

CAN A NATURAL LAW THEORIST JUSTIFY RELIGIOUS CIVIL LIBERTIES?

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The purpose of this essay is to explore how a natural law theorist of the Aristotelian-Thomist variety might justify the provision and protection of religious civil liberties. My thesis divides into both a negative and a positive component. The negative component is that some of the more prominent attempts to ground religious civil liberties in the principles of natural law theory are unconvincing. More specifically, I shall argue that Robert George's attempt to ground religious civil liberties in the good of "religion" is suggestive but ultimately in need of repair.¹ The positive side of my thesis is a suggestion for how natural law theorists might justify religious civil liberties. I shall contend that natural law theorists ought to present a multipronged justification for the provision and protection of religious civil liberties that, among other things, appeals to the ways in which participation in certain religious traditions forms and sustains what I will call a person's "effective identity."²

I. What Is a Natural Law Theory?
Lying at the core of any natural law theory are three claims: (1) a claim concerning the nature and constituents of genuine human flourishing; (2) a claim concerning the nature and the content of practical reasons; and (3) a claim concerning the proper role and limits of the state. In this section, I want to say just enough about each claim in order to set the stage for the subsequent argument.

On the Nature and Constituents of Human Flourishing

As I understand it, the natural law theorist's thesis concerning the nature of human flourishing says that genuine human flourishing (over some duration of time) consists in the sufficient participation in a sufficiently wide array of "basic goods." I shall understand basic goods to be certain kinds of activities and functional and experiential states. More exactly, I shall understand basic goods to be *kind-predicables*, the sorts of entities that can be multiply and/or repeatedly predicated of human persons (and other living creatures).³ I shall further assume that for a person to "participate" in a basic good is just for that person to exemplify that good.⁴ It is typical for natural law theorists to claim that there is a small number of basic goods that are general in nature. So John Finnis is, I judge, representative of the natural law tradition when he claims that there are eight basic goods that are constitutive of human well-being: bodily life; knowledge of reality (including aesthetic appreciation); practical reasonableness; excellence in work and play; friendship or harmony between individuals and groups of persons; harmony among one's feelings, judgments, and choices; harmony between oneself and the wider reaches of reality including a more-than-human source of meaning and value; and marriage.⁵ Of course, other natural law theorists offer somewhat different and more expansive lists of the basic goods.⁶ But it is ordinarily goods such as these that represent the constituents of authentic human flourishing according to a natural law view.

To this let me add two points of clarification. First, natural law theorists ordinarily add to their account of the nature of human flourishing a thesis about intrinsic goodness. Their claim is that participation in one or another basic good is itself intrinsically good. That is to say, the goodness that consists in the participation in any basic good does not inherit all its goodness from the way in which it causally or noncausally contributes to some other state of affairs that is good; rather, such participation is good in itself.⁶ Second, it is worth noting an

important divide between more traditional natural law theorists who, following Aquinas, give a deeper metaphysical account of what makes it the case that certain types of activities and experiential states are basic goods, and those, following Finnis and Germain Grisez, who do not. More traditional Thomists claim that any adequate account of what makes it the case that something is an aspect of human flourishing must appeal to a teleological account of human nature according to which human beings have an *ergon* or function. Finnis and his followers have vehemently denied this.⁷ In what follows, I will not attempt to adjudicate this controversy.

On the Nature and Content of Practical Reasons

Definitive of natural law theory is the thesis that a person's participation in a basic good is a reason of a sort. A little more precisely, the idea is that, necessarily, for any agent S and basic good G, there is a *prima facie* reason for S to positively value the participation in G in and for itself.⁸ When I say that there is a reason for a person to "positively value" the participation in a basic good, I mean that there is a reason for that person to prize, cherish, honor, esteem, respect, appreciate, etc., that participation — where prizing, cherishing, etc., is thought of as involving a whole range of appropriate emotional, desiderative, and actional responses to that participation. The reasons to positively value the participation in a basic good, I shall further assume, are both general and "basic" in character. These reasons are general insofar as they direct all persons in the appropriate circumstances to positively value any instance of a basic good. They are basic in at least two ways. They are, first of all, basic insofar as any explanation of an intelligible piece of practical reasoning must terminate by citing one or another such reason.⁹ Second, they are basic insofar as they cannot be inferred from other more fundamental reasons.¹⁰ Robert George, for example, writes that "intrinsic values, as ultimate reasons for action, cannot be deduced or inferred. . . . As basic reasons for action, the value intrinsic goods have cannot (and need not) be inferred from more fundamental reasons for action."¹¹ George does not say what he means by "more fundamental reasons" here, but I shall assume that he means *explanatorily* more fundamental reasons. So the idea is something like this: P is a basic reason to act only if P cannot be deduced from some other reason Q that explains why P is a reason to act. In any event, it is the panoply of general principles that specifies that we ought to positively value the participation in one or another basic good that comprises the "natural law."

On the Proper Role and Limits of the State

The third and final feature of natural law theories I wish to highlight is a thesis concerning the proper role and limits of the state. Put succinctly, the natural law theorist says that the proper and central role of the state is to provide the basic material, institutional, educational, and social circumstances in which a flourishing life can be chosen and lived. Notice that the proper function of the state is best understood as providing the circumstances in which a flourishing life can be chosen and lived; it is to provide its citizens with the *opportunity* to flourish. According to the natural law account, the state itself cannot guarantee that its citizens will choose a flourishing life, let alone flourish. The state can, however, take various steps to promote and protect (either directly or indirectly) the flourishing of its citizens. Thus, most natural law theorists have thought it proper for the state to enact "morals laws" of various kinds that render illegal certain types of activities that are thought to be inimical to the authentic flourishing of persons (e.g., recreational drug use, prostitution, and so on). However, it should be emphasized that, according to most natural law theorists, the state's ability to implement and enforce morals laws is limited in several ways.¹² For one thing, the natural law limits the measures the state can take to provide for or protect the flourishing of its citizens. The state is never to act in such a way that expresses an intention to destroy, frustrate, or inhibit the participation in, or the opportunity to participate in, the basic goods. For another, as Aquinas himself made clear, the state cannot demand too much of its citizens. Passing morals laws of an especially stringent sort may be futile, and may be the occasion for social ferment and even greater vice. So most natural law theorists agree that it is permissible and advisable for the state to allow its citizens to engage in certain kinds of activities that, strictly speaking, contravene the natural law.

II. Our Central Question

The central question I raised at the outset of this essay asks: does a natural law theory of the Aristotelian-Thomist variety have the resources to offer an adequate justification for the provision and protection of religious civil liberties?

Interestingly enough, Aquinas thought it did. It was Aquinas's conviction that it is the proper role of the state to provide for and protect the various religious civil liberties of at least some of its citizens.¹³ Aquinas reasoned that it is

the proper role of the state to provide for and protect the necessary components of the flourishing of its citizens. But the flourishing of any person consists in that person's enjoying eternal felicity. As such, the state has a duty to do what it can (within certain limits) to help bring about and not prevent its citizens' enjoying eternal felicity. On the assumption that Christianity is the one true faith, the state ought to allow its citizens to engage freely in Christian modes of worship. For in doing so, the state can clearly facilitate and not hinder its citizens from enjoying beatitude. Moreover, the state has reason to allow its citizens to engage freely in Jewish and pagan modes of worship as well, not because such engagement directly (or indirectly) contributes to the eternal felicity of the citizenry, but because, if the state were to disallow it, this would likely cause unnecessary social unrest and would harden non-Christians to the truth of the Christian gospel.

Needless to say, Aquinas's rationale for providing religious civil liberties is not something that is particularly attractive to contemporary natural law theorists—and for at least three reasons. First of all, some natural law theorists do not hold that theism, let alone Christianity, is true. So, Aquinas's deepest rationale for allowing religious civil liberties is simply unavailable to some natural law theorists. In addition, even if the truth of theism forms part of the content of the natural law, it is certainly one of its more controversial aspects. Thus, if a natural law theorist were to appeal to the truth of theism to ground religious civil liberties, her theory would not command widespread assent. Finally, most contemporary natural law theorists are apt to draw a much sharper distinction between church and state than did Aquinas. So, even if theism is true and even if it forms part of the content of the natural law, most natural law theorists do not claim that it is the *state's* responsibility to help bring about the eternal felicity of its citizens. If anything, this responsibility belongs to the church.

So the contemporary natural law theorist who wishes to find a basis to justify the provision and protection of religious civil liberties will have to find another rationale than the one Aquinas offered. Perhaps the most sustained attempt to develop such a rationale is found in Robert George's book *Making Men Moral: Civil Liberties and Public Morality*. I propose that we explore it in some detail.

George's Account

One of the more interesting features of George's approach is that, unlike many contemporary liberal views, it does not attempt to ground religious civil liberties in the good of personal autonomy. As George makes clear, according to a

natural law scheme, personal autonomy is not a basic good.¹⁴ The mere fact that a particular action would realize a person's autonomy does not, according to the natural law view, provide a basic reason for taking that action. At most, personal autonomy is a necessary condition for participating in goods such as practical reasonableness, friendship, and the like, but is not itself a basic good. And, thus, in George's view, we cannot hope to find a basis for the provision of religious civil liberties merely by appealing to personal autonomy. Nor, for that matter, does George try to ground religious civil liberties in a fundamental right to religious freedom. Rights, says George, are always derived from more fundamental moral principles and basic human goods.¹⁵ So, according to the natural law view, there is no sense in talking of a fundamental right to religious liberty. Hence, there is no sense in appealing to such a fundamental right to justify the provision of religious civil liberties. Nor, finally, does George endeavor to justify religious civil liberties by maintaining that the state ought to be neutral with respect to all conceptions of the good and, hence, should allow (all other things being equal) persons to pursue whatever form of life they please. At the core of natural law theories is the conviction that the state ought not to remain neutral with respect to all conceptions of the good, but ought to promote and protect the genuine flourishing of its citizens. So, the appeal to neutrality does not figure in the natural law theorist's attempt to provide a rationale for the provision of religious civil liberties. However, if these three paradigmatic liberal justifications for the provision and protection of religious civil liberties are unavailable to the natural law theorist, where else might the natural law theorist turn?

George's suggestion is that we ought to anchor religious civil liberties in what he calls the basic good of "religion":

I maintain that the right to religious freedom is grounded precisely in the value of religion, considered as an ultimate intelligible reason for action, a basic human good. Like other intrinsic values, religion can constitute a reason for political action; government need not, and should not, be indifferent to the value of religion.¹⁶

And what is the basic good of religion? Here it is worth quoting George at some length:

Irrespective of whether unaided reason can conclude on the basis of a valid argument that God exists—indeed, even if it turns out that God does not exist—there is an important sense in which religion is a basic human good, an intrinsic and irreducible aspect of the well-being and flourishing

of human persons. Religion is a basic good if it provides an ultimate intelligible reason for action. But agnostics and even atheists can easily grasp the intelligible point of considering whether there is some ultimate, more-than-human-source of meaning and value, of enquiring as best one can into the truth of the matter, and of ordering one's life on the basis of one's best judgment. Doing that is participating in the good of religion. Just as one has reason, without appeal to ulterior reasons . . . to pursue knowledge, enter into friendships and other forms of community, strive for personal integrity, develop one's skills and realize one's talents, one also has reason, without appeal to ulterior reasons, to ascertain the truth about ultimate or divine reality and, if possible, to establish harmony and enter into communion with the ultimate source(s) of meaning and value.¹⁷

If I understand George correctly, participating in the basic good of religion has two main components: first, it involves inquiring into whether there is an ultimate source of meaning and value; and, second, it involves ordering one's life on the basis of one's best judgment about whether there is such an ultimate source (which I shall hereafter simply call "God").

How, then, do we get from the claim that religion is a basic good to the conclusion that the state ought to provide and protect religious civil liberties? George never explicitly spells out his argument. But something like the following, I surmise, is what George has in mind:

1. Every person and institution, including the state, has basic moral reasons not to intentionally inhibit the opportunity for persons to choose to participate in the various basic goods, but has reason to intentionally protect such participation.
2. Religion is a basic good.
3. Therefore, every person and institution, including the state, has basic moral reasons not to intentionally inhibit the opportunity for persons to choose to participate in the good of religion, but has reason to intentionally protect such participation.
4. Providing for and protecting various religious civil liberties (e.g., the right to assemble and worship in a way one pleases, and so on) is a centrally important way by which the state can intentionally not inhibit but intentionally protect the opportunity for persons to choose to participate in the basic good of religion.
5. Hence, the state has basic moral reasons to provide for and protect various religious civil liberties.

I wish to press two sorts of objections to this argument. I want to maintain, first of all, that even if the participation in the good of religion is intrinsically good, and even if the state has a basic reason to provide for and protect such participation, George needs to furnish further considerations for thinking that these basic reasons are not overridden by other factors. Second, I wish to contend that participating in the good of religion does not provide basic reasons to positively value it and, hence, that religion is not a basic good.

The First Objection

Let us suppose that George is right to say that religion is a basic good and, thus, that participating in the good of religion is itself intrinsically good. That is to say, let us assume that it is intrinsically good to inquire into the nature and existence of God and to order one's life in accordance with one's best judgment about these issues. However, even if it were true that it is intrinsically good that one order one's life according to one's best judgment concerning whether God exists and what God is like, it may still be the case—and sometimes is the case—that the particular *ordering* of a life made on the basis of that judgment is intrinsically bad. Thus, it may be the case—and sometimes is the case—that the badness of a particular ordering is sufficient to defeat the intrinsic goodness of having ordered one's life according to one's best judgment concerning the nature and existence of God.

Consider, for example, a religious sect that espouses a view about reality that we might call "cosmic illusionism." This sect maintains that the way reality appears to us is deeply and systematically misleading. Though reality may appear to have different sorts of entities and various sorts of distinctive components, this is not the case. There are no distinctions to be found in reality; reality is really pure, undifferentiated "consciousness." Let us also suppose that this sect holds that, on account of their illusory nature, the apparent beauties of this world are to be shunned, political life should be scorned, and communal life is to be avoided. Now consider someone who belongs to this sect. After reflection, this person has come to accept the major tenets of this sect and she attempts to order her life according to these tenets. Pretty clearly, though it may be good that our sect member has ordered her life according to her best judgment concerning the existence and nature of the divine, the particular ordering of her life looks to be very bad indeed. As a consequence of adhering to the principles of this sect, this person holds packs of false beliefs about the nature of reality and fails to participate in the goods of aesthetic appreciation, sociality, and marriage, to name a few. In this case, it seems as if the badness of the ordering of our sect member's life

is sufficient to defeat the goodness of her having ordered her life on the basis of her best judgments concerning the existence and nature of the divine. And if the badness of the ordering of her life is sufficient to defeat the goodness of having ordered her life on the basis of her best judgments concerning the nature and existence of the divine, it is not immediately obvious why, according to a natural law view, the state should provide for and protect her religious civil liberties. After all, many natural law theorists, including Aquinas, have thought that in some cases the badness of the way in which a person has ordered her life is sufficient to defeat the goodness of that person's having ordered her life as she best sees fit. It was Aquinas's conviction, for example, that heretics ought not to be granted any religious civil liberties and deserved death.

Let me forthrightly admit that I do not think that this is an insurmountable objection to George's argument. I only claim that more needs to be said about why participation in the putative good of religion is of such importance that the state ought to protect the religious civil liberties of its citizens—even when we have good reason to believe that adherence to a particular religion renders the ordering of the lives of those persons who adhere to that religion intrinsically bad.

The Second Objection

The second objection to George's argument is more ambitious. It contends that, contrary to what George says, the putative basic good of religion is not a basic good at all.

The objection can be articulated best if we bring to mind the connection George thinks exists between basic goods and basic reasons. The participation in any basic good, recall, is a basic reason—where (roughly) a reason is basic in case it cannot be derived from a more fundamental reason. On the assumption that the basic good of religion consists in inquiring into the existence and nature of God, and ordering one's life on one's best judgment concerning these matters, it follows that we have basic reasons to engage in these activities. But now consider the following line of reasoning. Suppose a person were to ask herself: "Why ought I to inquire into whether God exists or what God is like?" A perfectly intelligible answer is, "Having knowledge is intrinsically good. Since inquiring into whether God exists and what God is like will make it more likely for me to increase my knowledge, I ought to inquire into whether God exists and what God is like." In this case, we have offered an argument to inquire into God's existence and nature by appealing to the basic good of knowledge. Thus, it appears as if we can deduce reasons for inquiring into God's existence and nature from the value

of participating in the basic good of knowledge. But are the reasons that consist in participating in the good of knowledge explanatorily more fundamental than those reasons that consist in participating in the putative good of religion? It appears that they are. We explain what it is to participate in this first aspect of the good of religion by appeal to the good of knowledge; indeed, the former appears to be simply an aspect of the latter. Thus, we naturally explain the reasons we have for participating in this aspect of the putative good of religion by appeal to the reasons we have for participating in the good of knowledge. We do not, however, appeal to the first aspect of the putative good of religion to explain what the good of knowledge is or the reasons we have to participate in it. That would be to attempt to explain what is explanatorily more basic in terms of what is less so.

Now consider another argument. Suppose this same person were to query: "Why should I order my life according to my best judgment concerning whether God exists and what God is like?" And suppose the answer is: "It is constitutive of a person's participation in the good of practical reasonableness that this person attempt to order her life in accordance with her best judgments concerning centrally important issues. Whether God exists and what God is like are centrally important issues. Hence, I ought to order my life in accordance with my best judgment about whether God exists and what God is like." In this case, we have offered an argument to order one's life according to one's best judgment about whether God exists and what God is like by appealing to the good of practical reasonableness. Accordingly, it appears as if we can deduce reasons for participating in the second aspect of the putative good of religion from the value of participating in the good of practical reasonableness. Are the reasons that consist in participating in the good of practical reasonableness explanatorily more fundamental than those that consist in participating in this second aspect of the putative good of religion? It appears so. We explain what it is to participate in this aspect of the good of religion by reference to the good of practical reasonableness; indeed, the former appears to be simply an aspect of the latter. Consequently, we naturally explain the reasons we have for participating in this second aspect of the putative good of religion by appeal to the reasons we have for participating in the good of practical reasonableness. We do not, however, explain what the good of practical reasonableness is, or the reasons we have to participate in it, by appeal to this second aspect of the putative good of religion. That would be to attempt to explain what is explanatorily more fundamental in terms of what is less so.

If the foregoing is correct, religion is not a basic good. This is because the reasons we have to participate in the good of religion can be derived from the value of participating in the good of knowledge and the good of practical reasonableness.

Moreover, we have grounds for believing that the sorts of reasons that participation in the good of knowledge and the good of practical reasonableness yield are explanatorily more basic than those yielded by the participation in the putative good of religion. Participation in the good of religion is just a way of participating in these explanatorily more fundamental goods. So, on the assumption that a thing is a basic good if and only if a person has a basic reason to positively value the participation in that thing, then it follows that the putative good of religion is not a basic good.

Three Replies

How might one respond to this argument? Here are three different replies.

One line of response runs as follows. To establish that religion is not a basic good, we would have to show that participating in the basic goods of knowledge and practical reasonableness fully explains why it is worthwhile to participate in the good of religion. But the argument just offered doesn't do that. At best, it offers a partial explanation of why we have reasons to participate in the good of religion. It ignores the fact that we have additional reasons to participate in the good of religion. These additional reasons are generated (in part) by the fact that it is the existence and nature of *God* into which we are inquiring. It is the *object* of the good of religion that makes it distinctively worthwhile to participate in it.

The fundamental problem with this reply is that, if it is correct, it results in an inordinate proliferation of basic goods. For consider any subject matter into which it is worthwhile to inquire. Take, for example, an existentially weighty matter such as the nature and existence of the soul, the nature of human flourishing, or the basis of morality. Or consider an existentially less central, though nevertheless worthwhile, subject such as Rembrandt's use of light, Charlie Parker's use of the diminished scale, or Chaucer's use of irony. According to the present reply, the reason a person has for inquiring into any of these issues and ordering her life according to her best judgment on these matters is not exhausted by the fact that in doing so she participates in the goods of knowledge and practical reasonableness. The object of each of these inquiries gives a person additional reasons to pursue them. However, if this "extra worthiness" is sufficient to transform an activity into a basic good, then we shall have to say that there are basic goods corresponding to each of these activities—and countless others like them. But George, Finnis, and company do not say this; they do not say that there is a basic good corresponding to inquiring into the nature of the soul or Rembrandt's use of light. And it is probably good that they do not. Once we have such a fine-grained account of basic goods in place, then we will be tempted to say that inquiring into any worthwhile

subject counts as a basic good. Moreover, fundamental to Finnis's and George's account of the basic goods is the claim that a good is basic only if it cannot be "reduced to merely being an aspect of" any of the other basic goods.¹⁸ But if being an "aspect" of a good is simply being a manner of participating in it, then it is difficult to see how the present reply can be sustained. An activity such as inquiring into the nature of the soul looks merely to be a way by which we participate in goods such as knowledge and practical reasonableness.

The second response to the argument takes a different route. It says that, while the argument we have offered so far may be successful in showing that the good of religion as George understands it is not a basic good, it is not successful in establishing that the good of religion as Finnis understands it is not a basic good. This is because Finnis offers us a distinct account of the nature of the good of religion that is not vulnerable to the kinds of arguments that we have raised against George's account. Here is Finnis's most extensive defense of the claim that religion is a basic good:

But is it reasonable to deny that it is, at any rate, peculiarly important to have thought reasonably and (where possible) correctly about these questions of the origin of the cosmic order and of human freedom and reason—whatever the answer to these questions turns out to be, and even if the answers have to be agnostic or negative? And does not that importance in large part consist in this: that if there is a transcendent origin of the universal order-of-things and of human freedom and reason, then one's life and actions are in fundamental disorder if they are not brought, as best one can, into some sort of harmony with whatever can be known or surmised about that transcendent other and its lasting order?¹⁹

One might interpret this passage to claim that the good of religion is not merely an aspect of the good of knowledge or the good of practical reasonableness. To be sure, participating in the good of religion consists in inquiring into whether there is a God and what God's nature is like. But it is more than this. It also involves (if the more-than-human order is personal) something like having one's will in accordance with the will of the divine. Thus, we might say that the good of religion is a distinct good that is more analogous to the good of friendship and community than the good of knowledge or practical reasonableness.

There are several problems with this reply. To begin with, it does not follow that if the putative good of religion is distinct from the good of knowledge and the good of practical reasonableness it is thereby a basic good. It may still be the case that the reasons we have for participating in the good of religion can be deduced

from the reasons that consist in the participation in the good of knowledge or the good of practical reasonableness. In addition, the reply misunderstands Finnis's conception of the good of religion. The reply in question suggests that, according to Finnis's view, the good of religion consists (at least in part) in a person's life and actions being in harmony with God's purposes. But Finnis does not say that. Rather, he says that, *if there is a God, one's life and actions are in fundamental disorder if they are not in harmony with God's purposes*. To be sure, Finnis would also affirm that, if there is a God, then a person ought to order her life in such a way that it is in harmony with God's purposes. But nowhere in his account of the good of religion does Finnis claim that there is a God. Nor does he maintain that the natural law implies that there is a God. So, it is incorrect to say that in Finnis's view the good of religion is distinct from the good of knowledge and the good of practical reasonableness insofar as the good of religion consists in being in harmony with God. And, once Finnis's view is understood correctly, there is, as far as I can tell, no substantive difference between his and George's position.

Let me point to a third way by which we might try to avoid the objection I have raised against the George/Finnis view. It might be said that the interpretation of Finnis just offered is incorrect. Finnis's claim is not that if there is a God, then religion is a good. Rather, Finnis's claim is that religion (i.e., attempting to, and aligning one's will with God) is a good insofar as it can be seen as something that would be worth having. Of course, the nonexistence of God would make this good out of reach in a way similar to the manner in which skepticism would make the good of knowledge out of reach. But even the skeptic who rejects the possibility of having knowledge can see that if knowledge could be obtained it would be good.²⁰

I doubt that this last reply is adequate. First of all, even if this reply were correct, it would not imply that participating in the basic good of religion is anything more than a way by which we participate in the goods of knowledge and practical reasonableness (and perhaps friendship). So the present reply is not really a reason for believing that religion is a *basic* good. Moreover, it is presumably the case that participating in the good of religion thus understood is a (basic) reason to act. But it is hard to see how the fact that is picked out by the counterfactual claim *if there were a God, then it would be good to align our will with God's* is a reason to act. The fundamental problem here is that whether the counterfactual participation in a good is a reason to act is (at least in part) a function of (1) whether the state of affairs that is specified in the antecedent of a counterfactual claim (in this case, God's existing) is likely to obtain at the actual world, and (2) the importance of the state of affairs that is specified in the consequent

(in this case, aligning our will with God's).²¹ Finnis and George, however, wish to characterize the good of religion in such a way that its status of being a good does not depend on whether God exists or whether it is likely that God exists. So suppose we grant that aligning one's will with God's own will would be immensely valuable (assuming that God is as the major theistic religions claim). However, for all that's been said, the likelihood of God's existing may be so low (say, zero) that there is, nevertheless, no reason to pursue that putative good. Moreover, it may be that genuinely attempting to align my will with God's will requires of me immense sacrifices—sacrifices that consist in my not participating in a wide array of basic goods that I know are valuable. And, since for all that we've been told, the probability of theism is very low, it may be that, given these sacrifices, I have no reason to attempt to align my will with God's. Finally, there is a problem regarding religious diversity: when we take into consideration everything that Finnis and George claim, it is reasonable to believe that there are many putative Gods with which we might seek to align our will. And, for all that's been said, there seems just as much a reason to align our will with any one of these Gods as with others. But attempting to align my will with one God's purposes will, in a large range of cases, be incompatible with attempting to align my will with another of God's purposes. But then the putative good of religion directs us to act in a variety of mutually incompatible manners. And that is just to say that participation in this putative good itself gives us no reason to act at all.

What the Natural Law Theorist Should Contend

I have argued that there is no basic good of religion. If the argument is sound, then the natural law theorist should not attempt to justify religious civil liberties by appealing to the putative good of religion. What, then, should a natural law theorist who is interested in justifying the provision and protection of religious civil liberties do?

Let me propose a general argumentative strategy to which natural law theorists should appeal. I suggest that in attempting to justify the provision and protection of religious civil liberties the natural law theorist should attempt to execute an argument that has three main stages. First, the natural law theorist ought to identify the various basic goods the participation in which is intrinsically good. Second, the natural law theorist should make evident the various manners in which participation in certain religious traditions is an instance of, or otherwise contributes to, participation in the basic goods and, hence, why the state has various reasons to grant the appropriate types of civil liberties to participate in those religious traditions. Third, the natural law theorist ought to develop a series of

arguments to the effect that (1) the state is incompetent in many cases to ascertain whether the goodness of participation in a particular religious tradition is defeated by other bad features of such participation, and (2) the state will sometimes have broadly pragmatic reasons to provide and protect religious civil liberties even when it has good reason to believe that such participation undercuts the participation in various basic goods. If the natural law theorist can successfully execute these three stages of the argument, then she will have given a sufficient justification for the state to grant religious civil liberties to participate in certain religious traditions. Though to this we should add the following qualification: if the state has good reason to believe that participation in a particular religious tradition has the effect of clearly and deeply damaging the common good, the state may revoke or not grant civil liberties to participate in that tradition.

This, I claim, is the sort of general strategy to which a natural law theorist should appeal. I want to close by considering in a little more depth how the natural law theorist might fill in some of the details of the argument. However, I should emphasize that what follows is just the broadest sketch of such an argument. All too often I simply glide over various intricacies and nuances that would characterize a more fully developed argument.

III. The Positive Argument

Suppose for the moment that the natural law theorist has successfully identified a cluster of basic goods the participation in which is intrinsically good. And suppose, moreover, that this list of basic goods roughly corresponds to the list that Finnis, Grisez, and George offer. What the natural law theorist should then attempt to establish, I suggest, is that participation in certain religious traditions is linked in various ways to the participation in these basic goods and, thus, the state has reasons to provide and protect civil liberties to participate in these traditions. More specifically, I suggest that the natural law theorist can identify at least two general ways in which participation in certain religious traditions is connected with the participation in the basic goods.

The first way in which participation in certain religious traditions is tied to participation in the basic goods is that we can participate in the various basic goods by way of participating in certain religious traditions. In other words, participation in certain religious traditions is often an *instance* of participation in the various basic goods. Indeed, it is this type of answer that has been lurking just below the surface of the second objection we raised earlier against George's view. What that objection brought out is that, while it may be the case that there

is no good of religion, the participation in various religious traditions is closely linked to the participation in goods such as knowledge and practical reasonableness. Consider again the basic good of knowledge. And let's suppose that we understand this good rather broadly so that it encompasses other epistemic praiseworthy states such as wisdom, understanding, and aesthetic appreciation. Surely Finnis and George are correct to point out that participation in certain religious traditions is a way by which we endeavor to gain knowledge or understanding of some centrally important issues (e.g., whether God exists, the good for humankind, the nature of right and wrong, and so forth). And surely they are correct to claim that such participation is valuable. Granted, such participation doesn't very often take the form of dispassionate or detached inquiry into these matters. Rather, it often takes the form of engaging in a religious way of life; that is, it often takes the form of engaging in certain rites, consulting certain texts and authorities, practicing certain disciplines, developing various kinds of aesthetic sensibilities, and the like. But as Pascal pointed out concerning the Christian faith, such active engagement is one of the most apt ways by which we can explore the contours of a given religious tradition and its claims to truth.

Or take, as another example, what Finnis calls the good of practical reasonableness. As Finnis describes it, the good of practical reasonableness consists in bringing one's intelligence to bear effectively on the problems of choosing one's actions and lifestyle and shaping one's character.²² Finnis invites us to characterize the practically reasonable agent (at least in part) as the person who has effectively conformed her actions, lifestyle, and character to her best judgments concerning how she ought to act and live. If this is an accurate depiction of practical reasonableness, then we should affirm that we can, and often do, participate in this good by way of participating in certain religious traditions. In seeking out wisdom concerning the human condition or the nature of God, and effectively conforming our actions, lifestyles, and character traits to our best judgments on these matters, we participate in the good of practical reasonableness.

Knowledge and practical reasonableness, however, are not the only two goods in which we can participate by way of participating in certain religious traditions. There is also the basic good of community and friendship. If we say that a community is instantiated when (and only when) agents have a common end and aim together to realize that end, then many religious groups count as communities.²³ Religious groups instantiate the intrinsic good of community by corporately worshipping God, sharing a vision that they will benefit others in important manners (such as bringing salvation, material and spiritual sustenance, etc.), and so on.

This is to indicate just several manners in which participation in certain religious traditions can be an instance of participation in various basic goods. We

could identify still other ways; for instance, we might identify the ways in which persons can participate in the goods of inner peace, excellence in agency, harmony between one's choices and judgments and behavior, and so on, by way of participating in certain religious traditions. But the general point I am trying to make should be clear enough. Let me, then, point to a second way in which participation in certain religious traditions and basic goods are connected.

This second way tells us that participation in certain religious traditions plays a contributory role in forming certain kinds of valuable character traits. A little more specifically, the idea is that participation in certain religious traditions very often plays the *contributory* role of helping to form and sustain character traits that better enable persons to participate sufficiently in a wide array of basic goods. There are any number of ways in which participation in certain religious traditions plays this contributory role.²⁴ In what follows, I will consider only one such way. I shall claim that participation in certain religious traditions plays an important role in forming and sustaining the types of traits that are necessary for effective agency itself.

Perhaps the best way to make the point is by having before us two concepts: what Charles Taylor calls a "framework of meaning" and what I shall call a "thick identity."²⁵ As I understand it, a framework of meaning is a more or less unified cluster of concepts, historical or mythical narratives, moral, aesthetic, or spiritual ideals, and so forth, that offer a portrayal of and direction for attaining genuine human flourishing. Religious traditions are typically constituted by frameworks of meaning; they are, in part, the sorts of things that offer us a vision of human well-being and direction concerning how we might attain it. It follows that one way by which we can assimilate the various ideals, insights, and standards of a given framework of meaning is by being inducted into one or another religious tradition. What I am calling a "thick identity," by contrast, is the natural upshot of a person's assimilating the ideals, insights, and standards of a given framework of meaning.²⁶ So, a thick identity might best be thought of as that configuration of traits that includes a person's characteristic ways of understanding and interpreting the world, her characteristic ways of behaving and relating to others, her firmest normative beliefs, desires, goals, and so on, that are held relatively constant in the course of practical deliberation.

For our purposes it is important to note that thick identities come in a number of varieties. Among these varieties are what I will call "effective identities." An effective identity is any thick identity that is *practically effective*. An effective identity allows a person to discern particularly salient features of situations, formulate sufficiently clear priorities among her ends, implement action plans that have a reasonable chance of realizing her ends in a wide variety of circumstances,

and so forth. Possessing an effective identity thus involves a person's having particular kinds of character traits. Among other things, a person with an effective identity must have a sufficient degree of congruence among her desires, goals, normative beliefs, and so on, together with sufficient congruence between her desires, beliefs, goals and behavior. Moreover, an effective agent must regard herself with sufficient esteem, regard her projects as sufficiently worthwhile, and have sufficient confidence to execute her projects given the proper opportunities. The reason why effective identities are especially noteworthy for our purposes is that having an effective identity is arguably a necessary condition of a person's being able to flourish. Without having the kinds of traits that comprise an effective identity (such as sufficient psychic harmony, self-respect, practical discernment, and so on), a person will be unable to participate adequately in a sufficiently wide array of basic goods.

What I should now like to claim is that the reason certain religious traditions play a contributory role in forming the sorts of character traits that better enable persons to flourish authentically is that they provide the frameworks within which persons can become effective agents. By supplying various sorts of ideals, insights, disciplines, and so forth, certain religious traditions provide the resources by which persons can form and sustain the traits of psychic harmony, self-respect, practical discernment, and so forth. My claim is not, of course, that religious traditions are the only things that play this role. They are only one among many. Nevertheless, I do want to suggest that certain religious traditions play a particularly important and, perhaps, indispensable role in forming effective identities. After all, certain religious traditions are attuned in ways in which many other disciplines, practices, and traditions are not to the sorts of phenomena that undercut effective identity. Loss of orientation, deep dissatisfaction or uneasiness, bitter internal conflict or restlessness, inordinate desire, and moral apathy—these are the ailments of the soul that draw a great deal of attention from most of the great religious traditions. Indeed, one of the central tasks of these religious traditions has been to offer us the sort of insight, edification, community, and disciplines by which we can be steered against or delivered from these conditions. So, without too much exaggeration, we can say that it is one of the central roles of certain religious traditions to produce in their members the qualities necessary for effective agency. To which we might add that there is evidence that they have had success in the endeavor!

My suggestion, then, is that having an effective identity is among the necessary conditions for a person to flourish, and that participating in certain religious traditions is an important and, perhaps, indispensable way by which these identities are formed. An implication of this is that, according to a natural law view, the state

has additional reason to allow and protect the liberties to participate in these religious traditions. In allowing for and protecting these freedoms, the state helps to provide the conditions in which a flourishing life can be chosen and lived.

But as I have indicated already, the natural law theorist must say more than this if she is to provide an adequate justification for the provision and protection of religious civil liberties. Even though participating in certain religious traditions may be an instance of participating in one or another basic good, and even though such participation may help to form the qualities in persons that are necessary for them to flourish, these good states of affairs can be defeated by other bad aspects of this participation. At the end of the day, the participation in certain religious traditions can just as well undercut authentic human flourishing as it can contribute to it. Thus, we are forced to move into the third and final stage of the natural law theorist's argument.

It is at this third stage of argument that the natural law theorist must appeal to more pragmatic considerations. In response to the observation that the goodness of participating in certain religious traditions can be defeated by bad aspects of that participation, the natural law theorist can say several things. First, she should admit that though a central role of the state is to provide the necessary conditions in which a flourishing life can be chosen and lived, the state is in many cases incompetent to discern whether the valuable aspects of participation in certain religious traditions are defeated by the bad aspects of such participation. So, for example, it may be the case that there are valuable aspects of a person's being a Theravada Buddhist or a Presbyterian. It may also be the case that these valuable aspects are defeated by the further fact that the central doctrines of Theravada Buddhism or Presbyterianism to which this person assents, and on which she has based her life, are false. But most would agree, I think, that it lies outside the competence of the state to discern whether that is the case. Whether the central claims made by the adherents of certain religious traditions are true is typically an extremely complex and difficult issue to decide. So we ought not to expect the state to issue accurate pronouncements on this matter. And since it lies outside the ability of the state to decide this issue competently, and since there are clearly valuable features of being a Theravada Buddhist or a Presbyterian, the natural law theorist can claim that the state ought not to disallow religious civil liberties to Theravada Buddhists or Presbyterians.

Other cases will be different. It might be plain from the perspective of natural law theory that the valuable aspects of participation in a given religious tradition are defeated by the bad aspects of such participation. So, for example, it may be clear from a natural law perspective that participation in a sect that advocates cosmic illusionism, and the detachment from aesthetic pleasure, genuine com-

munity, political activity, and so on, is an overall bad thing. But, as Aquinas made evident, this doesn't itself imply that the state ought to revoke religious civil liberties in such circumstances. It may be that prohibiting participation in such traditions would only increase social unrest, or promote that religion by creating martyrs, or would make overly stringent demands on the citizenry, or would be impossible to enforce in practice. In cases such as these, the natural law theorist may allow religious civil liberties to participate in certain kinds of religious traditions in order to prevent the occurrence of even greater evils. Of course, none of this should suggest that there will never be cases in which the state ought not to revoke or not permit religious civil liberties to participants in a particular religious tradition. It may be that participating in certain religious traditions is so harmful to the common good that the state must severely limit or ban such participation altogether.

IV. A Final Objection

I would like to close by considering an objection to what I have argued. It might be complained that the position I have defended implies that religion is an instrumental or mere contributory good. According to the view I have outlined, it might be said, participation in religious traditions is good and religious civil liberties ought to be protected, insofar as the participation in religious traditions of certain kinds contributes in various positive ways to the participation in other basic goods. But this approach—so the objection runs—seems wrongheaded. The strategy doesn't accurately reflect that manner in which many religious persons defend their claim to religious civil liberties. The way in which many religious persons defend their claim to religious civil liberties is not by pointing to the fact that participation in religious traditions of various kinds is crucial for, say, forming and sustaining effective identities. Rather, what many religious persons emphasize is how important—how centrally and *intrinsically* important—practicing religion is to them in their ordinary lives.

This objection correctly emphasizes that the success of the present strategy relies on the ways in which participation in religious traditions of certain kinds contributes in positive ways to participation in the basic goods. But it doesn't follow from this that participation in such religious traditions is a mere instrumental or contributory good.²⁷ Nor have I claimed that the present strategy is the *only* way by which a natural law theorist can justify the provision and protection of religious liberties; there may be other sorts of strategies available. Moreover, when pressed on the issue of why the state ought to provide for and protect

religious civil liberties, many ordinary religious persons, I suspect, would not hesitate to appeal to the fact that religious traditions provide frameworks of meaning that render their lives significant. I suspect, then, that the type of justification I have offered doesn't lie as far from those offered by ordinary religious persons as the objection would have us believe.

But suppose for the sake of argument that I am wrong about this last claim and that the strategy I have employed does not resemble closely the manner in which many religious persons defend their claims to religious civil liberties. What follows? Not, I think, that the present strategy is misguided or ought to be disregarded. To the contrary, I would think that it should be welcomed by those who wish to provide a justification for their claims to religious civil liberties. After all, there are plenty of activities that people claim to be especially important to them that do not deserve special attention from the state. What the present strategy offers is a rationale for why there is something special about religion and why the state should take seriously claims that religious institutions and practices of certain kinds should be protected. If what I have argued is sound, it is not only the fact that people are convinced that these institutions and practices are important that justifies the provision and protection of religious civil liberties. It is also the fact that these institutions and practices deserve protection because they contribute in important ways to authentic human flourishing. My aim in the latter part of this essay has been to articulate some of these ways.

NOTES

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1. See Robert George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Oxford University Press, 1993).

2. According to George, the basic goods can be "participated in by limitless numbers of persons on limitless numbers of occasions" ("Recent Criticisms of Natural Law Theory," *University of Chicago Law Review* 55 [1988]: 1389). However, in *Making Men Moral*, George also says that basic goods are "not Platonic forms that somehow transcend, or are in any sense extrinsic to, the human persons in whom they are instantiated" (13). I have my doubts whether these two positions are compatible, but will not pursue the issue here.

3. See Germain Grisez, Joseph Boyle, and John Finnis, "Practical Principles, Moral Truth, and Ultimate Ends," *American Journal of Jurisprudence* 32 (1987): 103.

4. See Finnis, "Is Natural Law Theory Compatible with Limited Government?" in *Natural Law, Liberalism, and Morality*, ed. Robert George (Oxford: Oxford University Press, 1996). Finnis's list of basic goods has, however, evolved over the years. Cf. Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980), and "Natural Law and Legal Reasoning," in *Natural Law Theory*, ed. Robert George (Oxford: Oxford University Press, 1992).

5. See, for example, Mark C. Murphy, *Natural Law and Practical Reasoning* (Cambridge: Cambridge University Press, 2001), chap. 3.

6. Here is how Finnis puts the point when speaking of the good of knowledge: "At the same time, finally, it is to be recalled that the knowledge we here have in mind as a value is the knowledge that one can call an intrinsic good, i.e., that is considered to be desirable for its own sake and not merely as something sought after under some such description as 'what will enable me to impress my audience' or 'what will confirm my instinctive beliefs' or 'what will contribute to my survival'" (*Natural Law and Natural Rights*, 62).

7. The literature on this topic is extensive. See, for example, Anthony Lisska, *Aquinas's Theory of Natural Law* (Oxford: Oxford University Press, 1998); Murphy, *Natural Law and Practical Reasoning*; and Alasdair MacIntyre, "Theories of Natural Law in the Culture of Advanced Modernity," in *Common Truths: New Perspectives on Natural Law*, ed. Edward McLean (Wilmingon, Del.: ISI Books, 2000). I should add that Finnis, Grisez, and George do not deny that the basic goods are grounded in human nature; to the contrary, they claim that they are so grounded (see George, "Recent Criticisms of Natural Law Theory," 1416). But nowhere, to my knowledge, have Finnis and company offered any account of the sort of dependence relation in question here.

8. Two points here. It is common for natural law theorists to say that the basic goods themselves are reasons, and not that participation in these goods is a reason to behave in a certain way (see, for example, Murphy, *Natural Law and Practical Reasoning*, chap. 3; George, *Making Men Moral*; and Finnis, Grisez, and Boyle, "Practical Principles"). However, since I don't see how a kind-predicable such as "knowledge" could be a reason, I shall speak of the participation in one or another basic good as being a reason. Moreover, when I say that "participation" in a basic good is a reason to behave in a certain way, I assume that we should understand this to mean that either (1) it is a person's actually exemplifying a basic good that is a reason for someone to behave in a given fashion; or (2) that a certain range of possible exemplifications of a good is a reason for someone to behave in a certain way. I will have more to say about clause (2) later in this essay.

9. George, "Recent Criticisms," 1990–94.

10. Strictly speaking, if the basic reasons are facts (as I think they are), then the claim is that the propositions that correspond to these facts cannot be deduced from propositions that correspond to explanatorily more basic facts.

11. George, "Recent Criticisms," 1992; and George, *Making Men Moral*, 12.

12. Finnis and George, for instance, diverge on the extent to which the state can implement moral laws in a given society. Cf. George, *Making Men Moral*, and Finnis, "Is Natural Law Theory . . . ?"

13. See *De Regna*, IV (i. 15) in *St. Thomas Aquinas on Kingship*, trans. Gerald Phelan (Toronto: The Pontifical Institute of Medieval Studies, 1949).

14. Or, more precisely, George holds that, according to one central understanding of the concept of personal autonomy, it is not a basic good. This conception of autonomy

says that "a person's life is autonomous if it is to a considerable extent his own creation." See George, *Making Men Moral*, chap. 6.

15. George, "A Response," in *A Preserving Grace*, ed. Michael Cromartie (Grand Rapids, Mich.: Eerdmans, 1997), 158.

16. George, *Making Men Moral*, 220.

17. *Ibid.*, 221.

18. Finnis, *Natural Law and Natural Rights*, 92.

19. *Ibid.*, 89–90.

20. This is the sort of view defended in Murphy, *Natural Law and Practical Reasoning*, 131–33.

21. For example, the fact that *we* I to give a small amount of money to my friend, then I would relieve his financial distress looks to be a reason to act. It is not unlikely that I can bring about the state of affairs picked out by the antecedent of this counterfactual (giving a small amount of money to my friend) at the actual world. Moreover, the state of affairs picked out by the consequent (relieving my friend's financial distress) is very important. Contrast this with the fact that *we* Bilbo Baggins to be alive, it would be good to befriend him. In this case, the state of affairs picked out by the antecedent (Baggins's being alive) is very unlikely to obtain at the actual world; Baggins is a fictional character. And, thus, though the state of affairs specified in the consequent (its being good to befriend Baggins) is valuable, I nonetheless have little reason to attempt to befriend Baggins because it is so improbable that Baggins is at any time alive at the actual world.

22. Finnis, *Natural Law and Natural Rights*, 88.

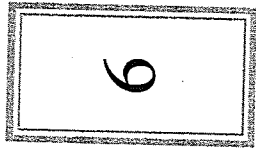
23. There are complexities concerning the nature of a community that I am ignoring here. For more on the subject, see Murphy, *Natural Law and Practical Reasoning*, 126–30.

24. See the essays by Coleman and Hollenbach in *Religion and Contemporary Liberalism*, ed. Paul Weithman (Notre Dame, Ind.: University of Notre Dame Press, 1997), that claim that participation in certain sorts of religious traditions helps people to develop certain kinds of character traits whose instantiation is especially important for the health of a liberal democracy.

25. See *Sources of the Self* (Cambridge, Mass.: Harvard University Press, 1989), chaps. 1 and 2.

26. Here I have learned and borrowed from David Wong, "On Flourishing and Finding One's Identity in Community," in *Ethical Theory: Character and Virtue*, ed. Peter French, Theodore Uehling, and Howard Wettstein, Midwest Studies in Philosophy 13 (Notre Dame, Ind.: University of Notre Dame Press, 1988).

27. It may be that religion is not intrinsically good according to the way Finnis and George characterize intrinsic goodness. But that may simply be a problem with their account of intrinsic goodness.



THE RENUNCIATION OF CONSCIENCE

MARK C. MURPHY

Nicholas Wolterstorff's 1998 Stone Lectures¹ begin with a reminder of the witness of Polycarp, bishop of Smyrna, a second-century Christian who was martyred for refusing the proconsul's order to disparage Christ and declare full allegiance to Caesar. A soldier's sword eventually had its way with Polycarp, but Polycarp remained loyal to Christ, his king.

Wolterstorff obviously approves—"approves" is far too weak a word—of Polycarp's response in the face of the proconsul's demand. The response—"For eighty and six years have I been his servant, and he has done me no wrong; how can I blaspheme my King, who has saved me?"—hits the mark. And Wolterstorff obviously thinks that the audience of the Stone Lectures will approve as well. There is no effort, because there is no need, to *defend* Polycarp's judgments and actions. It is obvious to all sensible Christians that Polycarp's choice was the right one. Wolterstorff takes his task to be entirely that of understanding more clearly the basis for the rightness of Polycarp's choice rather than that of seeing whether Polycarp chose properly in disobeying the proconsul's order.

Thomas Hobbes, like Wolterstorff, has much to teach us about the nature of political authority, and about how it can be in tension with the demands of divine authority. And Hobbes, like Wolterstorff, is a Christian.² But Hobbes's views on