

Is Freedom of Religion a Distinct Human Right?

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ABSTRACT: There is a tendency to eliminate the right to religious liberty and to include it under the more general rights to freedoms of conscience, of expression, and of association. Autonomy and ethical independence are seen as the fundamental values, grounding liberties and human dignity. Catholic Social Thought emphasizes the intellectual capacity to seek the truth alongside freedom and autonomy. It teaches that persons should live according to their vision of the good, but that they should investigate if their preferred vision is indeed truly good. This broadens the basis for the grounding of human dignity and rights such as religious liberty. This tradition is echoed in the history of religious liberty in America, in which the Protestant emphasis on conscience stressed the intellectual search for the truth. Alongside the philosophical argument in favor of the broader account of human dignity stressing both knowledge and freedom, there is also the argument from the history of religious persecution. The danger of religious persecution remains whether from ideological secularism or from fundamentalist theocracy. It is therefore wise to insist on the retention of an explicit right to religious liberty in international, national, and regional laws.

KEYWORDS: Human rights, religious liberty, autonomy, truth, conscience, religious persecution

Introduction

The American Constitution's First Amendment combines two principles with regard to religion in a single sentence: The nonestablishment clause and the free exercise clause:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or

of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Similarly, in the Philippines, the 2018 Consultative Committee's draft Federal Constitution follows closely the 1987 Constitution of the Philippines in embracing both principles. Article III Section 8 of the draft Federal Constitution expands slightly on the 1987 version:

No law shall be enacted that establishes, favors, or suppresses religion or its rejection, or that prohibits the free exercise and public expression of fundamental religious belief. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

There are two issues at stake in these formulations. These can be crudely formulated as the protection of politics from domination by religion, and the protection of religion from domination by politics. It is noticeable that the word 'separation' is not used in these formulations in the Bill of Rights, but it is used in the corresponding Section 5 of draft Article II, The Declaration of Principles and State Policies. 'Separation' has come to be a standard way of speaking of the relationship of church and state, religion and politics, taken from Jefferson's expression designating 'a wall of separation' between church and state.

I concentrate here on the free exercise clause. It is of course a simplification to describe the free exercise provisions as protecting religion from politics although that is its main effect, denying the US Congress (or subsequently following adoption of the Fourteenth Amendment, the federated States of the Union) the power to make law restricting the exercise of religion. It is notable in the Philippine case how the exercise of religion is expanded to include public expression of belief, as also participation in worship. In the American case, the free exercise of religion is linked with other freedoms, viz., the freedom of speech, the freedom of the press, the freedom of assembly, and the right to petition the government. The question I want to focus on in this paper is whether the freedom of religion is in fact an additional freedom to those listed as the freedoms of speech, of the press, and of assembly. If the state is obliged to respect and protect those rights of free expression, of publication, and of assembly, does it make any difference from the

state's perspective if what is being spoken or expressed is sacred or secular, if its content is essentially religious, or if its content is political or otherwise mundane? If groups assemble peacefully, does it make any difference from the point of view of the state whether they are gathering for prayer and worship, or for sport or entertainment, or indeed for a political rally? Citizens' rights to assemble, to proclaim their commitments and convictions, to declare their loyalties, should be protected and respected regardless of the content of their convictions and loyalties, provided the purpose and manner of speech and assembly be peaceful.

I ask the question as a philosopher, and my principal focus is philosophical, but the question is also of interest to theologians, legal theorists, political scientists and students of international relations. The question is expanded to include the *Universal declaration of human rights*: Is the reference to religion in its Article 18 superfluous? That article proclaims that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

This investigation should be seen as a continuation of discussions already published in *Tamara* 32 concerning the relationship between religion and the secular (Riordan 2015a, 2015b).

The question whether there is a need to protect the freedom of religion in addition to the freedom of conscience raises the more fundamental question of the grounding of rights, particularly human rights. How do we explain the basis of these claims we make against any state, and the grounds for asserting the claims listed as human rights? Why should the constitution of a state declare its commitment to respecting such claims? One possible answer to these questions appeals to human dignity. But doesn't that just push the question back one step further? Do we not also need to point to some ground or basis of human dignity? There are two parts to my paper. First, I consider the secular perspective on religion and the reasons in favor of removing an explicit mention of religion; second, I consider the arguments in favor of maintaining a distinctive right to religious liberty. A brief conclusion summarizes the case in favor of retention.

Religion from the Secular Perspective

The question about the distinctiveness of a right to freedom of religion arises now in the context of debates in political philosophy about the secular nature of the liberal state. From the point of view of liberal pluralism and liberal egalitarianism the question is raised whether exemptions to justified laws for religious reasons are warranted. Litigation on religious issues in liberal jurisdictions in which the free exercise of religion is protected is generating a large body of jurisprudence requiring systematization (McCrudden 2018). I take my starting point from these debates, for example, about the permissibility of prohibiting the wearing of the hijab or chador, prohibiting the wearing of religious symbols in the workplace, refusing to compensate employees whose exercise of religious duty is compromised (Seventh Day Adventists required to work on Saturday), public registrars of marriage refusing to facilitate same-sex marriages on religious grounds, guest house owners refusing to accommodate same-sex couples, objection to crucifixes in classrooms, and the like.

One major study of the issue begins by introducing the liberal egalitarian theory of state and religion with the assertion that “there is nothing special about religion, such that religious citizens should receive uniquely privileged treatment in the law—say, in the form of exclusive exemptions on the grounds of religious belief” (Laborde 2017, 42). The author, Cécile Laborde, is very respectful of religion, and is in no way anti-religious, but takes her stand upon a clear philosophical appreciation of the values of secular liberalism. At the same time, she acknowledges the validity of many criticisms directed against secular liberal accounts of religion, and a fundamental purpose of her book is to revise secular egalitarian theory of the state and religion to secure it against those valid criticisms. She groups these under three main headings and acknowledges their plausibility. It is worth summarizing these to help clear the ground for our own discussion. She names them as the a) semantic, b) the Protestant, and c) the realist critiques.

The semantic critique points out that the category of religion is very imprecise, without a universally valid empirical referent, so that generalizations about the state and religion must always seem to miss the point (Laborde 2017, 18-21).

This is a common complaint when theologians and people with religious faith read what liberal philosophers write about religion, maintaining that the concept of religion deployed is untrue to their actual experience of religion. A related second critique accuses secular theorists of reliance on a distinctively Protestant understanding of religion that prioritizes individualistic notions of conscience and belief. This invariably neglects the communal dimensions of religious adherence and practice (Laborde 2017, 21-24). The third form of criticism accuses the adherents of liberalism of substituting their doctrine for that of religion so that a power agenda is disclosed, the interests of the state being promoted at the expense of religion but without subjecting those interests to systematic analysis and criticism (Laborde 2017, 24-26). Crude forms of these criticisms can be answered, Laborde believes, but she concedes that liberal theory needs to be developed to provide a sophisticated answer to subtler forms of these criticisms. A key step in her approach is to disaggregate religion into various elements, since not every element of religion is either vulnerable or a threat in the political context.

First, she deals with the standard criticisms. From the point of view of liberal theory of the state, there is no interest in generating an adequate account of religion, so the semantic criticism is misplaced. What passes for religion in ordinary usage is that to which the liberal refers, without attempting to explain or define religion. In fact, a current strategy of liberal thinkers is to eliminate religion as a distinctive category, as they reinterpret religious belief and practice as a subset of convictions and activities deserving of legal respect and protection because they are rooted in the individuals' exercise of their fundamental freedoms. The distinctiveness of religion in comparison with other beliefs or practices becomes an acute issue for the liberal when there is an expectation that religion can be a basis for exemption from general laws. Why would or should religion provide claimants with grounds for exemption from otherwise generally valid laws? This concrete question is related to but not identical to that posed at the beginning of my paper: Is the freedom of religion a distinct human right? Even if it can be asserted that the freedom of religion is distinct and deserving of special mention in constitutions or bills of rights, it does not necessarily follow that this alone would justify the granting of exemptions.

The late Ronald Dworkin in his posthumous book *Religion without God* (2013) developed the views on religion in relation to politics that he had presented in his earlier works, including *Justice for hedgehogs* (2011). At the center of Dworkin's concern is the notion of ethical independence, that the guiding principles in a person's life be freely chosen, and not imposed by others or by authorities. Because of this life-shaping role, Dworkin discounts any perceived difference between religious and nonreligious convictions and values. Accordingly, he derives religious liberty from the more general right to ethical independence, with the result that religion is seen as only one class among many types of life-shaping commitments that people can make. To grasp the full implications of this approach, it is necessary to consider how Dworkin distinguishes between ethics and morality, with implications for his understanding of the law's function and limits, and also entailing a distinctive view of freedom of religion. He interprets ethics as the concern with the quality of one's own life, what one owes to oneself in terms of self-respect and authenticity. Morality is the concern with what is owed to others, but for Dworkin, significantly, what is owed to others must be decided collectively within a political community (Dworkin 2011, 377). Ethics and morality are linked: Morality—what we owe to others—is essential to ethics, to living well—what we owe to ourselves (Dworkin 2011, 419). Fundamental to ethics, what one owes to oneself, are dignity and liberty (Dworkin 2011, 376). He interprets dignity in terms of two principles: a) self-respect and b) authenticity. Self-respect is the requirement that each one takes one's own life seriously (Dworkin 2011, 203). Authenticity is the responsibility to shape one's life according to self-chosen standards, the shaping forces in one's life (Dworkin 2011, 204). They may have a religious origin, but they may also not, and they can as easily include atheistic or humanistic premises. The dignity of persons, their self-respect in taking responsibility for their decisions is no different from one kind of life-shaping option to another. Autonomy is critical for authenticity, and so it is jeopardized when others' judgments about the goals and values of life replace one's own. Hence liberty, including religious liberty, is to be respected because the political community owes respect (including non-interference in the scope of autonomous action) to the independence of persons who take

control of their own lives. Hence his and other philosophers' discounting of freedom of religion as a distinct freedom and a distinct right. Autonomy, as ethical independence, is the core value grounding all rights to liberty, including religious liberty. Human dignity invoked as a source of rights is essentially linked to the capacity for ethical independence, to the human ability to shape one's life according to self-chosen values and convictions.

It is inevitably the case that general laws will infringe on the scope of action available to persons. But the state's laws should be respectful of liberty rooted in autonomy and should remain neutral among different life-shaping choices made by citizens. There should not be either a favoring of some or a denigration of other ways of life, provided they are respectful of others' rights. Laborde summarizes the case made by Dworkin, drawing on a distinction between general and special rights.

Freedom of religion...is a general right to ethical independence, which is formulated as a principle of reason-giving or justification. Government must not appeal to the truth or untruth of one religion or ethical view in the pursuit of its goals (Laborde 2017, 45).

How might we respond to this suggestion that would abolish a distinct right to freedom of religion, seeing it as but one instance of freedoms already encapsulated in the standard rights to freedom of conscience, freedom of speech, and freedom of assembly?

In consideration of the positive side of the suggestion, we have to admit the plausibility of the case made from the perspective of the liberal state obliged to be neutral between citizens' commitments and values, and conceptions of the good life. Given the following:

- That it is beyond the competence of the liberal state to determine what religion is, and which phenomena fall within the definition and which fall outside;
- That it is outside the remit of the liberal state to provide for the flourishing of any church, sect or group pursuing a vision of wellbeing;
- That it must take care not to discriminate either in favor or against any group or any vision of the human good in its laws;

- That the one relevant foundational value it must respect is ethical independence, the autonomy exercised in the embrace of any religion as much as of any nonreligious vision of the human good.

In the light of these considerations, it seems plausible that from the perspective of the liberal state there be no distinction drawn between freedoms of conscience, speech, and assembly, and the freedom of religion.

The jurisprudence of courts in Europe and North America is following this trend of dissolving religion, seeing it as a subset of a broader value, namely ethical independence, the autonomous choice of a vision of a good life. Commentators remark on the trend. Charles Taylor, writing with Jocelyn Maclure in a recent work on secularism and freedom of conscience, downplays the distinction between religious beliefs and convictions of conscience (Maclure and Taylor 2011). They write with approval of the growing tendency of the North American courts to treat all sincerely held convictions as deserving of respect, whether religious or secular in nature. And they also recognize the similarity of their stance to that taken by Ronald Dworkin in an earlier publication (Dworkin 2006, 61).

The individualization (or Protestantization) of religion, identified by Laborde as one of the standard criticisms of liberal accounts of religion, is seen by Taylor and Maclure to be a feature of courts' approaches to understanding of religious liberty (Maclure and Taylor 2011, 81-83). They seem to endorse this approach, since they frequently remark that religious beliefs and world views are *chosen*, and to that extent they are seen as similar to other life-carrying beliefs. In suggesting that "public institutions and policies must be guided by the ideal of a society in which all individuals have an equal opportunity to choose their life plan and to implement it," they once again take for granted that life plans are chosen (Maclure and Taylor 2011, 81-83).

Another commentator identifies, with regret, the same dynamic of individualization of religion and the concentration on the psychological stance of the believer. Roger Trigg (2012) disapproves of this development because he believes it undermines the status of religious liberty in contrast to the respect given to equality. In the ongoing political movement to secure equality by eliminating discrimination, religious liberty is being interpreted in such a way

that when the values conflict, liberty must always be compromised in favor of equality. The reluctance of courts on both sides of the Atlantic to make reasonable accommodation for exceptions on religious grounds entails the risk of discriminating against the religious side in such cases (Trigg 2012, 117).

A useful illustration of the development from a purely religious phenomenon to an appreciation of a broader ethical phenomenon is found in the widening of the accepted grounds for conscientious objection to military service. Formerly, objectors had no protection in law in the United Kingdom (UK) and the United States of America (USA) and in many other jurisdictions and thus faced prosecution for their failure in civic duty. Gradually, legislators provided protection allowing for exemption, but originally on religious grounds only. In the course of time, the grounds for exemption were extended to include such reasons which performed in the lives of dissenters the same function which religious belief performed in the lives of believers. Access for all was originally won for all by religiously motivated people. Interestingly, the courts provided the extension of the exemption by acknowledging that religious belief functioned in a distinctive way in the lives of religious believers. By analogy with that distinctive function of religious belief, they acknowledged that ethical and humanist ideas could perform a similar function in the lives of those who espoused them. The decisive case was in 1965, *United States v. Seeger*, in which the Supreme Court ruled that the words “religious training and belief” must be interpreted to mean “any sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those qualifying for exemption.” This judgment deliberately reversed the *Military selective services act* (1940) which originally allowed for Conscientious Objection on religious grounds, but explicitly ruled out in Section 6(j) any interpretation that appealed to comparable nonreligious grounds. The 1940 *Act* declared that “the term ‘religious training and belief’ does not include essentially political, sociological, or philosophical views, or a merely personal moral code.”

The direction of development in the history from 1940 to 1965 is clear. What is noticeable now in the arguments from Dworkin and others is that the direction of analogy is reversed. As they present it, religious belief is to be

understood by comparison with the role of life-shaping choices in anyone's story. And this reversal leads to an interesting question: Is something essential overlooked in the reversal of the comparison? Is the role of religious belief in the life of a believer just the same as any life-shaping choice, or is there something distinctive about religious commitment?

Arguments Against Dissolving Religious Liberty

From the perspective of the liberal state, the right to religious liberty is simply one case of more general rights to freedom of conscience, freedom of speech, and freedom of assembly. Any believer who is also a citizen committed to liberal values can understand this perspective and possibly share it. But are there reasons from the perspective of the believer or religious adherent to resist the proposal of 'dissolving' religion? These reasons could be of two kinds. On the one hand, they could be prudential or political reasons, such as the historical experience of religious persecution marking out these distinctive beliefs, expressions and associations, as warranting special protection. On the other hand, they could be philosophical arguments comparable to the principle invoked by Dworkin in the elevation of 'ethical independence' as the interpretation of autonomy. In what follows, I will outline arguments of both kinds suggesting that the dissolving of religious liberty in more general liberty would be misguided. First the philosophical argument.

The plausibility of the liberal perspective has been acknowledged. But its plausibility depends on the acceptance of the core premise on which the argument is based, formulated by Dworkin as the principle of ethical independence. Autonomy, freedom, control of one's own life, these are key formulations of a central value in liberal political regimes. But it must be acknowledged that this central value is not the only such value capable of functioning in a foundational role. A broader perspective is desirable when considering the deeper issues of human dignity and its foundation. Alongside the value of ethical independence or autonomy can be placed the values corresponding to human intellect and reason, the quest for truth. In seeking the ground of human dignity, it is conceivable that one might locate the

pursuit of truth in the foundational position, comparable to how Aristotle in *The politics* locates the grounds for political existence in the human capacity for reasoned speech. However, it is not necessary to opt for one or the other—may not both values, freedom and truth, be taken as foundational for an understanding of human dignity, and then in turn, for a grounding of rights?

This is the position adopted in the radical shift accomplished by the Catholic Church when in the Second Vatican Council it embraces human rights in making its declaration on Religious Liberty, *Dignitatis humanae personae*. Pope John XXIII had begun the process with his encyclical letter on peace in 1963, *Pacem in terris*, in expressing the hope that commitment to human rights would be a basis for the nations of the world to work together for peace. The significant development in the Council was the acknowledgment of the dignity of conscience, which deserved respect, even when its judgment was erroneous. In other words, the Church moved from a position encapsulated in the slogan that ‘error has no rights’ to a position focused on the person, whose dignity and entitlement to respect was not diminished due to mistaken judgments. However, the ground of that dignity is declared to be the nature of the human characterized as possessing the capacities to seek and know the truth, and to choose freely the preferred way of life. Both knowledge and freedom are the values at the heart of this attributed dignity.

It is important to note that the arguments provided for the affirmation of the dignity of the human person are philosophical, and not based on revelation, although compatible with revealed truth about the human person as created in the image of God, *imago Dei*. The reasons given for the position point to the dual capacities of the human person to know the truth and to choose what is right. Once acknowledged, respect for these capacities requires that no one ought to be coerced but be permitted freedom to follow their own conscience, with the proviso that the goods of public order not be jeopardized. In fact, no one could be forced to hold to be true what they know to be false. This realization from ancient times has been the ground for objecting to coercion in matters of religious belief.

In its *Declaration on religious liberty* (*Dignitatis humanae personae*), the Second Vatican Council insisted that no one should be coerced in the matters

of religious belief and practice. Even where a person would be mistaken or misguided in their religious convictions, respect for their dignity as human persons would require that they should be allowed to “act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion.” This teaching marked a significant development. While abandoning neither the claims of the Church to truth, nor the assertion of the duty of all to seek the truth and the true Church, the Council acknowledged that even an erroneous conscience possessed dignity and ought to be respected.

Respect for freedom is emphasized since it is the more vulnerable value. In subsequent decades it became evident that the emphasis on liberty was in danger of eclipsing the other foundational value, the search for truth. With the popularity of post-modernist rejections of grand narratives and overarching theory Pope John Paul II found it necessary to argue for the capacity of human reason to pursue and attain truth. In a pair of encyclicals, the philosopher pope supported by the theologian Joseph Cardinal Ratzinger as Prefect of the Congregation for the Doctrine of the Faith spoke up for the integrity and powers of human reason. He defended the human capacity to know what is truly good and worthwhile, a capacity called in doubt by the general skepticism associated with the increasingly popular idea that truth could not be determined but that each one should choose for themselves the vision of the good according to which they would live. *Veritatis splendor* (VS) (1993) and *Fides et ratio* (FR) (1998) are the two encyclical letters in which John Paul II defends the powers of human reason. Part of his concern is the possibility of finding common ground in pluralist contexts, where Catholic Christians are challenged to find a basis for moral, social and political cooperation with those who do not share their faith. Human reason should be a common basis for dialogue and collaboration, and from the Catholic’s perspective it is one which can provide reliable guidance for living and acting. Hence the Pope’s motivation to write in defense of human reason.

The pursuit of an illusory freedom unconnected with truth is the target of the encyclical *Veritatis splendor*. While the search for knowledge in all fields thrives, the search for the meaning of life is said to be neglected (VS 1). Pope John Paul refers to the hope of the Second Vatican Council in its document

Gaudium et spes (GS 40, 43) of engaging in dialogue with contemporaries and their cultures (VS 36). Explorations of human autonomy and freedom belong in the dialogue with non-Catholics and nonbelievers, especially in pluralist societies (VS 74). However, the dialogue is frustrated when the contemporary disregard for reason's potential to answer the ultimate questions is reinforced by theoretical accounts which do not simply challenge the content of the Church's teaching but undermine the possibility of the Church's engagement in dialogue with partners in the world (VS 106).

The encyclical speaks of a 'crisis of truth' insofar as the exaltation of freedom and the affirmation of the dignity of conscience has been coupled with a disregard for the criteria of good and evil. Individual conscience is accepted as the arbiter of good and evil, but then each individual is deemed to have his/her own truth, different from the truth of others. This would deprive dialogue of its point and must ultimately undermine acceptance of universal moral truths, such as could ground human rights, or provide foundation for a genuine democracy (VS 96, 101).

Five years after *Veritatis splendor*, Pope John Paul II published another encyclical letter, dealing with some of the same concerns. Like the earlier letter, *Fides et ratio* was addressed to the bishops of the Church with the objective of reinforcing confidence in human reason and countering the tendencies to skepticism. It bemoans the fact that contemporary trends in philosophy and in postmodern culture militate against any raising of ultimate questions about the nature of the human, and its destiny, the nature of reality and of truth itself. Seeing the mission of the Church as service of humankind through engagement together in the search for truth, the Pope attempts to secure the cultural and intellectual conditions which would make that dialogue possible. He reminds his audience that men and women are always called to seek a truth which transcends them. The lack of confidence in human reason's ability to attain truth is found to be reflected not only in skepticism, but also in forms of relativism (FR 80) and in an undifferentiated pluralism whereby it is assumed "that all positions are equally valid" (FR 5, 50, 69).

Widespread skepticism would leave the proclamation of universal moral norms such as are expressed in human rights rooted in human dignity to

appear to lack rational foundation (FR 56). This has political implications also, since the denial of the possibility of discovering rational foundations deprives democracy of its grounding (FR 89). The anxiety is that without a solid moral foundation for human rights which are constraints on what governments may do to people, the formulation of human rights may become malleable to the influence of the politically powerful. Reflection on the dignity of the human person could provide that moral foundation, but any rejection of the capacity of human reason to come to conclusions about human dignity ultimately undermines the moral basis of democracy.

Veritatis splendor received a warm welcome from one contemporary moral philosopher who has been a leading figure in the critique of the philosophical presuppositions of modernity, Alasdair MacIntyre. MacIntyre (1994, 190) applauds the Pope's recognition of the implications of intellectual error for living the Christian life: The errors are not merely intellectual, but are "practical, moral errors...that are peculiarly influential in our own particular culture" (referring to North America). He picks out three errors. The view that pre-moral and pre-rational choices and preferences are fundamental to the person, so that moral standards are rejected if incoherent with those preferences, is a widespread distortion. A second tendency is to consider all moral situations as concerned with balancing and weighing benefits and costs. And the third is a relativism which is prepared to concede validity to moral principles and norms only as relative to certain persons or certain contexts. Each of these errors is challenged by the Pope's upholding of a moral law, rooted in the exigencies of human nature. In offering a service to truth in affirming universal and unchanging moral norms, the Church hopes to be of service to every person and to the whole of humanity, since the norms it teaches have legal and political implications.

Pope Francis continues the tradition's rebalancing in favor of truth countering the exclusive emphasis on choice as a key value. In his recent publication *Veritatis gaudium* (VG), an Apostolic Constitution on Ecclesiastical Universities and Faculties in December 2017, Pope Francis places Truth at the center of the mission of research, teaching and learning.

Jacques Maritain is another Catholic philosopher who upheld the search for truth as foundational for the understanding of human dignity

and human rights. Working in an earlier period, his thought was influential in the development of the discourse of human rights and the limits they pose to the power and purpose of the state. He confronted the temptation to skepticism encountered in the situation in which a person with firm convictions meets another of equally firm but contrary convictions. How does one respond? Holding on to one's convictions entails rejecting the fellow's views as mistaken, which can be un-neighborly to say the least; the alternative is resort to skepticism and deny that either party succeeds in getting beyond private opinion to the truth of the matter. Maritain argues for toleration of the other's views, based not on skepticism but on the love of truth and respect for human intellect and conscience as capable of attaining truth. He distinguishes different kinds of tolerance, and concludes as follows:

There is a real and genuine tolerance only when a man is firmly and absolutely convinced of a truth, or of what he holds to be a truth, and when he at the same time recognizes the right of those who deny this truth to exist, and to contradict him, and to speak their own mind, not because they are free from truth but because they seek truth in their own way, and because he respects in them human nature and human dignity and those very resources and living springs of the intellect and of conscience which make them potentially capable of attaining the truth he loves (Maritain 1961).

Martha Nussbaum in her magisterial study *Liberty of conscience* (2008) cites this passage in full on two occasions, both at the beginning and at the end of her study. This study provides reasons of both kinds to support the emphasis on the value of truth alongside that of autonomy or ethical independence. Philosophically, it recovers the background to the American Constitution's endorsement of freedom of conscience and freedom of religion. She finds in the combination of Stoic philosophy and Christian regard for conscience as articulated by Roger Williams, the founder of the colony of Rhode Island, that the respect for the search for truth is the foundational value that will allow for religious toleration and liberty of conscience. On Nussbaum's account, Williams did not evade the dilemma posed for those who were convinced of the truth of their own convictions and the error of others' views: How are others' views to be respected, when they are believed to

be false? The historical context of this issue was one of religious persecution, with the rigorous enforcement of orthodoxy in New England colonies. This experience of persecution motivated the demand for religious liberty.

What Williams emphasizes is not so much the ability to find the truth, although this is not denied, but the sincere quest for that truth (Nussbaum 2008, 52).

The idea that we are all solitary travelers, searching for light in a dark wilderness, led to the thought that this search, this striving of conscience, is what is more precious about the journey of human life—and that each person—Protestant, Catholic, Jew, Muslim, or pagan—must be permitted to conduct it in his or her own way, without interference either from the state or from orthodox religion (Nussbaum 2008, 37).

The argument, neatly summarized in this sentence, is for effective recognition of liberty of conscience, which is worthy of respect because of the significance of the search for truth in anyone's life. It is noticeable how intellectualist is the interpretation of religious conviction, in contrast to the current emphasis on choice. This search for meaning which lends intelligibility and a narrative structure to life is the reason why liberty must be fostered, not so much because the exercise of autonomy is fundamental to the living of a dignified life, but because no meaning or set of beliefs can serve the relevant function unless they are grasped and affirmed by people themselves. The act of comprehension is primarily an act of reason, and only secondarily an act of will. At stake is the search for an adequate meaning which can comprehend all of life; for the sake of this search, and for the implementation of its results in the living of a life, freedom must be protected. In this sense, Nussbaum's promotion of respect for autonomy is different. On her account, autonomy is not the basic value, but instead serves the more ultimate end of the answers which articulate the truth about the reality of human existence.

Nussbaum's lengthy study in providing an intellectualist account of the basis of human dignity and the corresponding right to religious liberty reinforces the philosophical stance of the Catholic tradition. She does it expressly in her endorsement of Maritain's views. This position is significantly different from Dworkin's. Nussbaum identifies the Stoic idea of a divine spark in each human being, evident in the human ability to distinguish right and wrong, and to

form ethical judgments, used to ground the equal worth and dignity of human beings at the time of the revolution in America. This capacity found in everyone was deemed worthy of respect and indeed reverence (Nussbaum 2008, 78-79). The required respect was to allow liberty and to protect it against subjection to the arbitrary will of another. Hierarchy of any kind would allow some to dominate others, violating the dignity of the subjected persons, who would be no longer free to follow their own judgment. It is worth emphasizing the Stoic focus on capacity for judgment, intending the true and the real, in contrast to the emphasis on choice in Dworkin's account of ethical independence.

A philosophical reason for preserving a distinctive right to religious liberty is found in the related question of the grounds of human dignity. Is dignity grounded only in the autonomy of humans, or is it also or instead grounded in the human capacity to search for and find truth? Once this question is posed, Dworkin's interpretation of dignity appears as evidently one-sided. Dignity is rooted in the kind of being the human is, but the description of that kind of being is foreshortened to concentrate simply on the capacity of each one to take responsibility for themselves. The Catholic intellectual tradition articulates an alternative account, both in the Second Vatican Council's declaration on religious liberty, and in Pope John Paul's defense of the capacities of human reason. This intellectualist position finds support in Nussbaum's study of the history of the freedom of conscience in America. The centrality of freedom is linked with the search for truth and the human capacity for judgment. A more extensive account of human dignity should recognize both values. On this account, then, the aspect of human dignity of particular relevance to religious liberty is the human capacity to inquire, to wonder, to seek to understand. It is not only in being a certain kind of animal, a rational one, that the dignity of humans on the ladder of being consists; it lies also in possessing an openness to the most ultimate and comprehensive explanation of reality, whatever it turns out to be. This too constitutes an essential element of human dignity.

A second reason to resist the reduction of religious liberty to the basic liberties of conscience, speech and assembly is derived from a reflection on historical experience. Consideration of the actual history of religious persecution, including the background to the First Amendment to the

American Constitution, points to the elements of experience which led the drafters to see in religious liberty a distinctive ground for recognition and protection beyond the general recognition and protection for liberties of conscience, speech and assembly (Perry 1997). The drafters of the American Constitution and its First Amendment recognized that religion posed a distinctive problem for the political community. The experience of persecution and enforcement of orthodoxy both in England and in the colonies of Massachusetts and Connecticut reminded them that such practice is always a temptation for those who hope to achieve good by the use of state power. Accordingly, they chose to ensure two things with regard to religious freedom, which in the case of other freedoms did not appear to be necessary. First, it was necessary to ensure that the state did not trespass in an area of life in which it had no competence, namely religion, and that it did not favor the views and convictions of any particular group. Note how here again the issue is intellectualist rather than voluntarist: The state should not endorse views and convictions that are beyond its capacities to judge. At the same time, it was necessary to ensure that no religion or church, no matter how well supported by the electorate, could assume the powers of the state by means of establishment and thereby impose its doctrines and practices on others. That these were real possibilities was evident to the framers, who did not see similar dangers with other kinds of belief or practices.

Nonestablishment is not simply a restriction on what the state may do, it is also a restriction on what any religion may aspire to. It may not seek or attain endorsement by the powers of the state. The nonestablishment provision underlines the distinctiveness of religious freedom and marks it off from other freedoms of belief and conscience. The legislators have not seen the need to warn the Congress against endorsing with state authority the views of any groups with firm convictions concerning the economy, the protection of the environment, scientific exploration of nature, or other fundamental values. They recognized something which distinguished religion from these other matters of personal commitment and belief. In whatever manner that distinctiveness might be described, at least they recognized that there were significant dangers for public life associated with it, against which they saw the need for protection.

In the contemporary context, the threat to religious liberty is not likely to come from an egalitarian liberal source. As long as the state culture is an enlightened liberal one, there is little danger in assimilating the freedom of religion to the other freedoms, of conscience, speech and assembly. But history and experience remind us that the condition of enlightened liberalism is not always realized, and where it is realized, it is fragile and in danger of being hijacked or colonized by less benign worldviews. There is a proselytizing atheistic humanism threatening religious liberty, but perhaps the greater threat comes from fundamentalist theocratic religion. Islam acknowledges that religious submission must be freely given, but it is very uncomfortable with the notion that a believer might freely renounce belief. A key element of the right to religious liberty as formulated in Article 18 of the *Universal declaration of human rights* is that “the right to freedom of thought, conscience and religion...includes freedom to change his religion or belief.” Apostasy, the abandonment of one’s religion, is generally regarded as a crime in Islamic societies, and not as the exercise of a recognized liberty, even if disapproved of. For instance, the Constitution of the Islamic Republic of Iran does not expressly formulate a right to religious liberty. However, it does have an article recognizing traditional religious groups in Iran and accords them traditional freedoms. Article 13 of the Constitution recognizes “Zoroastrian, Jewish, and Christian Iranian” as religious minorities, “who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.” This means that the law allows religious liberty only to those non-Islamic groups who are mentioned in the Koran—the Jews, Assyrian Christians, Armenian Christians, and Zoroastrians. Because the Koran is read as acknowledging the existence of these groups and respecting their divine origin, the Constitution carries over the same attitude and these groups enjoy a protected existence as minorities within a predominantly Shi’a population. Other groups, whether originating within Iran such as the Baha’i or with links to international churches such as Episcopalians or Roman Catholics do not enjoy the same institutionally secured liberty to exist, even though their presence and practice may be tolerated in practice.

The permitted religious liberty is restricted to the recognized minorities, but it is restricted in another sense also. The Constitution does not recognize a liberty to choose one's religion, to convert from one to another, or to abandon religious allegiance altogether. The respected minorities are not simply religious minorities: They are also cultural and ethnic minorities. The Armenian Apostolic Church for instance is a 'national' church to which new members can be added only by being born into an Armenian family. The church itself may not receive converts. The same holds for the other groups. This is a reason why evangelical Christian groups which typically proselytize are not tolerated because the possibility of a Muslim renouncing his religion and becoming a Christian may not be admitted. The prohibition of conversion includes also the prohibition of apostasy. It is not permissible to become an atheist and remain a citizen of the Islamic Republic. This is a serious qualification on the usual meaning of religious liberty. However, on the face of it, it does not conform to the understanding of religious liberty presupposed in Article 18 of the *Universal declaration of human rights* which proclaims that, "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

I cite the Constitution of the Islamic Republic of Iran, not because I consider it especially worthy of criticism, but only because I have had the opportunity of engaging in dialogue on these topics with colleagues from Iran. Consultation of the newly formulated constitutions of Afghanistan, and Iraq, reveals a comparable commitment to the precedence of Islamic law, and silence on religious liberty in the broad sense. It is very reassuring to read that The Bangsamoro Organic Law establishing the autonomous region in Mindanao contains a commitment to religious liberty in Article IX on Basic Rights, as follows:

SEC. 5. **Religious Freedom.** – The Bangsamoro Government shall guarantee religious freedom and the free exercise thereof pursuant to the Constitution, national laws, and principles of international law. The Bangsamoro Government shall protect all persons from harassment or any undue pressure, coercion, and violence on account of religion. Any establishment

and institution shall be free to implement policies and undertake activities pursuant to their respective religious beliefs and values.

Conclusion

The first section of this paper has surveyed the tendency within liberal philosophical reflection on human rights to subsume the right to religious liberty under the more general rights to freedom of conscience, freedom of expression, and freedom of association. The central argument in favor of this move identifies ethical independence, or autonomy, as the fundamental value, grounding liberties, and indeed human dignity. No authority, state or otherwise, may infringe on the ethical independence of a person by imposing on them a view of the human good. The liberty to choose the good according to which a person will structure his/her life is central to his/her dignity. Dissolving religion as a category in human rights law seems plausible therefore from the egalitarian liberal perspective.

In the second section, I have reviewed the contrasting philosophical position taken by Catholic Social Thought in which freedom and autonomy are indeed recognized and valued as fundamental, but alongside the intellectual capacity to seek the truth. It is as if to say that while it is appropriate that persons should live according to their self-chosen vision of the good, it is also incumbent on them to investigate if their preferred vision is indeed truly good. This broadening of the basis for the grounding of rights such as religious liberty provides also a richer basis for understanding human dignity. The Catholic intellectual tradition is supported by evidence from the history of the development of religious liberty in America, in which the Protestant emphasis on conscience highlighted not primarily the freedom to choose the good, but the intellectual search for the truth.

Alongside the philosophical argument in favor of the broader account of human dignity stressing both knowledge and freedom, there is also the argument from the history of religious persecution. The danger of religious persecution remains, whether from ideological secularism, or from fundamentalist theocracy. It is therefore wise to insist on the retention of an explicit right to religious liberty in international, national and regional law.

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