
Religious Liberty in *Natural Law and Natural Rights*

La libertad religiosa en Natural Law and Natural Rights

Gerard BRADLEY

Gerard.V.Bradley.16@nd.edu
Profesor de Derecho
Universidad de Notre Dame

RECIBIDO: 27/10/2020 / ACEPTADO: 14/12/2020

Abstract: John Finnis since 1980 has published many important scholarly papers treating different aspects of religious liberty. These works include both philosophical and theological perspectives. Some of the best of this work has specifically addressed *Dignitatis humanae* (DH), the Second Vatican Council's declaration of Religious Freedom. Perhaps surprisingly, then, Finnis says almost nothing explicitly about either the Council or about religious freedom in *Natural Law and Natural Rights*. I shall argue here that Finnis nonetheless identifies and cogently defends in *Natural Law and Natural Rights* (NLNR) the foundational components of a sound conception of religious liberty. Building upon these anchor points – drawing a line connecting the dots, if you will – one can bring this conception into clear view. Because it is constructed bottom up from deep philosophical foundations, this implicit account of religious liberty is critically justified, as well as robust. In this article I also build upon Finnis's foundations, and show how putative divine revelations to humankind impact religious liberty and, then, describe the cultural formations conducive to making robust religious liberty practically available to the inquiring, deliberating, acting person.

Keywords: natural law; religion; religious liberty; Finnis; *Dignitatis humanae*.

Resumen: John Finnis ha publicado, desde 1980, muchos trabajos académicos importantes dedicados a diferentes aspectos de la libertad religiosa. Entre las perspectivas utilizadas para tales aportaciones figuran la filosófica y la teológica. Algunos de sus mejores estudios se han referido, específicamente, a la declaración del Concilio Vaticano II sobre la libertad religiosa, *Dignitatis humanae*. Quizás por ello pueda sorprender que Finnis apenas se remita explícitamente a la libertad religiosa o al Concilio en *Natural Law and Natural Rights* (NLNR). Pese a ello, argumentaré aquí que, Finnis, no obstante, identifica y defiende en dicha obra, y, convincentemente, los elementos fundacionales de una sólida concepción de libertad religiosa. Por así decirlo, partiendo de, y enlazando, esos elementos, podremos llegar a visualizar claramente, si nos lo proponemos, tal concepción. ste implícito planteamiento de libertad religiosa atesora solidez y rigor crítico por su configuración a partir de profundos fundamentos filosóficos. También me apoyo en los fundamentos de Finnis y muestro cómo las tenidas por revelaciones divinas a la humanidad, inciden en la libertad religiosa, para describir, a continuación, aquellas realidades culturales que contribuyen el robustecimiento de una libertad religiosa practicable por aquellas personas que se cuestionan, deliberan y actúan.

Palabras clave: ley natural; religión; libertad religiosa; Finnis; *Dignitatis humanae*.

INTRODUCTION

Between the first and second editions of *Natural Law and Natural Rights* (hereinafter, *NLNR*), John Finnis published many philosophical essays on the subject of religious liberty. In addition to those collected in *Religion and Public Reasons* (which is volume V of his *Collected Essays*), several appeared during the first decade of this century, published

elsewhere¹. Finnis also brought out during those years some papers in which he explained and defended religious liberty from the viewpoint of Christian, and specifically Catholic, faith². These included substantial treatments of *Dignitatis humanae*, the Second Vatican Council's «Declaration on Religious Freedom». All of these papers repay careful reading. Finnis explorations of the meaning and foundations of religious liberty are among this great scholar's leading intellectual achievements.

There is just one reference to *Dignitatis humanae* in the 2011 «Post-script» to *NLNR*. It does not engage religious liberty. It is rather an illustration of Hohfeldian rights analysis³. This lone appearance corresponds to the scant reference to *DH* in the 1980 edition. Finnis there deployed it twice. One of them was (again) without specific reference to religious liberty. Finnis used *DH*'s account of «public order» as a good example of a term often used in international documents articulating human rights.⁴ He mentioned *DH* later in *NLNR* as an illustration of how one could profitably understand a right of conscientious objection which was, in this context, *not* synonymous with religious liberty. He wrote that «when conscientious objection witnesses to basic values such as life or religion and is not radically incompatible with the genuine common good it may be tolerated notwithstanding the conscientious judgment of the rulers that the law objected to is really necessary»⁵. This endnote qualified textual passages in which Finnis is considered «high-minded, conscientious opposition» to the demands of law: «[p]ractical reasonableness... demands that conscientious terrorism, for

¹ See, e.g., FINNIS, J., *Darwin, Dewey, Religion, and the Public Domain*, reprinted in *idem*, *Collected Essays, Religion and Public Reasons V*, Oxford University Press, Oxford, 2011; *idem*, «Why Religious Liberty is a Special, Important, and Limited Right», 2009; *idem*, «Equality and Religious Liberty», in Shah, Farr, Friedman (eds.), *Religious Freedom and Gay Rights: Emerging Conflicts in the United States and Europe*, Oxford University Press, Oxford, 2016.

² Perhaps the most insightful of these papers is Finnis' reply to Thomas Pink, in J. Keown, R. George (eds.), *Reason, Morality, and Law: The Philosophy of John Finnis*, Oxford University Press, Oxford, 2013.

³ «The serviceability of Hohfeldian analysis for even moral rights is suggested by its...applicability to the sophisticated and precise logical framework of the 'right to religious liberty' (as a claim-right not to be coerced in religious matters) expounded in Vatican II's declaration on that matter». *NLNR*, *op. cit.*, at p. 465. Finnis further opined in the «Postscript» that «the fact that the draftsmen described this right in non-Hohfeldian terminology as an immunity [rather than as a claim-right] does not affect the logic of their position»; *idem*, p. 465.

⁴ *NLNR*, *op. cit.*, pp. 215–216.

⁵ *Ibid.*, p. 291.

example, be suppressed with as much conscientious vigor as other forms of criminality»⁶.

These few passages tend to establish no more than a limited legal *toleration* of conduct motivated by religious conviction, where the conduct would otherwise be contrary to the positive law. In *NLNR* does not, moreover, Finnis nowhere affirms any right of religious liberty. Nor does the «Postscript». There is no Index entry for «religious liberty» or «religious freedom» in either edition. Neither engages, in any conspicuous way, with the subject at all.

I shall argue here that Finnis nonetheless identifies and cogently defends the foundational components of a robust conception of religious liberty. Building upon these anchor points – drawing a line connecting the dots, if you will – one can bring this conception into clear view. Because it is constructed bottom up from deep philosophical foundations, this account of religious liberty is critically justified, as well as robust.

Finnis made no effort in either edition of *NLNR* bring this picture into focus. The outline he laid down there nonetheless supplied the framework of his many explicit treatments of religious liberty in the *interregnum* between editions of *NLNR*.

In the first five parts of this essay, I shall excavate and expose what I call the «foundations» of religious liberty in *NLNR*. The sixth part amounts to a summation. In parts seven and eight I consider how putative divine revelations to humankind impact religious liberty and, then, describe the cultural formations conducive to making robust religious liberty practically available to the inquiring, deliberating, acting person. These parts go well beyond connecting-the-dots of what Finnis says or implies in *NLNR*. These parts are nonetheless inspired by and consistent with *NLNR*.

I. NATURAL RELIGION

The only significant «Postscript» development in the neighborhood of religious liberty involves what Finnis describes as the first edition's «very austere, minimalist view of what can be affirmed on the basis of reason alone about the nature of God»⁷. It was indeed «austere», and not mainly for a rea-

⁶ *NLNR*, *op. cit.*, p. 261

⁷ *Ibid.*, p. 424.

son Finnis supplied in 1980: «Since this is not a book on natural theology or the philosophy of God, I may be excused for doing no more than referring the reader to at least one place [in fact, to Grisez' *Beyond the New Theism*] where the objections I am aware of are fairly and sufficiently dealt with»⁸. Finnis there had in mind some philosophical objections to an argument he advanced in *NLNR* to show that «D» (God) exists: «what the whole argument shows, with rational (not logical) necessity, is that if *any* state of affairs, that might not exist, exists, then D *must* exist; without it no state of affairs that might not exist could exist»⁹.

Finnis' catalog in the first edition of the truths of «natural theology» was short («austere») chiefly because that is what Finnis then believed. He wrote in 1980 that «nothing could be established philosophically about God beyond existence and causality»¹⁰. In 2011 he wrote, that is «mistaken». His earlier cautions that further philosophical knowledge of God could only be «hypothetical and/or speculative» were, he wrote in the «Postscript», «unnecessarily agnostic»¹¹.

The amending passages in the «Postscript» are several¹². In 2011 Finnis maintained that one could reasonably affirm that, so long as one predicates

⁸ *NLNR*, *op. cit.*, p. 387.

⁹ *Ibid.*, p. 387

¹⁰ As recounted in 2011.

¹¹ *NLNR*, *op. cit.*, p. 479.

¹² The fullest statement of the revision:

The argument that we are, not logically, but rationally required to affirm the existence of a transcendent explanation/cause 'which exists simply by being what it is, and which is required for the existing of any other state of affairs' is said on p. 389 to be unable, 'I think', to take us further. That God's nature is personal, that 'the uncaused cause of all the good things of this world, including our ability to understand them) is itself a good that one could love, personal in a way that one might imitate, a guide that one might follow, or a guarantor of anyone's practical reasonableness' is said on p. 398 to be a set of propositions of which 'it is impossible to have sufficient assurance... without some revelation more revealing than any that Plato or Aristotle may have experienced'. Hence the negative conclusion stated bluntly on p. 405: '... what can be established, by argumentation from the existence and general features of the world, concerning the uncaused cause of the world, does not directly assist us in answering' the practical questions set up in the chapter's first pages--about the possibility of a deeper explanation of obligation, the reasonableness of self-sacrifice in human friendship, 'the point of living according to the requirements of practical reasonableness', that is, 'whether any *further* sense can be made of the whole situation... This limitation of natural reasoning', I added, though it 'leaves somehow «subjective» and «questionable» the whole structure of basic principles and requirements of practical reasonableness and human flourishing... does not unravel that structure or affect its internal order or weaken its claim to be more reasonable than any logically possible alternative structures'. FINNIS, J., *Philosophy and God's Nature: Second Thoughts*, in *Collected... (op. cit.)*, V.

human qualities analogously of God, God is like a *person* who *makes intelligent, free choices*. An obvious implication of these affirmations is *monotheism*, that God is of one mind and acts with an undivided will. Finnis also affirmed in 2011 that guided by reason alone, one could affirm that God causes and sustains in existence all that there is (and was, and will ever be), according to some unfathomable (to us) *divine creative plan*. On this basis, it would seem prudent to affirm (though Finnis does not quite do so) what Christians call «Providence»: the God who created and sustains the entire cosmos *cares* for humankind and its good.

As we shall see in the next part, Finnis maintains in *NLNR* that the basic human good of religion consists fundamentally in trying to establish harmony between oneself and the divine entity. With the fuller catechism of natural religion in hand, one could, with limited caution, describe more concretely the projected «harmony» as more like divine-human *cooperation*, or as something akin to human *friendship*, albeit with the supreme being¹³.

Will there ever be a state of affairs in which justice prevails, of what has traditionally been called a «future state of rewards and punishments»? Can one answer the question on the basis of reason alone? Finnis does not consider the matter, and I think that there is no practically certain answer. Reason certainly cannot tell us what *either* future state might be like. Coming to know whether there is such a thing as a final judgment at or after death, and whether there are post-mortem states of being such as «heaven» and «hell», depends upon the contingent possibility that God might communicate such information to humankind, through what most people (Finnis included) call *revelation*.

II. THE BASIC GOOD OF RELIGION

NLNR is justly studied for its explanation of what Finnis says, «since Cicero, we summarily and lamely call» *religion*¹⁴. In chapter four Finnis describes it as one of the several «basic values» (what more often he calls in

¹³ *NLNR*, *op. cit.*, p. 387. At pp. 405-06, Finnis discussed the «claim to know what God wills», and opined that it would «go[] beyond what can be affirmed about D on the basis of philosophical argumentation». Any such claim would rely upon some definite revelation that communicated, *inter alia*, the truths «that friendship with God, some sharing in God's life and knowledge and love-of-goods, is available to those who positively favor what God positively favors».

¹⁴ *NLNR*, *op. cit.*, p. 89.

other writings, basic human *goods*¹⁵). Religion consists in the «establishment and maintenance of proper relationships between oneself ...and the divine»¹⁶. This irreducibly distinct human activity can be understood and affirmed as valuable without any prior or accompanying commitment to belief in God (or gods). As Finnis writes: «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»¹⁷. Finnis further asks whether it is «reasonable to deny that it is, at any rate, peculiarly important to have thought reasonably and (where possible) correctly about these questions of the origins of cosmic order and of human freedom and reason» – even if those answers are agnostic or negative?¹⁸

The meaning and appeal of religion as a basic human good swing free of any propositions constitutive of natural theology. So, too, provisionally and up to a point, does the meaning and appeal of religious liberty. *Provisionally*, we can say that there is significant «religious» value in striving to learn the truth about the *alpha* and the *omega* of human existence, and in living according to what one's discovers the truth to be. Even the agnostic and the atheist live in a certain harmony with the «divine» (for them, quite literally in scare-quotes). For they can understand and value the urgent quest to seek an understanding of what lies beyond time and the visible world, if anything does – and incorporating that knowledge (or doubt, I suppose), into their worldview, and lives.

But only *up to a point*, in this sense: religion can be affirmed as a basic good which can be participated in by all without presupposing any natural truth about the divine. But neither the affirmation nor the participation is

¹⁵ In *NLNR*, and in many other places in his published works, Finnis acknowledged his debt to the pioneering work in the foundations of moral theory to Germain Grisez, and how his own work in the foundations of ethics was enriched by collaborating with Grisez and Grisez' former graduate student, the philosopher Joseph Boyle. These three great scholars worked together on numerous occasions, perhaps most famously and fruitfully, in producing *Nuclear Deterrence, Morality and Realism* (Oxford, Clarendon Press, 1987). Their synoptic statement of the moral theory is «Practical Principles, Moral Truth, and Ultimate Ends», *American Journal of Jurisprudence*, vol. 32, 1987, p. 99.

¹⁶ *NLNR*, *op. cit.*, p. 89.

¹⁷ *Ibid.*, pp. 89-90.

¹⁸ *Ibid.*, p. 89.

possible without having first in mind the content of natural religion as live *hypotheses*. One must have some concept of what cosmic origins, purpose, direction, and «D» *mean*, and suppose that there *could* be intelligible answers to religion questions, to get the religious quest aloft. The quest is made intelligible by the concepts which constitute (as it were) the object of the search.

III. RELIGION(S) AND TRUTH

If a reader were afforded just one word with which to describe the central theme of *NLNR*, it would be *truth*. Finnis maintains that one cannot adequately do jurisprudence (legal theory) without a critically justified account of true human well-being. The wider arc of subject matters in the book come under the same judgment: political theory, social sciences generally, and any understanding of the political common good, are all adrift unless they are anchored in the truth about human flourishing¹⁹. It is truth all the way down in *NLNR*, *both* as a description of Finnis' own exemplary commitment to relentlessly pursuing it, *and* of his distinctive methodology in jurisprudence and in social science generally.

Although nowhere in *NLNR* does Finnis quite express it in a declarative sentence, the upshot of what he says about the subject is that *religions* are, in essential and significant part, the kind of things that can be true or false. Religion is about (among other things) reality, visible as well as invisible, about what there was, is, and shall be. The various religions are in significant part different accounts of that reality. It is an unvarying, non-contingent truth that religion is an objective human good. But *religions* are more or less true accounts of the cosmos²⁰. Putting these few thoughts together, it would seem also that whether one establishes «harmony» with a true(r) or (mostly) false religion makes a big difference to how one's life goes.

¹⁹ Chapter I of *NLNR* is a compact but nonetheless compelling case for these theses.

²⁰ Here it is perhaps helpful to retrieve one of Pope Benedict's searing comments to Latin American bishops assembled in Aparecida, Brazil, in 2007. He told his listeners, many of whom were still in thrall to liberation theology, that all such political ideologies «falsify the notion of reality by detaching it from the foundational and decisive reality which is God». He explained that «only those who recognize God know reality», and that one «who excludes God from his horizons falsifies the notion of 'reality' and, in consequence, can only end up in blind alleys or with recipes for destruction».

IV. MORAL DUTY AND (TO) RELIGIOUS TRUTH

There is a *moral duty* to seek religious truth. This is not to deny that there is in humankind a deep instinct or psychological urge to seek to know what is really the case. There probably are. It is to emphasize that once any person, even a little child, comes to experience the move from ignorance to knowledge as something available to (proto)choice, then the clear-headed person – one whose concern for truth is not blunted or stultified by non-rational motives (such as fear or sloth) – is impelled to seek the truth.

Is there not also a moral duty to seek the truth about Shakespeare's alleged Catholicism, about who started the Peloponnesian War, and who won the 1919 World Series? Yes and no: knowledge of these matters is better than ignorance of them. In these three (and countless other) instances, it is easy to see the point of pursuing the relevant knowledge. And some people might indeed be obligated, by vocation or other special circumstances, to seek the truth in these or other contingent matters. But for most people, indifference to the Bard, Thucydides, or the notoriously corrupt «Black Sox» scandal of the 19 Series, gives rise to no moral concern.

Is it different with religion? Is there a special urgency to pursuing the truth about divine matters? Finnis and his collaborators have argued convincingly in several publications that the incommensurability of the basic human values, including life, knowledge, play, religion, friendship, marriage, aesthetic performances, means that there is no common metric according to which one could say that friendship, for example, is simply better or more important than, say, religion. Or vice versa. In addition, they have argued persuasively that morality requires that *all* of the basic human goods be respected in *all* of our choices, such that it is wrong to intentionally damage or destroy any of them in anyone's life. But this equal application of a «do-no-harm» norm has no tendency to elevate the pursuit of religion over enjoyment of other basic values. So, again: is there a special urgency or priority to the moral duty to seek religious truth?

There is. Religion pertains to truths about the origins of all that there is, the encompassing purposes of human existence, and potentially about pathways to a mode of being that transcends space and time – an «afterlife». Given what religion is about, then, anyone can see that religious *knowledge* is especially valuable. Religious ignorance is especially debilitating. Ignorance about the transcendent is bad. Indifference to the religious question is morally defective. When one adds to these considerations the possibility of revelation

whereby one could gain access to an otherwise unimaginable way of living here and now, and then possibly after death forever, the moral duty to seek religious truth acquires a special, if not unique, urgency.

V. SELF-CONSTITUTION THROUGH FREE CHOICE

In the Postscript Finnis wrote that, «[t]he fact that we can make free choices, for which we are responsible, and which have self-determining (self-constituting) significance, is clearly affirmed, and if one reads all the pages indicated in the index under ‘Freedom’ and ‘Self-constitution’, and the note on p. 127, one will have a fair idea of the fact’s significance»²¹. But, Finnis added in 2011, «no clear definition is articulated, though the needed definition is presupposed on, and indeed inferable from» the relevant passage on page 384²². Finnis then reiterated a definition of free choice he first offered in his 1983 book, *Fundamentals of Ethics*: «a choice is free if and only if it is between open practical alternatives (i.e. to do this, or to do that...) such that there is no factor but the choosing itself which settles which alternative is chosen»²³.

The incommensurability of the basic values is the matrix of this reality of morally significant free choice. «By disclosing a horizon of attractive possibilities for us, our grasp of the basic values this creates, not answers, the problem for intelligent decision: What is to be done? We have, in the abstract, no reason to leave any of the basic goods out of account»²⁴. But we cannot choose everything on offer. We must decide between incompatible alternative proposals for action. To have this (these) choice(s) between proposals for action «is the primary respect in which we can call ourselves both free and responsible»²⁵. Several times in *NLNR* Finnis provides arguments for affirming that such free choices can be, and commonly are, made.

What does this reality have to do with religion, and with religious liberty? After all, the religious quest for truth about divine matters would seem to be, basically, a matter of adducing, sorting, and critically judging the available evidence – an intellectual operation, not really performable by an artificial

²¹ *NLNR*, *op. cit.*, 2nd edition, p. 420.

²² *Ibid.*, p. 420.

²³ *Ibidem*.

²⁴ *NLNR*, *op. cit.*, p. 100.

²⁵ *Ibid.*, p. 100.

intelligence, but, well, maybe almost. No matter: there are innumerable free choices throughout the religious quest. Petty distractions and various sub-rational motives (perhaps chiefly, a fear of how one's life might be upended by finding religious truth), may threaten anyone's dedication to unbiased critical inquiry into what there is. Some people might scarcely register these choices consciously *as* choices; they are sufficiently habituated to honest inquiry that it comes naturally, spontaneously. Others will have to lean into the task, and may often consciously set themselves to doing it, without derailment by appealing frolics and detours.

There is always, moreover, a free choice at the end of investigating, weighing, and identifying the truth about any given subject. The intellect may identify the truth by operations (reading, logic) that do not involve moral evaluation and choice. But, then, the question: shall I *affirm* as true what my deliberations have convinced me *is* true? When the subject matter is arithmetic or chemistry, the willingness to affirm is so effortless that it seems not to occur at all; it is standing, habitual. Besides, it is hard to imagine what would tempt anyone to deny what the evidence and logic so clearly require one to affirm. When the subject matter is history or politics, though, one is more likely to become aware of consciously affirming that, say, a certain national group (mine) really was guilty of war crimes. In these sorts of cases and in the case of religious belief as well, there is almost always going to be *some* evidence against what clear-headed analysis shows to be true, and this evidence combined with temptations supplied by sub-rational motives, is liable to make suspension of belief, or the affirmation of what is false, an intelligible option for choice. In these cases, then, the free choice to be guided undistractedly by the truth wherever it leads, becomes morally significant and constitutive of one's character.

When the subject matter is religion, affirming as true a particular set of propositions (a putative revelation set out in a sacred book) entails a significant life commitment. In that case, one will surely entertain the question: even though this really does seem to be true, do I want to affirm it? Or, could (should?) I just let the matter drop, and concern myself with other things?²⁶

²⁶ In *NLNR* Finnis asserted that the «dignity of even the mistaken conscience... flows from the fact that practical reasonableness is not simply a mechanism for producing correct judgments, but an aspect of personal full-being, to be respected (like all other aspects) in every act as well as 'over-all' – whatever the consequences» (*NLNR*, *op. cit.*, p. 126).

This decision invariably engages free choice. Often, making the right choice involves heroic witness to the value of truth.

Finnis extended his 1980 discussion of free choice by noting in the «Postscript» that the «notion of freedom of choice, as the matrix in which human responsibility for good is set, first becomes an explicit theme in Christian writings. It is given great prominence by Thomas Aquinas», who opened the relevant part of his *Summa* by stating that «human beings are made in the image of God, and this implies... that they are intelligent and free in judgment and self-mastery». Each person «is the source of his or her own actions and has freedom of judgment and power over his or her works and deeds»²⁷. It is important to note, too, especially in contemporary cultures given, that the «self-determining» quality of free choices is largely *reflexive*; that is, the *effect* of choosing the good (or bad), upon one's own character. The point is not to choose for the sake of choosing, and in choosing somehow to establish one's unique «identity». It is rather to align oneself with, and thus witness to, the truth.

VI. «CONNECTING THE DOTS»

Based upon these several cornerstones elaborated in *NLNR*, we can bring into sharp relief a robust conception of religious liberty. Building upon the truths of natural religion, the basic good of religion (and the account of practical reason and its first principles of which it is a part), the reality of free-choice and how, in morally significant situations, it is self-determining, we can easily see that religious liberty is a human right. We can see that protecting it is a way to promote the good of religion. And we can see that protecting religious liberty (thus, promoting religion), is part of the common good of any political community. For that «common good» is (as Finnis has often pointed out in his writings) *your* good, and *mine*, and *his* and *hers*, and so on. In other words, the «common good» is fundamentally the good of all the persons whose political community it is. There is a wide range of morally defensible ways of doing so, and the best way of doing so in any particular community at a given moment will depend upon a mix of principle and contingencies of history. With that caveat, we can say based upon *NLNR* that protecting religious liberty is

²⁷ *NLNR*, *op. cit.*, p. 127.

among the highest duties of public authorities, and that promoting religion itself is, too.

Now, the significant *doctrinal* development in *Dignitatis humanae* has to do with the public celebration of non-Catholic religious rituals and rites. *DH* affirms the «right» of individuals and religious communities «not to be prevented from publicly teaching and bearing witness to their beliefs by the spoken or written word». Persons and their communities have concomitant» right(s)» to manifest their beliefs in «public worship», «in erecting buildings for religious purposes», and to «hold meetings or establish educational, cultural charitable or social organizations». All these «rights» pertain to non-Catholic religions, as well as to Catholicism.

The center of gravity of the whole document is, however, self-constitution through free inquiry and choice about matters religious. It is quite true that it is perennial Catholic teaching that the act of religious faith must be free. But this great truth was given a distinctive new emphasis by the Council; there is an invigorated sense that each person must be the author of his or her own religious convictions, and acts.

The Council's synoptic description of that foundation stone could serve as a summation of what Finnis indicated about religious liberty in *NLNR*:

It is in accordance with their dignity as persons—that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility—that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth, once it is known, and to order their whole lives in accord with the demands of truth. However, men cannot discharge these obligations in a manner in keeping with their own nature unless they enjoy immunity from external coercion as well as psychological freedom. Therefore, the right to religious freedom has its foundation not in the subjective disposition of the person, but in his very nature. In consequence, the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order be observed²⁸.

²⁸ Second Vatican Council. Declaration on Religious Liberty *Dignitatis humanae*, 2, Vatican City, 1965.

VII. REVELATION

Finnis' limited attention to natural religion in *NLNR*, along with his substantial development of the basic good of religion, shows the reasonableness of actually holding religious beliefs, over against skeptical (and other) sorts of objections to doing so. The truths of natural religion in particular provide reasons to expect some intelligible communication from God to humankind – «revelation». Finnis said in 1980: «Inasmuch as the speculation suggests that D *acts* and *knows*. It suggests that D's existing is conceivable on the model of *personal life*. It therefore suggests that some sort of communication from or self-disclosure of D might occur»²⁹. The affirmation of these «speculative» characteristics of God in 2011 makes the likelihood of some revelation that much more likely. But «[w]hether this does occur», Finnis rightly says, «is a question of fact, experience, history»³⁰.

Finnis emphasizes the distinction between the Platonic/Aristotelian claims of interior access to the divine through meditation and contemplation, and revelation in the biblical tradition. «Plato has no conception corresponding to Aquinas's differentiated concept of divine law, *i.e.* the law which supplements the natural law and is promulgated by God for the regulation of the community or communities (Israel and then the universal Church) constituted through God's Public self-revelation and offer of friendship. For Plato, while he would affirm that God can be apprehended by us in the act and experience of human understand, has no conception of a revelation accessible to men without the effort of rational dialectic and contemplation – of the sort of empirical revelation, for instance, that would be 'folly to the Greeks' (but would be offered to them none the less)».³¹

This possibility of revelation considered by itself is indescribably good news for humankind. For revelation portends access to truths pertinent to the meaning, purpose, conduct, and extension of human existence, which truths are otherwise inaccessible to reason. Revelation promises to enrich the prospects for any human person seeking to come into a proper relationship with God. If revelation includes directions about how persons are to relate to God, then men and women could establish harmony with the divine entity in ways otherwise unimaginable.

²⁹ *NLNR*, *op. cit.*, p. 392

³⁰ *Ibidem*.

³¹ *Ibid.*, p. 396.

The human experience with putative revelations is, however, cause for ambivalence. Information asserted to be revelatory is very often false. Sometimes those who claim to have received divine communications are simply frauds. Other times reporters in good faith either misunderstand some sort of spiritual experience, or fail to comprehend what seems to them to be a more propositional message from God. Sometimes those who report revelations lack the critical capacity to grasp and to articulate what has come from God in terms unspoiled by ambient cultural and historical prejudices. And, if there really is an entity which Christians (among others) call Satan, then there is the possibility that some *genuine* communication coming from the transcendent spirit-world is purposely leading people away from God.

Pseudo-revelations could, and as a matter of historical fact have, included instructions which *diminish* the divine-human relationship, and which interfere with enjoyment of the basic good of religion. Not only might a message considered revelatory require faithful recipients to abjure any sense of friendship with God, in favor of abject, servile submission to God's expressed will. A putative revelation might also instruct believers to treat those who subscribe to different religions, or who belong to other ethnic, racial, or national groups, with contempt. In any event, putative communications from God to human beings are a key determinant of how adherents of different religions understand religious liberty, notwithstanding what reason reveals and affirms about religion and freedom. Simply put, putative revelations can and often have undermined religious liberty.

Finnis' revised account of natural theology not only provides reasonable grounds to *expect* revelation. It also supplies critical criteria by which to judge the veracity of putative revelations. For if the propositions affirmed on the basis of reason are *true*, then any alleged revelation which contradicts those true propositions, is false – at least, so long as one does not subscribe to any diremption in the world of truths, such that what reason shows to be false, religion shows to be true, and vice versa. Polytheism is false because it contradicts monotheism, which is true. Sincere reports from seers, mystics, prophets, shamans, and ordinary folks that the «gods» have spoken to them, must be discarded as unreliable, if they are false; that is, if they contradict what reason shows to be true.

Believers have often engineered a «two-truth» reconciliation of the propositional content of religions with the nearly unassailable data of the natural sciences, history, and even textual criticism. This irenicism holds that both «A» and «not A» are true, one vindicated by reason and the other by

alleged divine communication. Other believers have simply closed their eyes and dogmatically denied some unassailable facts.

Many Christians have over the last century or so devised another way to hold onto Scripture and tradition by reimagining Scripture, no longer as inspired by the Holy Spirit and thus without error in the sacred author's assertions, but rather as a collection of fables, symbols, and other edifying expressions of some elusive limit experience of the sacred writer or of his particular second-century faith community, or both. Christian creeds and doctrines have been assimilated, in other words, to a more existential mode of understanding religion. Jaroslav Pelikan described this «affectional transposition» of Christian doctrine in his masterful *History of the Development of Christian Doctrine*. Pelikan showed how texts which had for centuries been understood to refer to realities (visible and invisible) as well as to moral perfection, were reimagined by a «theology of the heart». For instance: «Miracle, mystery, and authority, whose validity as objective realities seemed to have reached a dead end, took on new life when they became, instead, ways of speaking about the subjective validity of inward experience»³². In both settings, the apparent propositional content of religion is protected from the possibility of falsification by depriving it of any real-world referents. It is all a matter of the heart.

None of these reconciliation strategies is appealing. They all imply either that religion is *not* the sort of thing that is either true or false, or that retaining religious belief requires a diremption between reason and religion, or both³³.

³² YAROSLAV, P., *The Christian Tradition: A History of the Development of Doctrine Vol. 5: Christian Doctrine and Modern Culture (since 1700)*, University of Chicago Press, 1984, p. 119.

³³ Catholic doctrine on religious liberty avoids these implications. In *Dignitatis humanae*, *op. cit.*, 10, the Council Fathers asserted that «one of the major tenets of Catholic doctrine [is] that man's response to God in faith must be free: no one therefore is to be forced to embrace the Christian faith against his own will». They wrote:

The declaration of this Vatican Council on the right of man to religious freedom has its foundation in the dignity of the person, whose exigencies have come to be fully known to human reason through centuries of experience. What is more, this doctrine of freedom has roots in divine revelation, and for this reason Christians are bound to respect it all the more conscientiously. Revelation does not indeed affirm in so many words the right of man to immunity from external coercion in matters religious. It does, however, disclose the dignity of the human person in its full dimensions. It gives evidence of the respect which Christ showed toward the freedom with which man is to fulfill his duty of belief in the word of God and it gives us lessons in the spirit which disciples of such a Master ought to adopt and continually follow. Thus, further light is cast upon the general principles upon which the doctrine of this declaration on religious freedom is based. In particular, religious freedom in society is entirely consonant with the freedom of the act of Christian faith (*vid.*, *Dignitatis humanae*, *op. cit.*, 9).

VIII. CULTURAL REPERCUSSIONS

The basic concept of religious liberty is unintelligible so long as one hypothesizes – as some pieces of the preceding sections might suggest one well could – the solitary human individual engaged in an existential/intellectual quest. But, apart from the possibility of an intelligible private revelation to a Robinson Crusoe, no possibly fruitful religious quest is imaginable save in company of others. For anyone's intelligent quest depends upon a certain level of education and mental discipline. That takes others who teach. Thinking through the questions of cosmic meaning and purpose as they present themselves to *homo religious* requires also developed categories of thought, supple language, and critical reasoning skills which are not found in nature or in the untutored human psyche. That takes (for lack perhaps of a technical term) a *tradition*. In fact, any intelligent religious quest depends upon a capacity for abstraction and conceptual understanding that far exceeds anything one could possibly achieve in isolation.

Anyone's intelligent quest depends upon *culture*, and upon *community*. Besides the fact that only communities produce culture, ongoing conversation and comparison with others' thinking is as important to carrying on the search for answers to religious questions as they are to any other search for knowledge. It is also quite likely (at least, history suggest that it is) that putative as well as genuine revelatory communications will be directed to one or a few, who are then charged with transmitting the news to rest of the group, if not to everyone.

Besides, religious liberty is really comprised of two moral *duties*. One is each person's obligation to seek, to affirm as one responsibly can, and to live in accord with what one affirms. The basic *right* of religious liberty is grounded upon this duty; being free from the undue influence of others is meant to provide the space needed to be the author of one's own religious convictions, to *own* them. Religious liberty consists of one more duty: the moral obligation of everyone, including public authorities, to respect each one's honest, self-determining religious quest and, within limits, religious acts, by not coercing or pressuring or cajoling the seeker. Government in a just society will do all that it reasonable can do to protect everyone's enjoyment of this right.

Much more could be said about what any society needs to do to make the religious quest a lively possibility for its members. Perhaps most basic is this: governments stand in an asymmetrical relationship to religious liberty and the moral obligations in which it consists. Public authorities have the wherewithal

to gravely impair the religious well-being of the people. Many governments have done so. Governments have very limited means at their disposal, though, to stimulate and promote a robust religious liberty. Public authority serves religion and religious liberty best largely, but still far from entirely, leaving the religious life of the people to civil society; that is, to the culture – and then supporting that culture.

Finnis does not pursue in *NLNR* this question of the distinctive *cultural* milieu which religious liberty calls for³⁴. It would seem nonetheless that, based upon what he does say, a culture that is able to achieve genuine religious liberty must be characterized by a commitment to at least three propositions. First, that religion is a *zone of truth*, not an enclave of tradition, custom, identity, projections, emotions, and edifying fables. Second, that there is an important, inalienable personal moral duty to seek out and to embrace religious truth. Third, that religious liberty has to be securely distinguished from other sorts of liberty, even from the right of conscience with which it partly overlaps. Without these three cultural anchors – and no matter how much freedom from external interference characterizes a society – there will not be *religious* liberty.

First: by «zone of truth» I do not mean that specifically Catholic faith, for example, includes assent to true propositions (as we find in the Creed,

³⁴ Authoritative Catholic writers have zeroed in on this question over the last generation, with great insight. For one thing, culture is fundamentally the religious question writ large. Pope John Paul II wrote in his encyclical letter *Centesimus annus* [24]: «At the heart of every culture lies the attitude man takes to the greatest mystery: the mystery of God. Different cultures are basically different ways of facing the question of the meaning of personal existence». As that Pope once said to Francis Cardinal George: «Faith creates culture». Pope Benedict XVI told visiting American bishops in 2012: «At the heart of every culture, whether perceived or not, is a consensus about the nature of reality». To representatives of French culture Pope Benedict said in 2008: «What gave Europe's culture its foundation – the search for God the readiness to listen to him – remains today the basis of any genuine culture». In other words: culture is or at least should be organized around the quest for truth about divine reality. In his 2011 World Day of peace Message («Religious Freedom, the Path to Peace») Pope Benedict spoke more pointedly about culture and religious freedom than at any other time. He spoke of «the religious dimension of culture, built up over the centuries thanks to the social and especially ethical contributions of religion». «More important still is religion's ethical contribution in the political sphere». And he stated: «Religious freedom is... an achievement of a sound political and juridical culture». In other words (and here adapting the Pontiff's thought): *religious liberty is a cultural achievement*. It is not something which is the fruit of the earth or which is so obviously conducive to human happiness that no society could fail to promote it. Religious liberty is a cultural achievement which history and current events show to be uncommon, and fragile.

in the Decalogue, elsewhere in Scripture where the sacred authors assert a proposition). Religious liberty does not depend upon *this* «zone of truth». It depends instead upon an essential precondition, or implication of this «zone»: that religion is the kind of thing that is either true or false. «True or false» here means objectively the case, or not. It is not the watered-down subjective sense of «true», such that my religion is «true» for me because it corresponds to my experiences and feelings and expresses them more or less adequately, and your religion is «true» for you, for the same reasons. It is not the more anticipatory truth of self-assertion, or what is often denoted by the term «personal identity», such that one *projects* an idealized image of oneself, and thereafter strives to somehow become that ideal.

Second: *Dignitatis humanae* asserted that «[a]ll men are impelled by nature and also by moral obligation to seek the truth, especially religious truth. They are also bound to adhere to the truth once it is known, and to order their whole lives in accord with the demands of truth». Just so. But getting people to take this moral duty seriously is a difficult task in modern culture, which is secularized and treats religion as a private pursuit for persons whose tastes incline them in that (odd) direction. Compliance with this duty is not in any event straightforwardly a true norm of justice, as if we owe it to other people to seek the truth and wrong them if we do not (I say not «straightforwardly» because I think that there *is* a moral obligation to promote others' compliance with their moral duties, including their duty to seek religious truth, by setting a good example and even by remonstrating with them. An individual who shirks his own duty to seek religious truth sets a bad example, and is unlikely to encourage others by words to do what that individual has declined himself or herself to do). Compliance is also not quite a duty to God; at least, it is hard to compellingly make that case insofar as «God» is a hypothesis and not yet a reality (much less a personal reality to which humankind might owe moral duties), *ex ante* in the religious pursuit of truth. Compliance might be rightly considered a moral duty to oneself. If so, ignoring it would be what we call now a «victimless immorality», which most today see as not immoral at all.

In the end, there is no basis for legally punishing anyone for failing to conscientiously investigate divine matters. And trying to force anyone by less drastic means to perform this moral duty is self-defeating. One cannot *make* another honestly believe in the truth of any proposition. Trying to do can only result (at most) in feigned or half-hearted assent.

The third cultural requirement for religious liberty – that it must be distinguished from other sorts of liberties – is perhaps just an implication of the first two. To detach religious liberty from truth is to decapitate it. This is the danger in today's post-Christian societies, and the peril is often abetted by treating «religious liberty» as a synonym for «rights of conscience».

Respecting «conscience» is indeed a good thing. But it has nothing necessarily to do with religion; respecting and making room (within limits) for all to deliberate, choose, and act according to internal guidance and thus to function as morally integrated persons, is a great good. Religious liberty includes all this, and more: The believer acts not only with reference to internal cohesion. He or she also acts in relationship to God. «Conscience» rights pertain to the inner harmony of any acting person. «Religious liberty» refers to that as well as to harmony between the acting person and the transcendent God. Besides, the social and political role of genuine religious conviction goes beyond the importance of respect for conscience alone³⁵.

Returning to the matter of asymmetry and government care for religious liberty, it is no doubt the case that *paramount* obligation is to eschew the coercion and oppression that all-too-often have characterized their attitude to some, many, or even all believers in their societies. But saying that avoiding persecution is the most urgent imperative does not mean that public authorities do not have other necessary, crucial responsibilities. We can now see and say that governments have a grave obligation to work strategically to help create and sustain the cultural conditions which religious liberty entail.

³⁵ In his 2010 Christmas greeting to the Roman Curia, Pope Benedict also noted that «In modern thinking, the word 'conscience' signifies that for moral and religious questions, it is the subjective dimension, the individual that constitutes the final authority for decision». He observed further that the modern world is «divided into the realms of the objective and the subjective». Religion and morals, the Pope continued, «lie within the subjective realm. Here, it is said, there are in the final analysis no objective criteria». Each person must be guided by and indeed governed by his «intuitions and experiences», not objective truth. Pope Benedict argued that a truer understanding of conscience is as «both capacity for truth and obedience to the truth which manifests itself to anyone who seeks it with an open heart». The path of «conversion is a path of conscience – not a path of self-asserting subjectivity but, on the contrary, a path of obedience to truth». *This* «conscience» is not and cannot be turned in upon itself, as if the point of any «right» of conscience was to make way for persons to express their most authentic selves. Conscience and respect for it – both rightly understood – are subsumed within genuine religious freedom.

BIBLIOGRAPHY

- BENEDICT XVI, «Address on the Occasion of Christmas Greetings to the Roman Curia», Vatican City, 2010.
- «Address to the Fifth General Conference of the Bishops of Latin America and the Caribbean», Vatican City, 2007.
- «Address to the Bishops of the United States of America on their Ad Limina Visit», Vatican City, 2012.
- «Message for the Celebration of World Peace Day», Vatican City, 2011.
- FINNIS, J., *Collected Essays of John Finnis V: Religion & Public Reasons*, Oxford University Press, Oxford, 2011.
- *Natural Law and Natural Rights*, Oxford University Press, Oxford, 1980.
- *Natural Law and Natural Rights*. Oxford University Press, Oxford (2nd ed.) 2011.
- «Why Religious Liberty is a Special, Important and Limited Right», *Notre Dame Legal Studies Paper*, nn. 09-11, 2009.
- FINNIS, J; BOYLE, J. & GRISEZ, G., *Nuclear Deterrence, Morality, and Realism*, Oxford University Press, Oxford, 1987.
- GRISEZ, G., BOYLE, J. & FINNIS, J., «Practical Principles, Moral Truth, and Ultimate Ends», *American Journal of Jurisprudence*, vol. 32, 1987.
- JOHN PAUL II, *Centesimus Annus*, Vatican City, 1991.
- KEOWN, J. & GEORGE, R. (eds.), *Reason, Morality, and Law: The Philosophy of John Finnis*, Oxford University Press, Oxford, 2013.
- YAROSLAV, P., *The Christian Tradition: A History of the Development of Doctrine Vol. 4: Reformation of Church and Dogma (1300-1700)*, University of Chicago Press, 1984.
- SECOND VATICAN COUNCIL. Declaration on Religious Liberty *Dignitatis humanae*, Vatican City, 1965.
- SHAH, T., FARR, T. & FRIEDMAN, J., *Religious Freedom and Gay Rights: Emerging Conflicts in the United States and Europe*, Oxford University Press, Oxford, 2016.