dividing us, our civic life needs to steer back toward a larger conversation about how we can live together with shared values and spend less time focused on individual freedoms. Is this Unitarian Universalist heresy? Perhaps, but we have a legacy on both sides of this coin.

Perhaps there is a way to articulate a relational expression of how we want to be together as a nation that embraces religious freedom but does not pit conscience against conscience, belief against belief, individual against individual.

And if you believe, like I do, that the Constitution is grounded in a covenantal tradition, then it is also grounded in a living tradition, because a covenant is a living thing. Even biblical covenants evolve over time.

As the Rev. Victoria Safford says, “A covenant is not a contract. It is not made and signed and sealed once and for all, sent to the attorneys for safekeeping or guarded under glass in a museum. A covenant is not a static artifact and it is not a sworn oath: Whereas, whereas, whereas. . . . Therefore, I will do this, or I’ll die, so help me God. A covenant is a living, breathing aspiration, made new every day.”

So I’m willing to risk a little heresy to reevaluate the civic covenant, born out of the Protestant tradition but now firmly rooted in the secular world, that separates and protects religious expression.

If the Constitution is, at its heart, a covenant that describes how we want to be as a nation, if it is a “living, breathing aspiration”, perhaps it is time to refresh our vision of what it means. Perhaps in that work, of articulating what kind of nation we want to be, articulating our aspirational vision for who we can become, we will discover the next incarnation of religious freedom among us, a liberty that embraces pluralism, not just individualism.

This is our work, this is the gift of our free faith to our nation.