

Religious liberty and the human good

Robert P George¹

Abstract

“Religious liberty and the human good” is a defense of a robust conception of the obligations of governments to respect and protect religious freedom for the sake of the basic human right of religion itself, considered as an irreducible dimension of integral human well-being and fulfillment. This methodologically Aristotelian and perfectionist approach to the defense of religious liberty provides a principled way of defending a central freedom rationally and identifying its limits.

Keywords Religious liberty, basic human goods, integral human fulfillment, Martin Luther King, *Nostra Aetate*, *Dignitatis Humanae*, natural law.

The starting points of all ethical reflection are those fundamental and irreducible aspects of the well-being and fulfillment of human persons that some philosophers refer to as “basic human goods.” These goods – as more than merely instrumental ends or purposes – are the subjects of the very first principles of practical reason that control all rational thinking with a view to acting, whether the acts performed are, in the end, properly judged to be morally good or bad.² The first principles of practical reason direct our choosing towards what is rationally desirable because humanly fulfilling (and therefore intelligibly available to choice), and away from their privations.³ It is, in the end, the integral directiveness of these principles that provides the criterion (or, when specified, the set of criteria – the moral norms) by which it is possible rationally to distinguish right from wrong – what is morally good from what is morally bad – including what is just and unjust.⁴ Morally good choices are choices that are in line

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² Germain Grisez, “The First Principle of Practical Reason: A Commentary on the *Summa Theologiae*, 1-2, Question 94, Article 2,” *Natural Law Forum*, Vol. 10 (1965), pp. 168-196.

³ *Ibid.*

⁴ John Finnis, *Natural Law and Natural Rights*, pp. 450-452.

with the various fundamental aspects of human well-being and fulfillment integrally conceived; morally bad choices are choices that are not.

1. The difference between just and unjust laws

To say the very abstract things I've just said is simply to spell out philosophically the point made by Martin Luther King in his *Letter from Birmingham Jail* about just and unjust laws – laws that honor people's rights and those that violate them. You will, perhaps, recall that the great civil rights champion anticipated a challenge to the moral goodness of the acts of civil disobedience that landed him behind bars in Birmingham. He anticipated his critics asking: How can you, Dr. King, engage in willful law breaking, when you yourself had stressed the importance of obedience to law in demanding that officials of the southern states conform to the Supreme Court's de-segregation ruling in the case of *Brown v. Board of Education*? Let's listen to King's response to the challenge:

The answer [he says] lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that "an unjust law is no law at all."

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law.

Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority.⁵

1.1 Just laws

So: just laws elevate and ennoble the human personality, or what King in other contexts referred to as the human spirit; unjust laws debase and degrade it. Now his point about the morality or immorality of laws is a good reminder that what is true of what is sometimes called "personal morality" is also true of "political morality." The choices and actions of political institutions at every level, like the choices and

⁵ Martin Luther King, *Letter from Birmingham Jail* (New York: Harper Collins, 1994). The Letter was written and originally published in 1963.

actions of individuals, can be right or wrong, morally good or morally bad. They can be in line with human well-being and fulfillment in all of its manifold dimensions; or they can fail, in any of a range of ways, to respect the integral flourishing of human persons. In many cases of the failure of laws, policies and institutions to fulfill the requirements of morality, we speak intelligibly and rightly of a violation of human rights. This is particularly true where the failure is properly characterized as an injustice – failing to honor people’s equal worth and dignity, failing to give them, or even actively denying them, what they are due.

1.2 Unjust laws

But, contrary to the teaching of the late John Rawls and the extraordinarily influential stream of contemporary liberal thought of which he was the leading exponent,⁶ I wish to suggest that good is prior to right and, indeed, to rights. Here is what I mean: To be sure, human rights, including the right to religious liberty, are among the moral principles that demand respect from all of us, including governments and international institutions (which are morally bound not only to respect human rights but also to protect them). To respect people, to respect their dignity, is to, among other things, honor their rights, including, to be sure, the right that we are gathered today to lift up to our fellow citizens and defend the right to religious freedom. Like all moral principles, however, human rights (including the right to religious liberty), are shaped, and given content, by the human goods they protect. Rights, like other moral principles, are intelligible as rational, action-guiding principles because they are entailments and, at some level, specifications of the integral directiveness or prescriptivity of principles of practical reason that directs our choosing towards what is humanly fulfilling and enriching (or, as Dr. King would say, uplifting) and away from what is contrary to our well-being as the kind of creatures we are – namely, human persons.

And so, for example, it matters to the identification and defense of the right to life – a right violated by abortion, the infanticide of handicapped newborns and other physically or mentally disabled persons, the euthanizing of persons suffering from Alzheimer’s disease and other dementias common among the elderly, and all acts of whatever type of the direct killing of innocent human beings, including the killing of captured enemy soldiers and the targeting of civilians in terror attacks, even in justified wars – that human life is no mere instrumental good, but is an intrinsic aspect of the good of human persons – an integral dimension of our overall flourishing.⁷ And it matters to the identification and defense of the right to religious

⁶ John Rawls, “On the Priority of Right and Ideas of the Good,” *Philosophy and Public Affairs*, Vol. 17, No. 4 (1988), pp. 251-276.

⁷ Germain Grisez, John Finnis, and Joseph M. Boyle, Jr., *Nuclear Deterrence, Morality and Realism* (Ox-

liberty that religion is yet another irreducible aspect of human well-being and fulfillment – a basic human good.⁸

2. Reason and Religion

In its fullest sense, religion is the human person's being in right relation to the divine – the more than merely human source or sources, if there be such, of meaning and value. Of course, even the greatest among us in the things of the spirit fall short of perfection in various ways; but in the ideal of perfect religion, the person would understand as comprehensively and deeply as possible the body of truths about spiritual things, and would fully order his or her life, and share in the life of a community of faith that is ordered, in line with those truths. In the perfect realization of the good of religion, one would achieve the relationship that the divine – say, God himself, assuming for a moment the truth of monotheism – wishes us to have with Him.

Of course, different traditions of faith have different views of what constitutes religion in its fullest and most robust sense. There are different doctrines, different scriptures, different structures of authority, different ideas of what is true about spiritual things and what it means to be in proper relationship to the more than merely human sources of meaning and value that different traditions understand as divinity.⁹

2.1 The correlation between Reason and Religion

For my part, I believe that reason has a very large role to play for each of us in deciding where spiritual truth most robustly is to be found. And by reason here, I mean not only our capacity for practical reasoning and moral judgment, but also our capacities for understanding and evaluating claims of all sorts: logical, historical, scientific, and so forth. But one need not agree with me about this in order to affirm with me that there is a distinct basic human good of religion – a good that is uniquely architectonic in shaping one's pursuit of and participation in all the basic human goods – and that one begins to realize and participate in this good from the moment one begins the quest to understand the more-than-merely-human sources of meaning and value and to live authentically by ordering one's life in line with one's best judgments of the truth in religious matters.

ford: Clarendon Press, 1987) pp. 304-309.

⁸ On religion as a basic human good, see John Finnis, *Natural Law and Natural Rights*, pp. 89-90.

⁹ For a deeply informed and sensitive treatment of similarities and differences in the world historical religions, see Augustine DiNoia, *The Diversity of Religions: A Christian Perspective* (Washington, DC: Catholic University Press, 1992).

If I am right, then the existential raising of religious questions, the honest identification of answers, and the fulfilling of what one sincerely believes to be one's duties in the light of those answers are all parts of the human good of religion – a good whose pursuit is an indispensable feature of the comprehensive flourishing of a human being. If I am right, in other words, then man is, as Becket Fund founder Seamus Hasson says, intrinsically and by nature a religious being – *homo religiosus*, to borrow a concept, or at least a couple of words of Latin, from Eliade – and the flourishing of man's spiritual life is integral to his all-round well-being and fulfillment.

But if that is true, then respect for a person's well-being, or more simply respect for the person, demands respect for his or her flourishing as a seeker of religious truth and as a man or woman who lives in line with his best judgments of what is true in spiritual matters. And that, in turn, requires respect for his or her liberty in the religious quest – the quest to understand religious truth and order one's life in line with it. Because faith of any type, including religious faith, cannot be authentic – it cannot be *faith* – unless it is free, respect for the person – that is to say, respect for his or her dignity as a free and rational creature – requires respect for his or her religious liberty. That is why it makes sense, from the point of view of reason, and not merely from the point of view of the revealed teaching of a particular faith – though many faiths proclaim the right to religious freedom on theological and not merely philosophical grounds, to understand religious freedom as a fundamental human right.

3. Rights independent of religious beliefs

Interestingly and tragically, in times past, and even in some places today, regard for persons' spiritual well-being has been the premise, and motivating factor, for *denying* religious liberty or conceiving of it in a cramped and restricted way. Before the Catholic Church, in the document *Dignitatis Humanae* of the Second Vatican Council, embraced the robust conception of religious freedom that honors the civil right to give public witness and expression to sincere religious views (even when erroneous), some Catholics rejected the idea of a right to religious freedom on the theory that “only the truth has rights.” The idea was that the state, under favoring conditions, should not only publicly identify itself with Catholicism as the true faith, but forbid religious advocacy or proselytizing that could lead people into religious error and apostasy.

The mistake here was not in the premise: religion is a great human good and the truer the religion the better for the fulfillment of the believer. That is true. The mistake, rather, was in the supposition made by some that the good of religion was not being advanced or participated in outside the context of the one true faith, and that

it could be reliably protected and advanced by placing civil restrictions enforceable by agencies of the state on the advocacy of religious ideas. In rejecting this supposition, the Fathers of the Second Vatican Council did not embrace the idea that error has rights; they recognized, rather, that *people* have rights, and they have rights even when they are in error.¹⁰ And among those rights, integral to authentic religion as a fundamental and irreducible aspect of the human good, is the right to express and even advocate in line with one's sense of one's conscientious obligations what one believes to be true about spiritual matters, even if one's beliefs are, in one way or another, less than fully sound, and, indeed, even if they are false.¹¹

3.1 Merit in non-Christian religions

When I have assigned the document *Dignitatis Humanae* in courses addressing questions of religious liberty, I have always stressed to my students the importance of reading another document of the Second Vatican Council, *Nostra Aetate*, together with it. Whether one is Catholic or not, I don't think it is possible to achieve a rich understanding of the Declaration on Religious Liberty, and the developed teaching of the Catholic Church on religious freedom, without considering what the Council Fathers proclaim in the Declaration on Non-Christian Religions. In *Nostra Aetate*, the Fathers pay tribute to all that is true and holy, implying and then explicitly saying, that there is much that is good and worthy in non-Christian faiths, including Hinduism and Buddhism, and especially Judaism and Islam. In so doing, they give recognition to the ways in which religion, even where it does not include the defining content of what the Fathers, as Catholics, believe to be religion in its fullest and most robust sense – namely, the Incarnation of Jesus Christ – enriches, ennobles, and fulfills the human person in the spiritual dimension of his being. This is to be honored and respected, in the view of the Council Fathers, because the dignity of the human being requires it. Naturally, the non-recognition of Christ as the Son of God must count for the Fathers as a falling short in the non-Christian faiths, even the Jewish faith in which Christianity is itself rooted and which stands according to Catholic teaching in an unbroken and unbreakable covenant with God – just as the proclamation of Christ as the Son of God must count as an error in Christianity from a Jewish or Muslim point of view. But, the Fathers teach, this does not mean that Judaism and Islam are simply false and without merit (just as neither Judaism nor Islam teaches that Christianity is simply false and without merit); on the contrary, these traditions enrich the lives of their faithful in their spiritual dimensions, thus contributing vitally to their fulfillment.

¹⁰ See Kevin J. Hasson, *The Right to Be Wrong: Ending the Culture War Over Religion in America* (New York: Encounter Books, 2005)

¹¹ *Dignitatis Humanae*, 2-3.

3.2 The Catholic heritage of reasoning and religious liberty

Now, the Catholic Church does not have a monopoly on the natural-law reasoning by which I am today explicating and defending the human right to religious liberty.¹² But the Church does have a deep commitment to such reasoning and a long experience with it. And in *Dignitatis Humanae*, the Fathers of the Second Vatican Council present a natural law argument for religious freedom – indeed they begin by presenting a natural-law argument before supplementing it with arguments appealing to the authority of God’s revelation in sacred scripture. So let me ask you to linger with me a bit longer over the key Catholic texts so that I can illustrate by the teachings of an actual faith how religious leaders and believers, and not just statesmen concerned to craft national or international policy in circumstances of religious pluralism, can incorporate into their understanding of the basic human right to religious liberty, principles and arguments available to all men and women of sincerity and goodwill by virtue of what Professor Rawls once referred to as “our common human reason.”¹³

Let me quote at some length from *Nostra Aetate* to give you an appreciation of the rational basis of the Catholic Church’s affirmation of the good of religion as manifested in various different faiths. I do this in order to show how one faith, in this case Catholicism, can root its defense of a robust conception of freedom of religion not in a mere *modus vivendi*, or mutual non-aggression pact, with other faiths, or in what the late Judith Shklar labeled a “liberalism of fear,” or, much less, in religious relativism or indifferentism, but rather in a rational affirmation of the value of religion as embodied and made available to people in and through many traditions of faith. So here is what *Nostra Aetate* says:

Throughout history even to the present day, there is found among different peoples a certain awareness of a hidden power, which lies behind the course of nature and the events of human life. At times there is present even a recognition of a supreme being or still more of a Father. This awareness and recognition results in a way of life that is imbued with a deep religious sense. The religions which are found in more advanced civilizations endeavor by way of well-defined concepts and exact language to answer these questions. Thus in Hinduism men explore the divine mystery and express it both in the limitless riches of myth and the accurately defined

¹² On natural law and religious freedom in the Jewish tradition, see David Novak, *In Defence of Religious Liberty* (Wilmington: ISI Books, 2009). (Rabbi Novak kindly dedicated this fine work to me. Inasmuch as this is the first time I’ve had occasion to cite it in a publication, I am happy to have the opportunity publicly to thank him for what I consider to be a high honour.)

¹³ John Rawls, *Political Liberalism* (New York: Columbia University Press, expanded edition, 1993), p. 137.

insights of philosophy. They seek release from the trials of the present life by ascetical practices, profound meditation and recourse to God in confidence and love. Buddhism in its various forms testifies to the essential inadequacy of this changing world. It proposes a way of life by which men can with confidence and trust, attain a state of perfect liberation and reach supreme illumination either through their own efforts or by the aid of divine help. So, too, other religions which are found throughout the world attempt in their own ways to calm the hearts of men by outlining a program of life covering doctrine, moral precepts and sacred rites.

The Catholic Church rejects nothing of what is true and holy in these religions. She has a high regard for the manner of life and conduct, the precepts and doctrines which, although differing in many ways from her own teaching, nevertheless often reflect truths which enlighten all men. Yet she proclaims and is in duty bound to proclaim without fail, Christ who is the way, the truth and the life (John 1:6). In him, in whom God reconciled all things to himself (2 Cor 5:18-19), men find the fullness of their religious life.

The Church therefore, urges her sons to enter with prudence and charity into discussion and collaboration with members of other religions. Let Christians, while witnessing to their own faith and way of life, acknowledge, preserve and encourage the spiritual and moral truths found among non-Christians.

The Church has also a high regard for the Muslims. They worship God, who is one, living and subsistent, merciful and almighty, the Creator of heaven and earth, who has also spoken to men. They strive to submit themselves without reserve to the decrees of God, just as Abraham submitted himself to God's plan, to whose faith Muslims link their own. Although not acknowledging Jesus as God, they revere him as a prophet; his virgin Mother they also honor, and even at times devoutly invoke. Further, they await the Day of Judgment and the reward of God following the resurrection of the dead. For this reason they highly esteem an upright life and worship God, especially by way of prayer, almsgiving, and fasting.

Over the centuries many quarrels and dissensions have arisen between Christians and Muslims. The sacred Council now pleads with all to forget the past, and urges that a sincere effort be made to achieve mutual understanding; for the benefit of all men, let them together preserve and promote peace, liberty, social justice and moral values.

Sounding the depths of the mystery which is the Church, this sacred Council remembers the spiritual ties which link the people of the New Covenant to the stock of Abraham.

The Church of Christ acknowledges that in God's plan of salvation the beginning of her faith and election is to be found in the patriarchs and in Moses and the prophets. She professes that all Christ's faithful, who as men of faith are sons of Abraham (cf. Gal 3:7), are included in the same patriarch's call and that the salvation of the Church is mystically prefigured in the exodus of God's chosen people from

the land of bondage. On this account the Church cannot forget that she received the revelation of the Old Testament by way of that people with whom God in his inexpressible mercy established the ancient covenant. Nor can she forget that she draws nourishment from that good olive tree onto which the wild olive branches of the Gentiles have been grafted (cf. Rom 11:17-24). The Church believes that Christ who is our peace has through his cross reconciled Jews and Gentiles and made them one in himself (cf. Eph 2:14-16).¹⁴

3.3 Religious liberty for all – atheists included

Of course, from the point of view of any believer, the further away one gets from the truth of faith in all its dimensions – what the Council Fathers refer to in the passages I just quoted as “the fullness of religious life” – the less fulfillment is available. But that does not mean that even a primitive and superstition-laden faith, much less the faiths of those advanced civilizations to which the Fathers refer, is utterly devoid of value, or that there is no right to religious liberty for people who practice such a faith. Nor does it mean that atheists have no right to religious freedom. The fundamentals of respect for the good of religion require that civil authority respect (and, in appropriate ways, even nurture) conditions or circumstances in which people can engage in the sincere religious quest and live lives of authenticity reflecting their best judgments as to the truth of spiritual matters. To compel an atheist to perform acts that are premised on theistic beliefs that he cannot, in good conscience, share, is to deny him the fundamental bit of the good of religion that is his, namely, living with honesty and integrity in line with his best judgments about ultimate reality. Coercing him to perform religious acts does him no good, since faith really must be free, and dishonors his dignity as a free and rational person. The violation of liberty is worse than futile.

4. Conclusion

Of course, there are limits to the freedom that must be respected for the sake of the good of religion and the dignity of the human person as a being whose integral fulfillment includes the spiritual quest and the ordering of one’s life in line with one’s best judgment as to what spiritual truth requires. Gross evil – even grave injustice – can be committed by sincere people for the sake of religion. Unspeakable wrongs can be done by people seeking sincerely to get right with God or the gods or their conception of ultimate reality, whatever it is. The presumption in favor of respecting liberty must, for the sake of the human good and the dignity of human

¹⁴ *Nostra Aetate*, 2-4.

persons as free and rational creatures – creatures who, according to Judaism and Christianity, are made in the very image and likeness of God – be powerful and broad. But it is not unlimited. Even the great end of getting right with God cannot justify a morally bad means, even for the sincere believer. I don't doubt the sincerity of the Aztecs in practicing human sacrifice, or the sincerity of those in the history of various traditions of faith who used coercion and even torture in the cause of what they believed was religiously required. But these things are deeply wrong, and need not (and should not) be tolerated in the name of religious freedom. To suppose otherwise is to back oneself into the awkward position of supposing that violations of religious freedom (and other injustices of equal gravity) must be respected for the sake of religious freedom.

Still, to overcome the powerful and broad presumption in favor of religious liberty, to be justified in requiring the believer to do something contrary to his faith or forbidding the believer to do something his faith requires, political authority must meet a heavy burden. The legal test in the United States under the Religious Freedom Restoration Act is one way of capturing the presumption and burden: to justify a law that bears negatively on religious freedom, even a neutral law of general applicability must be supported by a compelling state interest and represent the least restrictive or intrusive means of protecting or serving that interest. We can debate, as a matter of American constitutional law or as a matter of policy, whether it is, or should be, up to courts or legislators to decide when exemptions to general, neutral laws should be granted for the sake of religious freedom, or to determine when the presumption in favor of religious freedom has been overcome; but the substantive matter of what religious freedom demands from those who exercise the levers of state power should be something on which reasonable people of goodwill across the religious and political spectrums should agree on – precisely because it is a matter capable of being settled by our common human reason.



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