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OPINION | MAIN STREET

A Liberal 'Gets' Religion

A U.S. Civil Rights Commission report on religious liberty is so bad, it's good.



By

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Sept. 12, 2016 7:16 p.m. ET

Martin Castro has just performed an enormous public service for his country. But it's not the one he thinks.

Mr. Castro is chairman of the U.S. Commission on Civil Rights, a venerable institution dating to 1957 that has helped America kill Jim Crow and make good on our founding promises. An Obama appointee, Mr. Castro last Wednesday made public a report on nondiscrimination protections—increasingly about gender preference and sexual orientation—that in its crassness rivals Hillary Clinton's belittling of Donald Trump supporters.

Here's Mrs. Clinton: "You know, to just be grossly generalistic, you could put half of Trump's supporters into what I call the basket of deplorables. Right? The racist, sexist, homophobic, xenophobic, Islamophobic—you name it."

Here's Mr. Castro: "The phrases 'religious liberty' and 'religious freedom' will stand for nothing except hypocrisy so long as they remain code words for discrimination, intolerance, racism, sexism, homophobia, Islamophobia, Christian supremacy or any form of intolerance."

Mr. Castro's is the prevailing view among progressives. Barack Obama alluded to it when he derided small-town Americans bitterly clinging to guns or religion (i.e., the Second and First Amendments). Ditto for Mrs. Clinton, who in a remark about reproductive rights declared that "deep-seated cultural codes, religious beliefs and structural biases

have to be changed.”



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Mr. Castro’s contribution, by contrast, is so bad it’s good. For he confirms that the progressive argument is mostly about insulting Americans with differing views.

The commission report is called “Peaceful Coexistence: Reconciling nondiscrimination principles with civil liberties.” Its top finding is this: “Civil rights protections ensuring nondiscrimination, as embodied in the Constitution, laws, and policies, are of pre-eminent importance in American jurisprudence.”

Translation: Nuisances including the First Amendment’s “free exercise” of religion guarantee take a back seat to the rapidly multiplying non-discrimination causes such as the “right” to coerce any baker you want into baking the cake you want for your same-sex wedding.

In her own submission to the report, the commission’s Gail Heriot pinpoints the flaw in the finding. A University of San Diego law professor, Ms. Heriot says she could easily imagine a case for Mr. Castro’s position. But instead of an argument, she says, the commission offers a decree.

“By starting with an assertion that antidiscrimination laws are ‘pre-eminent,’ she writes, “the Commission’s analysis essentially begins with its conclusion. Why should anyone accept it? The Commission said so.”

The reasonableness of Ms. Heriot’s contribution almost makes this awful report worth its price. Here is a civil rights commissioner who takes the clash between nondiscrimination and religion seriously, who appreciates that these clashes are the result of government going places it never went before—and who recognizes that the questions raised are more complicated than Mr. Castro’s good guys versus bad guys caricature.

Ms. Heriot also recognizes the public-service aspect of publishing the chairman’s prejudice: Though she first thought of asking Chairman Castro to remove his statement, she writes, on further reflection she concluded that it “might be better for Christians, people of faith generally and advocates of limited government to know and understand where they stand with him.”

Indeed we are better off. The solitary virtue of Mr. Castro’s presentation is that he makes not the least effort to hide the ugly bits. These lead to a nation where the mediating institutions that stand between the citizen and government (churches, schools, private associations) are stripped of influence, and the political system no longer decides divisive issues through its elected representatives.

In Mr. Castro’s world, those who dissent from the prevailing pieties are deemed unfit for the public square . . . the judgment of federal agencies substitutes for Congress . . . and Justice Anthony Kennedy is free to take his own private mystery of the universe and impose it on the nation by unearthing constitutional rights unmentioned in the Constitution at the expense of the rights that are.

What does it mean for the election? Plainly Mrs. Clinton stands with Mr. Castro on this ahistoric and unconstitutional reading of rights. Even poor Gary Johnson, who embarrassed himself on television when he seemed to have no idea what Aleppo was, has come out against religious liberty—suggesting he understands even less about libertarianism than he does about Syria.

And Mr. Trump? No one would ever confuse Donald Trump with Reinhold Niebuhr. Yet even with his ambiguous stands on where gay rights begin and end, Mr. Trump seems unlikely to people his administration with Martin Castros bent on coercion.

In the meantime, we’re left with this: The melancholy spectacle of the U.S. Commission on Civil Rights issuing a report trashing the first civil right enumerated in the Bill of Rights.

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