

Good is Good by Garvey

Garvey: Good is Good

- There are two standard answers to the question, why we protect freedom of religion
 - Religious freedom is an aspect of personal autonomy
 - Freedom of religion prevents political strife
- Agnostic viewpoint. The autonomy theory and political theory make no assumptions about the truth or value of religious decisions.
 - "For Laurence Tribe, religious autonomy is just one aspect of the larger 'rights of privacy and personhood.'" (43)
 - Moreover we attach value to the act of choosing, not the choices made or the outcomes.
 - Similar to Raz's belief that it is the act of voting that counts, not what we vote for.

Autonomy Theory

- Religious freedom entails the right to accept or reject any form of religion without coercion from the government.
- *Torcaso v. Watkins*: Found that Maryland had violated religious freedom by requiring state office-holders to declare their belief in God
 - The Constitution assigns equal importance to belief and disbelief.
- Free exercise clause brings up one issue: It protects the free exercise of religion, but not the free rejection of religion. It favors choices *of* religion over choices *against* religion.
 - Therefore we must classify disbelief as a form of religion in order to protect it
- Federal Law defines religious belief as "an individual's belief in a relation to a supreme being involving duties superior to those arising from any human relation." (43)
 - Supreme Court has asked the question, whether the objecting is as valuable a part of an agnostic's life as the belief is in a orthodox person's life.
- That we are capable of stepping back from our first-order preferences and can construct our second-order preferences to fit what our life should be like is an important argument in favor of freedom.
 - A political order must respect the freedom to act as unencumbered selves on our second-order preferences
- In autonomy theory the choice to practice religion is given the same strength as the choice to smoke, to have sex with who we chose, etc.
 - Our reliance on our constitution tells us that this cannot be the case; we have to recognize that different acts deserve different levels of protection.
 - "What we need is an argument that is capable of protecting religion without protecting a lot of other activities that we don't feel strongly about." (45)
- Another problem with autonomy theory: it makes two assumptions about human nature
 - That we are capable of differentiating between first- and second-order preferences
 - The value-laden assumption that we can make the above distinction in order to live "authentic" lives
- Religious view that our actions are in fact ordained by God, and that we have no control over them, conflicts with the autonomy theory.
 - Christian freedom exists not in making your own choices but in obeying the law of God; then it is the autonomy of God, not of the believers.
- There can be an uneven implementation of the freedom of religion between agnostics and believers, though the Court has attempted to level things out.
 - Has held that that the constitution does not necessarily require special treatment for religiously required behavior.
- Protection of religious freedom can often come across as religious preference.
- Autonomy theory is too simple to explain the complexity of the law in reference to freedom of religion

Political Strife Theory

- Denial of freedom inherently causes conflict
 - The universal damage by conflict applies to agnostics and believers alike, therefore it is in everyone's best interest to promote freedom
- Persecution: Agnostics cannot be stopped from practicing their faith, but they can be forced to practice another by a repressive government.
- Here the value of freedom is instrumental, not intrinsic; if freedom didn't lead to peace we wouldn't support it as blindly as we do.
 - The political argument makes no assumptions about "the kind of person we are" as autonomy does with its first- and second- order preferences
- The political defense of freedom gives no protection to the small fringe groups, if the group is sufficiently small the government can ban/disband it without worrying about the resulting conflict
- "The political explanation tells us that freedom is good because it brings peace. It does not tell us why we should prefer freedom to other means of bringing peace. It gives us no reason to object to the suppression or the establishment of religion, provided the job is done ruthlessly enough to prevent civil war." (49)
 - There are many ways to promote peace, why do we rely upon freedom as our main means of doing so?
 - Advantage of freedom is that it respects piety as well as peace, but we need an argument that tells us why it's good to respect piety.

Believer's Standpoint

- Best reason to protect religious freedom is the assumption that religion is inherently good
- Religious acts are necessary because to the religious person they please God and allow for our continued existence.
- Opposite argument: It is futile to coerce people to participate in religious ceremonies they don't believe in. Milton, to force a ritual's performance is "to compel hypocrisy [sic], not to advance religion." (50)

- o Belief in God cannot be forced, therefore we must be allowed to find our own way to God, which is precisely why it is necessary to protect the freedom to choose one's religion.
- Freedom assists the search for religious truth
 - o Fear that control of religion inevitably leads to suppression of the truth because there is no way to validate the authenticity of insight claimed to be from God.
- Harm threatening the believer is always worse than the harm threatening the non-believer (heaven or hell compared to comfort or discomfort).
 - o Consequentialist argument
- Government can't force the practice of a ritual, nor can it prohibit such a practice.
 - o Question: Why would agnostics support special treatment for religious devotees?
- Agnostics, having no real religious convictions, will tend to support a system of rules that is supportive and fair to everybody.
 - o Best way to be fair to the majority is to maximize freedom
 - o Fairness has two dimensions:
 - Consent: universal consent is an indication that a rule is fair
 - Reciprocity: all parties must share equally in the benefits
 - But protecting freedom of religion does not necessarily benefit agnostics to the extent that it does the orthodox.

The religious justification is the only convincing explanation for the support of religious freedoms, and the split-level character of the free exercise law.

- o In turn we must accept that the law sees religion as a good thing if we are to believe that there can be unequal treatment between the two groups.