Grounding Our Right to Religious Freedom

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Our right to religious freedom is best grounded in the universal duty to seek ultimate truth, and not in human autonomy.

Do rights protect autonomy or duties? Answers to that question drive our current debate over religious freedom.

To say that rights protect autonomy is to understand rights as guarantors of the absolute freedom to define the meaning and purpose of one's own life. One should have the “right” to devote one’s life to sculpting marshmallow chipmunks just as much as one should have the right to devote one’s life to curing cancer.

Indeed, many people favor this view of rights because of its supposed “value neutrality.” This view would have us respect other people’s freedoms by interfering with their lives as little as possible.

Of course, even if one thinks rights protect autonomy, no one is absolutely free to do whatever he wants. We all face natural limits like power and scarcity. For example, I am balding; I would like to have a full head of hair, but I am not free to have a full head of hair. I don’t have the power to grow hair. I am also limited by scarcity. I have only one head. If I were a robot, I might wear a different head every day, changing them out like wigs.

While ancient peoples, by and large, dealt with powerlessness and scarcity by developing moral virtues like patience, temperance, and hope, modernity has a new solution: technology. Technology increases our power and increases the products from which we can choose. Today I can cure my baldness with drugs, disguise it with implants, or hide it with spray paint: then I will be happy. This is the promise of technology in our day: it allows us to satisfy all of our desires and so become happy.

Modern liberalism, pairing the autonomy view of rights with the pursuit of progress, treats technology as necessary for happiness. Every technology is good so long as it pleases someone. Limiting technology therefore limits “choice” or autonomy, and therefore someone’s happiness.

The Obama administration’s HHS contraceptive mandate is rooted in this philosophy. Proponents of the mandate believe that to hinder people's use of a technology that would facilitate the satisfaction of their
desires, such as contraception, is to deny them happiness. When one says that abortion, contraception, or in
vitro fertilization is a wrongful, bad technology, what they hear is: you don’t have a right to be happy. “And
don’t I have a right to be happy?” they respond.

Modern liberalism cannot deny demands for technology, no matter how absurd or immoral. Neither can it
adjudicate between conflicting rights. If rights are based on autonomy and autonomy is defined as the
absence of frustrated desires, whatever those desires are, there’s no objective limit to what one can have a
right to. Since reality doesn’t limit rights based on desires, liberalism must resolve conflicts of rights by
convention, contract, or sheer power. Despite its intention to maximize freedom, liberalism often ends up
restricting some people’s rights of conscience for the sake of others’ technologically powered autonomy.

Think about this from a parent’s perspective. When Joe wants to play with Jane’s toys, but Jane doesn’t
want Joe to play with her toys, who has to step in and solve the problem? Parents. What happens in the
adult world when Smith decides he “needs” something from Jones—maybe something important, like
medical care, or education—and Jones doesn’t want to provide it because he thinks Smith’s intentions are
immoral? They go to court. And at that point the state has to decide whether to coerce Jones to give Smith
what Smith “needs” to be happy.

Here we come to the fundamental paradox of modern liberalism. On the one hand, liberalism in all its
stages has always treated human freedom as sacred. On the other hand, modern liberals also believe that in
order to guarantee their freedom, they can in practice use the state’s coercive power to compel others to do
what they believe is wrong.

This is the logical consequence of liberalism’s autonomy view of rights. Since the state is supposed to be
“value-neutral” about what each party desires, in cases where human autonomy is at stake it really has no
principled way to decide between competing claims. The result, more often than not, is not a fair contract
between the two parties but an arbitrary exercise of political power, justified by the myth that we have a
right to technological progress and convenience.

The natural law tradition avoids these problems by insisting that rights protect obligations rather than
autonomy. Rights are tied to those goods objectively required by human nature for flourishing, such as life,
truth, and virtue. Since we would suffer harm by neglecting to seek such goods, we have obligations to
seek them.

Yet “ought implies can,” as ethicists say; one cannot have an obligation to do what one cannot do. I cannot
promise my son that he will grow up to be a six-feet-tall millionaire, or that he will never be in an
earthquake. I cannot make those promises because I cannot make him a six-feet-tall millionaire, or prevent
That’s where natural rights come into play. They grant us the moral power to do and be good. They guarantee that we can seek what we should seek: the power to protect our lives against threats, to search for truth as rational beings, and to act in accord with our consciences.

Rights also provide some information about how to seek the human good. Because natural rights are tied to real human goods, we can adjudicate between apparently conflicting rights claims according to rational principles of priority and immediacy rather than convenience or power, as in liberalism.

For instance, although St. Thomas Aquinas grounded positive-law private-property rights in their contribution to the goods of life and health, he also recognized specific exceptions to these civil rights. If a starving man had a more immediate need of a loaf of bread to sustain his life than the shopkeeper selling it, the natural right of the starving man, in a limited and temporary way, would legitimately infringe the civil right of the shopkeeper. The starving man would eventually need to make restitution for this infringement, but the same rational principle—seek life—would govern the rights of both the baker and the pauper. We see the same thing today when the imperative to seek life requires motorists to stop at red lights and ambulances, in limited and well-defined circumstances, to drive through them.

Civil law should thus be a specification of the natural law, or at least consistent with it. If not, the civil law fails qua law, that is, as a system of rational principles governing human behavior directed to human flourishing.

When a putative legal right contradicts a natural right—when it directly prevents us from fulfilling our basic moral obligations as human beings—the now-pointless legal right dissolves before the greater claim. Rights protect duties; they guarantee our power and freedom to be good.

This simple idea has two enormous consequences.

First, it entails that no earthly power, no government of men, has absolute dominion over our lives, freedom, or conscience. As our founding fathers argued in the Declaration of Independence, the priority of natural rights and duties over man-made rights and duties entails that governments are limited by natural law. Governments are instituted in order to secure our natural rights, they wrote, and “whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it”—or at the very least, to resist it.

The second consequence follows from the first. If rights protect our ability to do and be good, and if natural law has priority over civil law, then not only do we have a natural right to exercise ourselves in
ways necessary for the fulfillment of our obligations, but we also have the right to refuse to obey when a government commands us to do what is wrong, which includes those things that we are obligated not to do. That argument also has a long pedigree, having famously been made by American abolitionists during the civil war, by the Nuremberg Court against Nazi war criminals, by Mahatma Gandhi against the British, and by Dr. Martin Luther King in his “Letter from Birmingham Jail,” to name a few.

We can ground the right to religious freedom in this view of natural rights.

As diverse thinkers across the ages have held, human beings are born with the desire and the capacity to seek truth about issues of ultimate meaning. Whether we describe this with Aristotle as the universal desire of reason to know why, or with St. Augustine as a heart restless for relationship with God, this search defines us as rational beings.

Each of us has a duty to seek, then, as far as we are able and in our own way, the truth about first things. To refuse this duty is to neglect ourselves as human beings. Likewise, the equal dignity of every rational soul gives us an obligation to enable and encourage all persons’ honest and sincere search for truth.

The obligations to seek and to help others seek ultimate truths—including most importantly a relationship with God—generate fundamental natural rights to do so. Together they comprise the natural right to religious freedom. The HHS mandate is an unwarranted obstacle to this natural right, since it attempts to subvert this right with a severely limited civil-law definition of what constitutes genuine religious expression. Medical care, education, and charitable works apparently do not qualify, contrary to the longstanding tradition that one can seek the face of God by comforting the needy.

As the ecumenical group Evangelicals and Catholics Together recently argued, to hold that rights protect duties makes it clear why religious freedom—which allows believers to fulfill their basic obligation to seek God in all areas of life—is prior to every other freedom: the freedom of speech, the freedom of assembly, the freedom of press, the freedom to assemble and so discuss, and seek, and live out our convictions with others, the freedom to form and sustain distinctive institutions dedicated to these activities, and above all the freedom to worship—all of these freedoms are necessary for religious freedom. Religious freedom is not one freedom among others; rather, it is the foundation of every other freedom.

Despite the American government’s argument that we have legal duty to obey the HHS mandate and its liberal conception of rights and freedom, we have a prior duty rooted in the natural law to live in accord with our convictions, including (for instance) the convictions that contraception and abortion are wrong. We have a right to act in accord with that duty. We may, as members of a pluralistic society, sometimes tolerate evil, but we need not participate in it.
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