

# The Natural Law Foundations of International Human Rights and Religious Freedom

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## KEY TAKEAWAYS

In the West, there is a fundamental division over what human rights are that must be addressed philosophically.

Natural law provides a basis for universal human rights that is grounded in human flourishing.

Religious freedom protects the ability of all people to ask questions related to meaning and value and to live with integrity in light of the answers.

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.

—Article 18 of the Universal Declaration of Human Rights (UDHR)

## The Intellectual Origins of Universal Human Rights

If we look at the history of human rights discourse and human rights concepts—and, indeed, the very concept of human rights—we can trace it all the way back into the late medieval period. Pioneers of human

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rights discourse were themselves in virtually all cases drawing on the work of very important medieval natural-law theorists, such as St. Thomas Aquinas, who, in turn, drew heavily on classical thinkers such as Plato and, especially, Aristotle, so in a certain sense we can push things all the way back into ancient Greece.

Theorists Dominican Priest, Francisco Vitoria, and Prussian official, Emer de Vattel, were people who were interested in relations among governments. They were interested in what was called the law of nations and its relationship to what some called “the law of nature”—natural law—and they were drawing on the broader, deeper tradition of natural-law thinking about morality and especially political morality to do their work. So our concepts and our ideas and even our language of human rights were in some very fundamental ways shaped by that tradition.

## The Universal Declaration of Human Rights (UDHR)

Now after the Second World War, and in the wake of the revelation of the horrible Nazi human rights atrocities, many leaders decided it was time to sit down and do some serious reflection on human rights. A commission was formed to draft a universal declaration of human rights, and it is certainly true that many people thought it would be impossible to do that because of the differences of tradition and philosophy of those who were involved. Under Eleanor Roosevelt’s chairmanship, however, they did manage to produce what I think is quite a good document.

Is it perfect? No. Is it flawless? No. Are there things that I might change? Yes, of course, but it’s nonetheless an extraordinary achievement. The story of that achievement is told beautifully and wonderfully by Professor Mary Ann Glendon of Harvard Law School, our leading theorist of human rights today. I commend to everyone her terrific book, *A World Made New*, the story of the Universal Declaration of the Universal Human Rights. If you want to know the answer to the question, what are the roots of this? It’s really in Professor Glendon’s book. There she lays a great deal of emphasis on the following very important point. Because of the different traditions that were represented among those given responsibility for doing this reflection and writing, they quickly realized that they would not be able to come up with a single agreed upon theoretical basis for the defense of human rights.

What they could more easily agree on was the conclusion that there are human rights—that is rights we have simply in virtue of our humanity, rights that always have to be respected, rights that governments, but not

just governments, have responsibilities for respecting and protecting. And they were able to agree on some specific rights despite the fact that they didn't have a common underlying set of reasons for the agreed upon positions. Those from the West, the Jewish and Christian members, of course came with this whole legacy that we're talking about very much in mind; but there were Muslim members and Confucian members, as well. And others. People came from different traditions of thought and faith and consequently brought different background understandings and intellectual resources. And yet the drafting commission was able to reach broad agreement.

## The Need to Address the Philosophy Underlying Universal Human Rights

Now, no one should take that to mean that we can do without reflection on the fundamental reasons—on the philosophy of human rights—especially today when we do have very fundamental differences among people even in our own society. In fact, some central disputes are not so much between or among civilizations, as they are within our own country and culture.

We have fundamental differences about *what human rights are* and *what human rights there are*. So we're going to have to think about where human rights come from. How do we know that a particular claim of right is a valid one? Rights can't just be whatever you or I happen to want, so how do we distinguish true rights from false or failed claims that such and so is a right? We are in a situation of conflict about the meaning of rights, about whether this or that is in fact a right. And often we have disagreement about how this or that right, if we agree there is such a right, actually applies in this or that set of concrete circumstances. That means we have to do fundamental philosophy. There is no way out of it. There's no way around it.

There's no way to avoid doing it, but I to lay some stress on the fact that this is largely a debate within our own country and within our own culture, or at least within the West where we now have a fundamental division—sometimes referred to as “the culture war.” It has been going on for decades, but now it has manifested itself in the struggle over the language of human rights, over the discourse of human rights.

The new human rights commission in the State Department—the Commission on Unalienable Rights—reflects Secretary Pompeo's judgment that to do his work, to do the work of the U.S. Department of State, we need fresh philosophical thinking about human rights. What they are, where they come from, which claims of rights are valid and which are not. Of course, by

placing Professor Glendon in the chair of that commission, he's done the nation a wonderful service because there's no one more qualified to lead reflection and discussion of these issues than Mary Ann Glendon.

Naturally any such commission is controversial. There's no avoiding that. Secretary Pompeo, when announcing the new commission, quoted the great former Chief Rabbi of Britain, Lord Jonathan Sacks, on a very important point, and I would commend this to your own thinking as we begin our discussion today. He noted Rabbi Lord Sacks' point that there will always be a dominant discourse at any point in any culture or society.

Today the dominant discourse, at least when it comes to international affairs, but also much of our domestic discussion, is a discourse of rights, a discourse of human rights. What that means is that everybody is going to frame and try to justify his or her position in terms of "human rights." Actually, the concrete circumstance in which Rabbi Lord Sacks made the point was in regard to anti-Semitism.

He noted that anti-Semitism is, alas, a constant throughout history—you seem to find it everywhere. We even find it where there are no Jews to be anti-Semitic against. Rabbi Sacks notes that wherever the horrible curse of anti-Semitism appears, it is always rationalized in the dominant discourse of the day. In the medieval period, when the dominant discourse was theological, anti-Judaism or anti-Semitism was rationalized in religious terms.

During the Enlightenment, when science or reason was the dominant discourse, it was justified in those terms. During the late 19th early 20th century, when what was then known as nationalism had its big heyday, anti-Semitism was again justified in the dominant discourse. The Jews were depicted as "cosmopolitan," "not linked to any particular nation." They were allegedly "a separate nation that has no valid place within other nations," and so forth. So not only good things, but also evil things, even very evil things like anti-Semitism, will be justified in the dominant discourse of the day.

Of course, today you find anti-Semitism justified in the discourse of human rights, because as Jonathan Sacks correctly notes, the dominant discourse will always provide the terms in which *anything*, be it good or bad, will be advocated. So I look forward to the work of the new commission. And I commend Secretary Pompeo for launching this very important project. The language of human rights has indeed been manipulated. It has been hijacked. We need to get rigorous and serious about it. Secretary Pompeo's appointees to the commission are excellent—not only Mary Ann Glendon, but all the others. And as with the commission that drafted the Universal Declaration of 1948, they represent a wonderful spectrum of traditions of thought about justice, morality, and human well-being. There is Rabbi Meir

Soloveichik, a great scholar of the Jewish tradition; Shaykh Hamza Yusuf, an equally eminent scholar of Islamic thought; Jacqueline Rivers, who brings the riches of the tradition of African-American Christianity—a tradition that contains powerful thinking on justice and human rights; Katrina Lantos Swett, who twice chaired the U.S. Commission on International Religious Freedom; Christopher Tollefson, a very distinguished natural-law philosopher; Peter Berkowitz, a wide-ranging scholar of political philosophy whose expertise includes the wisdom of the American founders on natural rights; and others. So I'm looking forward to an important contribution to the public good.

## Humanity Is the Source of Universal Human Rights

What does it mean for something to be a human right? Well, if there are such things as human rights, if there are such realities, then a human right is a right you have simply in virtue of your humanity. And that means that it is a right that all human beings have.

It's a right that's not a privilege bestowed upon you by a king, or a president, or a parliament, or a congress, or a panel of judges. It's none of those things. It's something we possess simply because we are human—whether or not other people or any institution recognizes it. Now rights of course, are not material or physical objects; they're not like microphones, or papers, or table and chairs. They're immaterial realities. They're principles. Now that doesn't mean they're not true. That doesn't even mean they don't *really* exist or that they're not objective; but it means that we can't just look out into the world and see them—even with a powerful telescope or microscope. They can't be *empirically* verified. Philosophical arguments need to be made to validate them.

Philosophical reasoning has to be engaged in, in order to reach the conclusion, a valid conclusion, that there are such things as human rights, and that this or that is indeed a human right. Again, if human rights exist, they are rights we possess simply in virtue of our humanity, which means you don't need to achieve or earn them.

You don't need to be really pretty, or really smart, or really strong, or any of those things. You merely need to be a human being. The weakest, the most vulnerable, the outcast, the suffering person, the homeless woman, the mentally ill or drug addicted man living under the bridge, the individual at the dawn of life—even in the womb—or approaching the end of life—all have basic human rights. None is superior or inferior to any other in basic dignity on account of race, sex, ethnicity, age, size, location, mental capacity, physical ability, stage of development, or condition of dependency.

All have *and have equally* human rights. Now if there are such things as rights we have simply in virtue of our humanity, it must be because there's something very special about our humanity. It's that very special thing, that very special-ness, that we refer to in using the fairly modern term "human dignity." It refers to the *intrinsic* worth or value—or to use a religious term, the "sacredness"—of human beings.

In other words, human beings are not just means to other ends (or to *other people's* ends). They are not cogs in the wheel, the wheel of a larger collectivity, for example, like the state, or "the fatherland," or the future communist utopia, or what have you. On the contrary, human beings are ends to which other things—including entire institutions, legal systems, political systems, educational systems—are means. Human beings do not exist to serve these institutions; rather, they exist to serve human beings.

The human being is what is fundamental and it's the interest of the human being—the well-being, the flourishing of the human being—that we're concerned about when we identify, or seek to identify, human rights. Now on the account that I think is soundest of human rights and of human dignity, human rights are not where we begin our reasoning. We do not argue from them, but rather to them. Human rights are principles that we reason to. Beneath the concept of human rights is the concept of human good, human well-being, fulfillment, flourishing. We believe people have rights because their welfare, their flourishing matters. Again, they are ends, not means; they are *persons*, not objects or instruments.

This is where fascism and certain (other) forms of socialism (such as communism) go so badly wrong. They treat the collective as the end to which people, persons, human beings are means. That's exactly backwards. That's the most fundamental problem with Soviet or Chinese Communism. That's the problem with Hitler's Nazis. The human, the person is devalued, relegated to the status of a mere instrument—an object to be used as opposed to being understood and regarded as a person and therefore someone to be respected and honored, someone whose well-being matters.

If we think of the human being as an end, then it's the flourishing of the human being that we're fundamentally concerned about. Among those concerns is a concern with justice, fairness among human beings. Part of the human good—an aspect of the diverse, variegated, complex good of human beings—is the good of living in justice and harmony, in other words in right relationship, with others. A properly ordered polity is concerned with justice, doing justice, preserving justice, advancing justice. The same is true though for private associations, for religions, and for us as individuals.

Sometimes the precise object of our action is to bring about justice, or greater justice, or to rectify an injustice, because justice is an aspect of the flourishing of human beings. Justice is also concerned with the overall flourishing of human beings. So rights considered as principles of justice will be specified by reference to the human good.

Now, interestingly, this was denied by even the greatest of the 20th century liberal political philosophers, John Rawls, whose magisterial works, *A Theory of Justice* published in 1971 and *Political Liberalism* published in 1993, dominated mainstream political theory through his lifetime and beyond. Rawls, for whom I have great admiration in many ways, in my opinion got things exactly backwards on this point. He famously said the right and rights are prior to the good. He believed we could come up with a conception of political right, the right ordering of political society and political institutions, and indeed of the rights people have, while prescind- ing from consideration of controversial claims about what makes for or detracts from a valuable and morally worthy way of life—in other words, without reflecting on disputed questions of the human good.

This idea Rawls called “anti-perfectionism.” Much of my own work over the past three decades has been devoted to contesting it. In my view, the *only* way we can figure out what rights people have—or even that people have rights at all—is by beginning with reflection on the human good, human well-being, human flourishing—as tough and controversial as that is in a pluralistic democratic republic like ours.

We need to reflect on, and argue about, what is, and what is not, truly in the interest of human beings (which will include reflection on what liberties must be respected for the sake of human flourishing), what’s for their integral well-being, if we are to have any hope of specifying what rights in fact people have, and how rightly—that is, justly—to order our institutions.

We must concern ourselves not only with just relations among individuals in society, and just relations between government and individuals, but also with the role of non-governmental institutions of civil society, beginning with the family and religious communities that have primary responsibility, and play the primary role (at least in a justly and rightly ordered society) in providing health, education, and welfare, and transmitting to each new generation the understandings and virtues that enable people to lead successful lives and be good citizens.

So I think when we’re reflecting on human rights, we shouldn’t think of human rights as premises, but rather as conclusions. What we need to do to get us to those human rights which are real and important, and in many cases non-derogable, unalienable, absolute—what we need to do to get there,

to understand human rights, to understand *what human rights are* and *what human rights there are*—is think really carefully and rigorously about the human good in all of its complexity.

## Three Competing Philosophies of Human Rights

Historically and today, there seem to be three major contenders to supply the basis of human rights and political justice or political morality more broadly. There are some others that are in secondary roles.

One of the three major contenders is utilitarianism. That's the idea that in morally significant choosing, one should choose the option (or act on the rule)—whether in politics or in personal life—that overall in the long run promises to produce the net best proportion of benefit to harm, however benefit and harm are defined. This is the view famously associated with Jeremy Bentham, who said that the right thing to do is to do the thing that will produce the greatest good, or the greatest “happiness,” for the greatest number. Now you might think, and you would be right to think, that this is very problematic as a basis for human rights, or for rights of any kind. Bentham himself regarded the idea of natural rights as not only any old nonsense, but nonsense on stilts.

Yet if anybody has a claim to being a founding father of modern liberalism, it's Bentham's disciple, the great 19th century English liberal philosopher John Stuart Mill, who in his very, very important work *On Liberty* attempted to, in effect, derive a theory of rights to key liberties on a utilitarian basis. Some utilitarian theorists today still try to do that. The element of truth I find in their efforts—and bear in mind that I'm a rather severe critic of utilitarianism generally, and I think it's hopeless as a theory for defending the idea of human rights—is I think Mill was right to reject the idea of what he called “abstract right.”

For example, when he's talking about liberty of thought and discussion in the second chapter of *On Liberty*, he says it can't just be a right considered as something independent of the human good that somehow just falls down on people out of the heavens. If there is a right to freedom of expression, or freedom of thought and discussion, it's because such a right serves or is a condition of a human good or a set of human goods.

Mill is here rejecting the idea that the right is prior to the good. It's the reverse. The good is rather prior to the right. And I'm with Mill, and against Rawls, on *this* point. You need to understand the good that's being protected in order to grasp the right that protects it. Mill, quite correctly in my opinion, grounded the right to liberty of thought and discussion fundamentally in



the good or truth and truth-seeking. This is indeed a basic, constitutive, and profoundly important aspect of human well-being and fulfillment. Mill argues that you've got to understand that good in order to grasp the real point of recognizing and honoring a right to freedom of expression. And something along the same lines can be said of any basic human right.

Of course, what I reject in Mill's approach is his utilitarianism—the idea that there can be a workable master moral principle that says (whether in politics or any other domain of life in which ethical decisions must be made): “choose the option that overall in the long run will produce the best net proportion of benefit to harm,” or “maximize happiness,” or “maximize pleasure.” The human good in its various irreducible dimensions, given the complexity of our existence as creatures that are biological, intellectual, relational, moral, etc., confounds any such strategy of aggregation and quantification.

An alternative is the theory of human rights, or unalienable rights, as abstract rights. This is something in the ballpark of what figures like John Rawls have in mind. They want to abstract from any consideration of the human good, because they don't want to shape fundamental political principles or institutions or arrangements in line with controversial conceptions of the human good. That's the “anti-perfectionism” I mentioned a few minutes ago.

Rawls proposes that we should choose principles of justice for a well-ordered society first by conceiving of justice as fairness, and then recognizing that the way to ensure that fairness is preserved is to choose our principles of justice behind what he calls a “veil of ignorance” in what he calls “the original position.” The idea here is to imagine a situation in which you know nothing about what makes you different from anybody else. All you know are the things that all human beings have in common, what he calls primary goods and basic facts of human psychology.

Anything that distinguishes you from anyone else—being male or female, white or black, tall or short, rich or poor, Hindu or Muslim, etc., including, critically what your conception of the human good is—you don't know. Yet it is in this “original position” behind the “veil of ignorance” that you must choose principles—principles of justice—that will govern the polity and society in which you will live when you come out from behind the veil and leave the original position. So: What principles would you choose? It is *those* principles that are the *correct* principles of justice, Rawls supposes, because they are what fairness, he further supposes, requires.

Now, I've devoted quite a bit of my scholarly career to trying to explain why this whole idea doesn't work, why we cannot abstract from the human

good or considerations of human well-being in the way Rawls proposes, and imagine we could choose principles of justice behind a veil of ignorance where we don't know anything about what makes us different from anyone else. I won't repeat all my arguments here. I will note, however, that it is a non-sequitur to infer from the fact that principles chosen behind a veil of ignorance would be fair (i.e., not unfair) that principles chosen in part on the basis of reflection and judgments about the human good and its moral requirements *would be unfair*. That inference is straightforwardly fallacious.

The third approach is the natural law approach. It's the approach that I've represented in my own writing, that Ryan Anderson has represented, that John Finnis, the great Oxford moral and political philosopher and philosopher of law, represents. Like Mill, we natural-law theorists are interested in grounding human rights in the human good; but unlike Mill, we reject a utilitarian approach to ethical decision-making. We don't think you can doctor up Benthamism to make it work for these purposes, or for that matter for any purposes.

So our way is the hard way. It's the tough road. It means thinking very seriously, deeply, critically about the human good in all its complexity and variety—knowing that we can make mistakes and that reasonable people of goodwill can and do disagree about what makes for, or would detract from, a valuable and morally worthy way of life. And yet there is no way around that if we're going to think seriously and well about human rights.

One of the problems for the second school of thought—the contemporary liberal, or progressive school of thought—is that it provides a standard for the identification of abstract rights, which it itself consistently fails to meet, and fails to meet because it cannot meet it.

It does not, ultimately, retain neutrality on questions of the human good, on questions of what makes for or may detract from a valuable and morally worthy way of life. I'm by no means original in making this point. It's central to Alasdair MacIntyre's critique of contemporary liberalism of the sort proposed by Rawls, Ronald Dworkin, and others. It's central to Michael Sandel's critique, to John Finnis' critique, to Nicholas Wolterstorff's critique.

It is that Rawls et al. are smuggling into their theories the very things they claim are impermissible to consider: ideas about human well-being and fulfillment; ideas about the human good; ideas drawn from larger worldviews (what Rawls calls "comprehensive doctrines").

Try to solve the abortion question. It's a controversial question of rights, correct? Some people say women have a right to abortion. Other people say (and I'm on their side) that the unborn child has a right not to be aborted. Try resolving that question while abstracting from questions of the human good or from ideas drawn from larger worldviews of comprehensive doctrines.

Or, to take another issue, try figuring out what marriage is (opposite-sex only, or can it be same-sex? monogamous or polygamous? limited to two partners in a sexual partnership together, or can three or more partners be married as a group?) while prescinding from questions of the human good and being neutral as between competing comprehensive views.

Of course, liberals like Rawls and Dworkin defend positions on abortion, marriage, and similar questions, but in doing so they always—and unavoidably—rely in part on decidedly non-neutral ideas about human nature, the human good, human dignity, what’s right and wrong.

It’s certainly true that the dominant discourse in the intellectual sector, certainly in the academic culture has, for at least fifty years, been the second one. It’s been the liberal one. Rawlsianism being the most prominent of all the liberal theories of political right and of human rights. I think it’s intellectually a failure for all the reasons I’ve been articulating for all these years. I may be wrong about it, I may be right about it, but that’s my view.

What’s clear is that it has been dominant. It shapes the views of many people who are now opinion leaders, precisely because of its now longstanding dominance in academic life. It’s become dominant in journalism, for example, in literature and the arts, in the professions, in much of government, in a great deal of corporate America. That’s why the left has had such success in using human rights discourse to advance its agenda.

Now from Secretary Pompeo’s point of view and from mine, that’s a hijacking. Obviously, they don’t see it that way. They see it as providing the correct conception of human rights. So the whole question is, do you agree that that ideology is correct? It’s not human rights, the concept of human rights as historically understood, that’s driving the ideology. This is the important thing to see. It’s not the concept of human rights that’s driving the ideology. It’s liberal (strictly speaking, secular progressive) ideology that is reshaping the idea of human rights.

## **On Growing Attacks against Religious Freedom**

It’s a terrible tragedy and it looks like it’s only getting worse. The situation in some particular areas is improving, but in others, it’s certainly continuing to decline. I traded back and forth the chairmanship of The Commission on Religious Liberty with Katrina Lantos Swett, who’s a great human rights advocate and dear friend. She and I had the same view of this, that there seemed to be two different families of threats to religious freedom as a fundamental human right.

One is religious extremism of various sorts in different places. It's not just Islamic extremism, though there is certainly Islamic extremism in various places. There are also a lot of Muslims who are pushing back against Islamic extremism. There are Muslims who are in leadership positions advocating human rights. They don't get nearly enough attention and should get a good deal more, but you can recognize Islamic extremism while at the same time acknowledging that much work in favor of religious freedom is being done by Muslims, and being done by devout and faithful Muslims in the name of Islam. In any case, Islamic extremism is not the only form of religious extremism leading to violence and persecution.

Look at the situation among Hindu extremists in India. Again, it is most definitely not all Hindus. There are lots of Hindus who are on the side of the angels when it comes to religious freedom and other human rights, but there are also Hindu extremists. And there are, of course, extremists of other faiths. And there are various victims. Jews, alas, continue to be targets of violence and discriminatory treatment. And often Christians are victims too.

Throughout the world these days, from Africa and the Middle East to China, Vietnam, and North Korea, we see the persecution of Christians. Often there are other people being persecuted as well, but in the mix are Christians. Sometimes Muslims are victims. The Uyghur Muslim community in China are victims of persecution and religious freedom abuses. The Rohingya Muslim community in Burma are victims of persecution and gross discrimination. Sometimes the persecutors are atheists, sometimes the persecuted are atheists. The best data we have show that something in the vicinity of three quarters of the world's population live under regimes, or in cultural circumstances, where religious freedom is routinely violated.

So on the one side, the threat as Katrina and I noticed comes from religious extremism. On the other side, it comes from militant and increasingly illiberal forms of secularism. So we have, for example, people trying to ban the public expression of religion in western nations.

You saw this most recently in Canada. You see it in some nations in Europe. There are efforts to ban circumcision of male infants by Jewish or Muslim communities. There are attempts to drive religion from the public square, and restrict it to the purely private sphere, to drive it to the margins of society.

The French *laïcité* approach—which, by the way, the UN Declaration Article 18, explicitly rejected as contrary to the fundamental human right to religious freedom—exists in France and some other places. We have to remember that the right to religious freedom cannot be reduced to the mere “right to worship.”

Such language has come out of previous State Departments, and to the extent that it is an effort to diminish the scope of religious freedom, it's really a corruption of the human rights idea of religious freedom. As the language made clear, the right to religious freedom is not simply the right to worship, not simply the right to say your prayers before dinner or on your knees at bedtime, or in your temple or synagogue or church or mosque.

It's the right to express your religious views and sentiments in public. And it's not just the wearing of religious jewelry, for example, or a headscarf, all of which is important; but it's also the right to bring your religiously inspired convictions about justice, the human good, the common good, and human rights into the public square and vie in circumstances of peace and freedom for the allegiance of your fellow citizens.

There's a big problem with the narrow definition of religious freedom. You see it, for example, in Professor Rawls' 1993 book in *Political Liberalism* where he makes a truly heroic effort to defend this liberal conception of the limits on religion in public life, but gets himself tied up in knots trying to figure out how he can avoid condemning Martin Luther King's witness in the public square.

King was speaking and advocating in specifically religious terms for views that he held fundamentally on a religious basis, for example, the brotherhood of all men under the universal fatherhood of God; the idea that racism is a sin against God, a sin against the God who made all human beings in his very image and likeness with no discrimination between races or ethnic groups.

So it's really important to understand correctly the breadth of the human right to religious freedom. It includes the public as well as the private expression of religious faith; it includes the right to advocate in the social and political domain, in the mode of Martin Luther King. Whether you're advocating for the civil rights cause, or for the pro-life cause, or any other cause, you have the right. Those are all important dimensions of religious freedom.

## What the Right to Religious Freedom Protects

I should say a word about what I think the right to religious freedom is a right to. I committed myself as a natural law theorist of human rights to the idea that the good is prior to the right—the reverse of the Rawlsian position. So what's the human good, or set of human goods that is protected by the right to religious freedom, especially as the right is articulated in Article 18 of the UN Declaration.

Well, of course the right to religious freedom protects a lot of things. Religion and free and functioning religious institutions can provide a counterweight to public political power. You saw this, for example, in Poland when the Catholic Church was the support structure for Solidarity, standing up against the tyrannical Soviet puppet regime. You saw it in other places in Eastern Europe when communism was crumbling there. You've seen it at other times and in other places in history. You look at the Bible, and often it's the religious witness of the prophet of God standing up against a tyrannical king.

In addition, religions together with other institutions of civil society play important roles in providing health, education, and welfare to people and transmitting to rising generations the values necessary, and the habits and virtues needed, for people to lead successful lives and be good citizens. These activities are among the goods protected by the right of religious freedom.

But let me go deeper. Let me describe a very fundamental and existentially central human good. I'll attach a name to it, but if you don't like the name, give it a different name. The important thing is the reality—the basic human good—I'm describing, not the name we choose to give it.

There are three dimensions to this good. First, the raising of fundamental questions of meaning and value—existential questions, questions that are by nature, if you'll permit me to use the word, “religious.” “Where did we come from?” “Is there somewhere we're going?” “Is there a point to all this?” “Is there a more than merely human source of meaning and value, or sources of meaning and value?” “Is the material and efficient causality we experience and know in the world all there is? Or is there more?” “Do our lives have meaning?” “If so, what is that?” “Do we have responsibilities to others?” “Are we under a mandate to, for example, do unto others as we'd have them do unto us—a norm we find articulated in one way or another in all of the great religions and philosophical traditions of the world?”

It's the raising of these questions and others like them—that's the first aspect of this three-dimensional good. Second, there is the effort honestly to answer these questions, that is, the effort to explore and answer them not with wishful thinking, not with what's going to make one look good in one's community, but with honesty.

Third, there is the determination to live with authenticity and integrity in light of one's best answers, one's honest judgments, whether those answers and judgments are atheistic or theistic. Whether they are Muslim or Christian—whatever they are. Now I call this three-dimensional good “the good of religion.”

Please feel free to call it something else—use a different label—if you don't like that name; but it's this good that is protected, fundamentally protected, by the right to religious freedom.

The tyrants who through history going all the way back to the oppressive kings spoken of in the Bible, and all the way forward to China today, or to those who in the name of misguided secularist ideologies try to drive religion to the margins, are offenders against the right to religious freedom. They deny, or seek to deny, to people the opportunities they need and deserve to realize a critical aspect of their humanity, a crucial aspect of their well-being and fulfillment.

Even someone like Richard Dawkins, the famous atheist, would I'm sure be the first to say that the raising of existential questions, the honest effort to answer them, and the resolution to live by one's answers—whatever they are—with authenticity and integrity are essential to the leading of a worthy human life. I'm sure that he would not want his children to go through life without raising the great questions, answering them honestly, and living authentically in line with their answers.

Even if his children disappointed him by reaching what he would regard as the “wrong” conclusions (say, embracing Christianity) he would not wish they had avoided asking the questions—and that's because he knows, just as well as anyone else knows, that there is something essential to our humanity about asking them, trying to answer them honestly, and living by one's answers.

And if one's answers are theistic, then the right to religious freedom includes the right to try to get oneself as fully as possible into harmony with God, doing God's will. And it includes the right to be a member of a community of faith, a community dedicated to doing God's will, to answering God's invitation to friendship.

Notice that on this account, everybody has the right to religious liberty. The right is not just for religious believers.

Atheists, too, have the right. Of course, from the point of view of the religious believer, the thoughtful and sincere atheist (think, for example, of Albert Camus) has only a fragment of the good of religion, a good he begins participating in simply by raising the great questions and sincerely seeking to address them; but it is a fragment of the real thing.

So the right of the atheist to religious freedom, no less than the right of the believer, must be respected—which is why it would be wrong, terribly wrong, to force an atheist to go to a Catholic mass, or participate in a Jewish ritual or a Muslim prayer services, that he or she objected to as a matter of principle as an atheist.

So in this sense, a right like the right to religious freedom is a universal right because it's responsive to, it protects, a universal good—a good that is a good for everyone. There is no one for whom the good I described is not essential to their humanity, to their integral flourishing as a human being. We would be poorer—worse off—if we failed to ask the great existential questions; to answer them as honestly as we can and encourage our children to answer them honestly; and to live with integrity in light of our best answers.

Now, if I've come anywhere near to persuading you, it's because you're seeing that the right to religious freedom, like other basic human rights, is not an “abstract right.” It's rooted in things, it protects goods, that are essential to our humanity, to our flourishing.

## On Attempts to Limit Religious Freedom to Counter “Hate Speech”

We need to fight back against [attempts to silence speech in the name of “hate speech”] with all our might because, again, th[is] [is] anti-human at the end of the day. We humans are truth seekers, and as John Stuart Mill in that second chapter of *On Liberty* rightly pointed out, truth cannot be authentically sought in the absence of freedom.

To seek the truth, we need the freedom to seek the truth. We need to be free as Mill pointed out, not only from the coercive power of the state, which is what some of these groups and individuals want to use against dissenters from whatever their orthodoxy is, but also free from what Mill called “the tyranny of public opinion”—what we might call “political correctness” or “group think.”

It's that kind of tyranny that impedes the truth-seeking process. It impairs the seeking of religious truth, to be sure, but is also impairs the seeking of truth in other areas: for example, the truth about justice, the truth about science, the truth about any subject of intellectual inquiry. So we cannot yield to this tyranny.

Again, one of the things that pleases me about the makeup of the State Department Commission is that it has outstanding representatives from various great traditions of thought and faith. Hamza Yusuf from the Muslim tradition. Meir Soloveichik, a leading Orthodox Jewish rabbi and public intellectual. Katrina Lantos Swett, who comes from a Jewish background and is a member of the Church of Jesus Christ of Latter Day Saints. Professor Glendon herself representing the Catholic tradition. David Tse-Chien Pan. There are people representing different perspectives and traditions of wisdom and thought about the deepest questions and fundamental human rights.



We certainly need to be concerned about freedom of thought, freedom of speech, freedom of discussion. Tyrants of any sort, whether they're of the right or the left, are always going to try to squelch criticism of their views, of themselves, of their administrations, of their ideologies, of their religions.

They're going to treat any criticism as an offense against decency, or an offense against the common good, or an offense against what's right. We should by now, in this late season of our human experience, have learned to say absolutely no to that. The liberty of thought and discussion is absolutely essential.

Now, as I said, religious people certainly have the right to bring their religiously inspired convictions into the public square to vie for the allegiance of their fellow citizens, to make their case, to try to win converts to their positions or their faith.

But the conditions of all this are peace and freedom. There can be no violence, no coercion, no imposing group think, no silencing dissenters and critics. People who are genuinely interested in the truth will not try to impose on others, they will not seek to squelch dissent or discussion. If they're genuinely interested in the truth, they will want people to think deeply, critically, and for themselves. They will oppose censorship and coercion of ideas.

But, of course, we sometimes have ideologues and fanatics. They claim to be interested in truth, but what they're really interested in is conformity—and power. Sometimes they are secularists; sometimes they are religious extremists. Either way, we must oppose and resist them. We certainly cannot allow their intolerance and hostility to freedom of religion and discussion to take root here in our own society.

One of the shocking things I find about even my own students when they enter my classes on constitutional interpretation and civil liberties is that they come in believing that there is a “hate speech” exception to the First Amendment. They are stunned to learn that actually there is no such thing. This is not a problem I had five years ago or 10 years ago. But I and other teachers in the field have it today. That shows you that there's a change in consciousness; young men and women are being fed this idea that there's this thing “hate speech,” that someone is guilty of when they criticize someone else's behavior, or self-definition, or beliefs, or faith, or what have you.

Now of course there is no hate speech exception to freedom of religion or speech. The First Amendment protects my right and yours and everybody else's right to criticize other people's religion, to criticize other people's behavior, to criticize other people's moral beliefs, self-understandings, ideological views.

That's a precious gift that we have in this country. We got there ahead of most people in the world, and we should not give that up. We need to fight to preserve it especially in our schools, colleges, and universities. We need to be encouraging our students to question dominant ideologies, whatever they are. We should not pander to, or reward, conformism or for group think, whether it's with safe spaces, or with hate speech rules, or speech codes, or anything like that. Of all places, our educational institutions need to be places of robust civil discourse.

I'm not talking here about obscenity, or name-calling, or abuse, but of robust civil discourse where all ideas are on the table, and where we're entitled, even encouraged, to unsettle each other by challenging each other's most deeply held, cherished, even identity-forming convictions.

## On Engaging Those Who Disagree

[W]hat we need to encourage is robust *but civil* discourse. So all ideas are on the table, but we should insist that people do business in the proper currency of intellectual discourse. That's a currency that consists of reasons, arguments, and evidence.

Now my calling you a four-letter word, or my insulting your mother, or using a nasty expression for your ethnic group or racial group, that's not providing reasons, arguments, and evidence.

Now we need to be careful about empowering the state or university officials to police language, because that can be abused and veer over into the stifling of ideas and opinions; but there's nothing wrong—in fact, there's everything right—about me disciplining myself not to be abusive, not to call people names, but rather to do business in that currency of reasons, arguments, and evidence.

When somebody is willing to do business in that currency, I'm willing to do business with them no matter how radically I disagree with them. I'll give you an example.

One of my colleagues at Princeton is a famous utilitarian philosopher named Peter Singer, who argues for among other things, the moral permissibility of infanticide. Not just abortion. Not just late-term abortion. But the moral permissibility of killing the baby after he or she has been born.

Singer thinks that an infant is not yet a "person," and therefore doesn't have the dignity of a person and therefore, may morally permissibly be killed. If you kill that baby, you don't do any wrong to the baby. Now you might wrong the parents or something like that; but if you're the parents and

there's nobody else whose interest is involved, you just don't want this baby (who may or may not be handicapped), he doesn't think there's anything morally wrong with killing the child. Now I'm pro-life. So you can imagine how shocked and scandalized I am by the idea that you would kill not only an unborn baby, but a newborn baby.

Yet when a couple of years ago, a disabled people's rights group came to Princeton to protest Professor Singer and demand that he be fired, and that his tenure be revoked and he be driven out of town and condemned by the University and so forth, I published an op-ed piece defending not only his abstract right to freedom of expression but his right to freedom of expression as it is rooted in the good we share of truth-seeking.

And that's because Peter Singer, like me, does business in the proper currency of intellectual discourse. He makes arguments, he gives reasons, he provides evidence.

He certainly hasn't persuaded me, but I'll tell you what: I make my arguments better today because I've had to deal with arguments that he's made about the status of a newborn baby. He has made me think more deeply about what gives a human being value.

Is it consciousness? Is it self-awareness? Is it the ability to deliberate? A lot of people who regard themselves as pro-choice say, "well, when a baby's born, then the baby is suddenly a member of the human community with rights, but until the baby's born, the baby has no rights and therefore may be aborted; but, of course, we wouldn't be for infanticide."

Singer, however, rightly says, "birth doesn't change anything about the baby. There must be something that gives the baby dignity. If it's not just in virtue of his humanity, which you have before you were even born, then it's got to be something else."

"What could it be? It must be some level of self-awareness, or ability to think or reflect or deliberate, or something like that." So he's forced people to confront the question, "What is it exactly about the human being, whether born or unborn, that gives the human being dignity?"

Is it the immediately exercisable capacities for deliberation, judgment, abstract reasoning, choice, and so forth? Or is it something else? I think it can't be immediately exercisable capacities of any sort. Otherwise people would lack dignity and a right to life when they were deeply asleep, or under general anesthesia, or in a medically induced coma?

I think it's something else: namely, the root capacities, or what philosophers call the "radical capacities," for precisely those sorts of activities—capacities that a human being has immediately upon coming into existence (that is to say, from the earliest embryonic stage.)

And I think the only way to avoid the argument for infanticide is to say that it's got to be the root capacities, and not the immediately exercisable capacities; but because Professor Singer thinks it's the immediate exercisable capacities, he's driven to the conclusion that infanticide could be morally permissible.

So I've actually developed my thinking a lot in wrestling with Singer's arguments, and that's what happens.

No matter how far away from you ideologically or morally or politically or religiously a person is, that's what happens when you're doing business with each other in the proper currency of intellectual discourse, when you're engaging dialectically using reasons and arguments.

Thank you.

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