

Religious Liberty and Democracy: Are They Mutually Exclusive?

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I. The Contested Nature of Democracy and Religious Liberty

The title of my paper is meant to sound paradoxical. After all, religious freedom is an important democratic form, and seemed to play a large role in the development of modern liberal democracies. How could it be that religious freedom and liberal democracy are mutually exclusive?

To say the least, the concept of liberal democracy is a contested one. It is contested at the level of theory and in everyday political discourse and practice. The fact that radically opposed political movements can both claim the mantle of democracy is evidence of the claim. The Occupy Movement sees the power of a small number of people and institutions over American life—the power of the so-called “one percent”—as contrary to fundamental democratic convictions. On the other hand, the Tea Party and other conservatives see the Occupy Movement as anti-democratic because of its antagonism to free enterprise. I think we could make similar points about a large variety of other political debates: tax law, affirmative action laws, the minimum wage, and unions. Proponents of different sides of these debates often see their opponents as enemies of democracy, and therefore, suspect that their opponents are engaged in a kind of Newspeak when they claim the mantle of democracy. The key democratic values, however, such as freedom, equality, and self-rule are open to various understandings. Many of these debates embody these different understandings.

Different conceptions of democratic values are tied up with different conceptions of democratic procedures, democratic deliberation, and democratic legitimacy. An overall

conception of democracy is tied up with a conception of the justification of political power and the fair and equitable *implementation* of public policy.

One way to see this is to ask a vexing question in democratic political theory. What is the relationship between liberal democracy and a particular account of the good life for human beings? It is probably only a slight exaggeration to say that there are as many answers to that question as there are liberals¹ and critics of liberal democracy.² Are liberal democracies legitimate and democratic in virtue of remaining neutral on questions of the good? Should liberal democracies instead seek to establish a social order based on a substantive conception of the human good? Democratic forms are, therefore, justified in terms of how they promote the good life (which itself might be variously conceived by proponents of this approach to liberal democracy). Does liberal democracy instead endorse certain limited claims about the good, without endorsing a fully orbéd conception of the good life?

Influential accounts of liberal democracy understand the achievements of democracy in terms of its ability to establish a social order in some way *independent* of contentious opinions about morality and the good life. So in many accounts of democracy, the conception of what is an illegitimate *imposition* on freedom on the will of the people is closely tied to an understanding of what kinds of considerations are *out of bounds* in democratic deliberation. We might call this the “disestablishment” strain of liberal theory. What makes a society liberal and democratic is its ability to disestablish as many parochial and contentious accounts of morality and the good. This is *how* it treats its citizens as equals. It leaves contentious views of the good life out of account in

¹ Throughout the paper ‘liberal’ and ‘liberalism’ will not refer to the left of our current political spectrum, but to people and positions endorsing liberal democracy.

² See for example the writings collected in Michael Sandel, ed., *Liberalism and its Critics* (New York: New York University Press, 1984) for classic contributions to this debate. See also Richard Rorty, “The Priority of Democracy to Philosophy” in *Objectivity, Relativism, and Truth* (Cambridge: Cambridge University Press, 1990), 175-196.

assigning and establishing basic freedoms. That is to say, the state achieves an appropriate *neutrality* about the good. Accounts differ, however, regarding what it means to be neutral.

The key points to draw from this are as follows: There are different conceptions of core democratic values. These different conceptions extend to differences about what it means for a democratic state to be “neutral.” The disestablishment impulse is contested. So disagreements about neutrality actually reflect substantive disagreements about central democratic goods. Further, different conceptions of democratic values exist within larger cultural context, and that context can shape those understandings in fundamental ways.

These observations suggest that liberal democracies can take on very different “trajectories” based on different (and often developing) conceptions of democratic values, and the cultural contexts in which those conceptions arise. Further, a dominant trajectory within a culture typically leaves room for dissenting understandings of democracy and contrary narratives about, the guiding principles of a particular liberal democracy.

The above discussion provides a context for understanding current debates about religious liberty. Religious liberty offers an interesting window into the ways in which democracy is contested and into the trajectories that different liberal democracies take. Consider the two main components of religious liberty: free exercise and disestablishment. Specific disagreements about these values and their relationship mirror the different conceptions of the relation between democratic political forms to a conception of the human good. In the case of religious liberty, the question is to what extent the rationale for religious liberty relates to the positive goods served by religion. So some will see free exercise as central to religious liberty because it is necessary for robust religious practice, so that both public and private life can benefit from lively spirituality in the nation. On the other hand, others will see the importance of

free exercise to simply be a corollary of disestablishment, where the rationale for disestablishment involves freeing society from the undue influence of religious beliefs, sensibilities and practices. One justification justifies free exercise based on the positive public good of sincere and protected religious belief. The other works from a conception of the need for public neutrality on questions of religious belief.

So religious liberty is open to various interpretations connected to various justifications in the same way as other democratic forms. The recent dust-up over provisions in the Affordable Care Act related to mandates to provide artificial contraceptives, including abortifacients, is an instance of this conflict. Many see the mandate as a triumph of disestablishment. Religion was rightly left out of account when considering the wide distribution of a fundamental human need. I find it interesting that viewing things that way makes available an interpretation of the situation such that there is no curtailing of free exercise. The proponents of the mandate do not argue that free exercise has to give way to this important act of disestablishment. Instead, the idea is that free exercise was not curtailed because religious belief “doesn’t belong” in debates about public policy or in the health care choices of individuals. There is a conception of religious belief as in its nature private, such that preventing the *overreaching* of religious belief beyond its proper private role is not a curtailing of the free exercise of religious belief. After all if religious belief *is private*, then the attempt to make it public is not a curtailing of it—it is simply a curtailing of the undemocratic *abuse* of it.

We once again see democratic values open to radically different interpretations. The idea that forcing private business owners and religious institutions to provide insurance that covers abortifacient contraceptives to employees, in violation of their religiously informed conscience, seems like an obvious curtailing of the free exercise of religion. But if my contention is correct,

then free exercise is subject to various interpretations, leading to the condition I described earlier with the Occupy Movement and Tea Party conflict. Both sides see the other side as obviously rejecting a core democratic value.

Rather than defend one account of democracy and religious freedom as the correct one, I would like to explore the trajectory of our democracy related to religious liberty. I think there will be surprising implications of that analysis which would be missed by a frontal assault on the reasoning in favor of the contraception mandate. One implication is that nearly all accounts of democracy share central problems that I will outline by examining the dominant trajectory of American liberal democracy.

In short, the trajectory of our liberal democracy is the trajectory of what Pope John Paul II dubbed “the culture of death.”³ From this point of view, it is not an accident that an apparent erosion of religious liberty occurred in connection with issues related to reproductive autonomy and the protection of human life. But it is also important to see that John Paul II used the term “culture of death” to refer to aspects of our culture besides those connected to “life issues” such as abortion and euthanasia. Indeed, his point is that the explicit violations of human life in abortion and euthanasia reflect the outworking of attitudes pervasive in the culture. These attitudes shape nearly every interaction between human beings in Western culture. Further, all manner of cultural practices are “death-dealing,” not just abortion and euthanasia. By examining John Paul II’s discussion of the culture of death, I hope to make the following idea plausible: We are all deeply implicated in the culture of death. Just about *every* affirmation of democracy endorses or at least severely minimizes death-dealing aspects of our culture. I will suggest that if

³ John Paul II, *Evangelium vitae*, Encyclical letter on the value and inviolability of human life, Vatican Web site, March 25, 1995, http://www.vatican.va/edocs/ENG0141/_INDEX.HTM.

this claim is right, it has implications for how religious believers should respond to our current situation. I will suggest that considering our own relation to the culture of death, and standing against aspects of it that we have too easily accepted is more important than winning specific legal battles related to the new health care law. Religious believers reconsidering our relation to the culture of death will be crucial if religious belief is to be a worthwhile public voice in a dark culture. Since that is one of the main things that makes religious freedom worth having, this task is crucial to sustaining robust religious liberty.

II. John Paul II on the Culture of Death

John Paul II's analysis of modern culture has many familiar elements. Aspects of analysis can be found in figures such as C.S. Lewis, Alasdair MacIntyre and Charles Taylor.⁴ His account connects an account of the cultural quest for "empty freedom" independent of moral content with the detached quest for efficiency and dehumanizing instrumentalization of human beings. In *Evangelium Vitae*, John Paul II introduces the concept of the culture of death thus:

... we are confronted by...[what] can be described as a veritable structure of sin. This reality is characterized by the emergence of a culture which denies solidarity and in many cases takes the form of a veritable "culture of death". This culture is actively fostered by powerful cultural, economic and political currents which encourage an idea of society excessively concerned with efficiency. Looking at the situation from this point of view, it is possible to speak in a certain sense of a war of the powerful against the weak...⁵

John Paul II identifies excessive concern with efficiency as a cause of the culture of death. His point in so doing will become clearer as we connect it to his larger analysis. But he is clearly concerned with a dehumanizing orientation that views humans in a detached way as part of various calculable methodologies for maximizing certain kinds of gains. Normally, these gains

⁴ See C.S. Lewis, *Abolition of Man* (New York: Harper Collins, 2001); Alasdair MacIntyre, *After Virtue*, 2nd ed. (Notre Dame: University of Notre Dame Press, 1984); Charles Taylor, *The Ethics of Authenticity* (Cambridge: Harvard University Press, 1992).

⁵ John Paul II, *Evangelium Vitae*, sec. 12.

are also calculable, and therefore, are specified impersonally. The worry here would be similar to concerns that Wendell Berry has with evaluating farming practices solely on the basis of production.⁶ In Berry's view, using *yield* as the sole measure of agricultural success leaves out of the account the costs to the land and farmers and the way of life of farming. It fails to take into account the disruptions to communities, habits, and practices that its paradigm presupposes, and therefore, cannot take into account more qualitative ways in which more yield negatively affects human flourishing, and robs many of fulfilling work as part of a robust way of life. This is simply one example of how we might think of the potentially dehumanizing detachment of an excessive concern with efficiency. It will be useful to connect this idea to other central parts of John Paul II's cultural analysis to provide a fuller picture of his concerns.

As he outlines his understanding of the culture of death and its sources, John Paul II then discusses democracy, and the ironic erosion of democracy in the name of rights and freedom. So *Evangelium Vitae* is an instance of providing a vision of democracy which sees other interpretations as fundamentally anti-democratic. He writes:

This is what is happening also at the level of politics and government: the original and inalienable right to life is questioned or denied on the basis of a parliamentary vote or the will of one part of the people—even if it is the majority. This is the sinister result of a relativism which reigns unopposed: the “right” ceases to be such, because it is no longer firmly founded on the inviolable dignity of the person, but is made subject to the will of the stronger part. In this way democracy, contradicting its own principles, effectively moves towards a form of totalitarianism. The State is no longer the “common home” where all can live together on the basis of principles of fundamental equality, but is transformed into a tyrant State, which arrogates to itself the right to dispose of the life of the weakest and most defenceless members, from the unborn child to the elderly, in the name of a public interest which is really nothing but the interest of one part.⁷

For John Paul II, sanction by a democratic procedure is not sufficient to make a practice democratic. Indeed, majority votes can be used to simply impose the “will of the stronger”

⁶ Wendell Berry, “Six Agricultural Fallacies” in *Home Economics* (New York: North Point, 1987), 123-132.

⁷ John Paul II, *Evangelium Vitae*, sec. 20.

against the most vulnerable and the powerless, which to John Paul II is the denial of the heart of democratic ideals.

John Paul II's reasoning rests on a deeper analysis of the elevation of a conception of freedom within modern culture. He analyzes how freedom unconnected to judgment about the good leads to the kind of tyranny he discusses in the above quote. So the Pope disavows any conception of liberalism or democracy where the goal is promoting *choice* while remaining neutral on the moral substance of those choices. Promotion of *that* kind of freedom leads to tyranny. The point is so important because it provides grounds for a fundamental critique of liberal visions across the political spectrum. Positions dubbed "conservative," "liberal," and "moderate" all endorse this kind of conception of freedom in ways that John Paul II would argue compromise the very heart of the democratic ideal.

John Paul II's comments on this conception of freedom are as follows

...[F]reedom negates and destroys itself, and becomes a factor leading to the destruction of others, when it no longer recognizes and respects its essential link with the truth. When freedom, out of a desire to emancipate itself from all forms of tradition and authority, shuts out even the most obvious evidence of an objective and universal truth, which is the foundation of personal and social life, then the person ends up by no longer taking as the sole and indisputable point of reference for his own choices the truth about good and evil, but only his subjective and changeable opinion or, indeed, his selfish interest and whim.⁸

We can call this understanding of freedom "empty freedom." It is freedom that is in some sense unconstrained by objective standards. This conception of freedom does not hold sway only among moral relativists.⁹ Indeed, many presuppose this view of freedom in some areas, while seeing very definite moral constraints in other areas. Others hold to very strict and objective moral requirements to promote and uphold these exercises of empty freedom that are expressions

⁸ John Paul II, *Evangelium Vitae*, sec. 19.

⁹ See Alasdair MacIntyre's work for fuller analysis of this conception of freedom and its place in modern culture. See especially chapter 3 of *After Virtue*.

of the self, and not themselves able to be evaluated by impersonal or objective standards. I will say more about this below.

It would be too quick to conclude that since people view freedom as unconstrained by objective standards, they see nothing to prohibit them from any action whatsoever. So naturally they will have no problem destroying human life for whatever arbitrary reason they choose. While the view of freedom as arbitrary does hold sway in the culture, proponents typically do not consider themselves complete amoralists in this way. Indeed, many can be great moral crusaders against real and perceived injustices. The link is more subtle. John Paul II's discussion suggests that this view of freedom impoverishes our moral resources, such that we are unable to sustain human dignity. Indeed, that is the key thought animating the title of my paper. I think that freedom of religion can co-exist with other democratic forms—indeed, it *is* a democratic form. But I think all modern liberal democracies, and nearly all justifications of liberal democracy lack such resources.

I have suggested that the idea of empty freedom does not typically lead those who tacitly or explicitly endorse it to be simple relativists. The reason this view of freedom cannot sustain respect for human dignity is more subtle. The best way to get at this is to examine aspects of the history of this concept, which is an important aspect of the history of liberal democratic theory and practice.¹⁰ John Paul II suggests key aspects of this history in the comments on freedom above. He speaks of the quest to emancipation from all forms of tradition or authority. The Enlightenment context in which liberal democratic theory arose, there was an attempt to depart from traditions and authorities. Kant, an important progenitor of one strain of liberal theory,

¹⁰ My brief account of this history is heavily indebted to Alasdair MacIntyre's account of the "Enlightenment Project" in *After Virtue*.

declared the essence of Enlightenment is to “Think for oneself.”¹¹ Enlightenment figures did not envision separating either reason or morality from all objective standards. Instead, these standards would free people from irrational, arbitrary, unjustified, and authoritarian standards. The historical context here is the disruption in the early modern period of the core theological and metaphysical backdrop that had provided a robust intellectual framework for Western Christendom.

So one strain in the Enlightenment and liberal theory is that the theological and metaphysical picture that provides a robust conception of the good for man is suspect. On this view, the freedom of democracy is the freedom from the sway of this mode of thinking. That story provides part of the backdrop to our current situation which is suspicious of any public or social role of religious conviction, such that the convictions of business owners and the standards and character of religious institutions cannot influence the health care options available to individuals.

So certain traditional beliefs were considered suspect, but the notion of tradition *as such* was also viewed with suspicion. The ideals of objective truth and morality remained. Indeed, many thought that the departure from tradition would establish the possibility of finding objective truth, which is universally valid, in contrast with parochial prejudice.

The Enlightenment developed a conception of the individual as improperly constrained by tradition and most by himself when exercising his reason and will independent of the dictates of tradition. Contained in this thought are the seeds of conceptions of democratic discourse as neutral, as well as the seeds of a conception of the self, defined by the exercise of arbitrary freedom that John Paul II discussed.

¹¹ See Immanuel Kant. “An Answer to the Question : What is Enlightenment?” in *Practical Philosophy* ed. Mary Gregor, (*The Cambridge Edition of the Works of Immanuel Kant*) 11-22 (Cambridge: Cambridge University Press, 1996).

The result is that you have a conception of the individual as prior to society. Second, you have the loss of a substantive conception of the human good based on a theological and metaphysical conception of human nature and its *telos*. So we have a thinning of resources for conceiving of the good life for human beings. To fill this void, the idea of authenticity emerged as a primary good.¹² And the self that is authentically expressed can be characterized independent of its social relations and roles. Those social relations are *external* to the self.

John Paul II comments on the conception of social life that emerges from these developments:

This view of freedom leads to a serious distortion of life in society. If the promotion of the self is understood in terms of absolute autonomy, people inevitably reach the point of rejecting one another. Everyone else is considered an enemy from whom one has to defend oneself. Thus society becomes a mass of individuals placed side by side, but without any mutual bonds. Each one wishes to assert himself independently of the other and in fact intends to make his own interests prevail.¹³

The idea of a common good is lost in this scheme. Society is merely a collection of individuals seeking to assert their independent wills. Whether or not they cooperate with others, the expression of the self does not involve common projects to the extent that one's identity is tied up in those common projects. That would be an illegitimate imposition on the self. So, at bottom, you have a collection of *isolated* wills in society. The agendas of these wills *may* coincide. But since there is no common project that essentially defines and constitutes these wills, each can come into fundamental conflict with others. Lacking the moral resources provided by the classical framework of a shared human *telos*, the ethical categories available for adjudicating these conflicts are severely limited. The category that is available is the promotion of the good of arbitrary choice. Since in the empty freedom view the content of those choices matter little to

¹² See Taylor, *Ethics of Authenticity*.

¹³ John Paul II, *Evangelium Vitae*, sec. 20.

their value, we are left with the idea of *efficient maximization* of choice. We can provide no substantive categories for evaluating choices in terms of promoting human flourishing.

III. The Culture of Death and Modern Democracy

I will not outline how we can get from the idea of efficient maximization of empty freedom to reasoning that allows for the destruction of human life in its most vulnerable conditions. It is important to see that even without practices such as abortion, a culture that develops along the lines outlined above is significantly impoverished in its categories for thinking about the human good. As a result, the culture produced will be de-humanizing and death-dealing in various ways.

I appealed above to Wendell Berry to suggest an example of a culture obsessed with efficiency leaving out of account important considerations relevant to human flourishing. My key contention, following John Paul II, is that this sort of thing is pervasive in our culture due to the trajectory I have been describing. Without a substantive conception of the human good, the good life is conceived as that which promotes the possibility for authenticity and choice. This mode of evaluation will seek to remain neutral on the goodness or value of the choices it promotes. Indeed, in this context, the concept of excellence of choices has been subordinated to the idea of authentic choice. So any attempt to impose a framework of evaluation on choices of life will be viewed with suspicion.

While the left and right disagree on policy, both endorse maximization of freedom and choice in certain domains without regard to the *content* of the choices made. The right endorses this in its evaluation of the market and the left in its promotion of personal choice. Both the left and the right presuppose and endorse a way of life that is meant to provide options, flexibility, and choice. Both sides of the political spectrum fail to see significant human and cultural losses

that result from this way of life. Disruption of traditional ways of life, loss of humane rhythms of local life, loss of rootedness and sense of history and place, loss of reverence for the beauty and diversity of creation, and loss of meaningful work are just some of the costs which are left out of account in the endorsement of a choice-maximizing way of life. In addition, I concur with both Pope John Paul II and Pope Francis that this way of life presupposes and relies upon the existence of intolerable working conditions, inhumane treatment of animals, and exploitation and degradation of nature.

Reproductive autonomy is just one perceived necessity for succeeding in this modern way of life that puts a premium on flexibility, adaptability and mobility at the expense of rootedness, constancy and commitment. Our thin modes of evaluation lack the resources to critique the quest for such autonomy. Thus, any attempt to restrict it is likely to seem like the arbitrary imposition of substantive ethical judgments that ought to be severely limited in democratic deliberation. So the mandate to provide abortifacient contraceptives to employees is one manifestation of the cultural and political values established by the trajectory we are on which I have outlined. If my analysis is correct, all of us are complicit in that trajectory, and all our dominant political voices endorse significant aspects of it.

If that is so, then Christian believers should not simply respond to individual curtailments of the free exercise of religion. We must also realize the ways in which we are complicit in the way of life that warrants such curtailments. Religious freedom is important in part because Christianity can provide a robust voice against the process of dehumanization that I have outlined. But Christians must first acknowledge the ways in which we have selectively upheld and endorsed this dehumanizing way of life.