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What is Religious Liberty?

Abstract

"So what is religious liberty? In looking at this question, we should parse the two questions that are embedded in the larger question, looking at religion and liberty for religion separately. From this, especially given the nature of religion, I hope to give some insight into what religious liberty should be, why that is so difficult to achieve, and why Christians have an abiding confidence despite this difficulty."

Posting about religious liberty and what it means for Christians today from *In All Things* - an online hub committed to the claim that the life, death, and resurrection of Jesus Christ has implications for the entire world.

<http://inallthings.org/what-is-religious-liberty/>

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What is Religious Liberty?

 [all in allthings.org/what-is-religious-liberty/](https://allthings.org/what-is-religious-liberty/)

Donald Roth

If we ask what political conditions would be necessary to bring about an end to, or at least significant abatement of, religious persecution, the normal answer is that governments should respect religious liberty. In fact, the promotion of religious liberty is listed by the United States as a “[core objective of U.S. foreign policy](#).” However, like asking if everyone is in favor of a “fair tax system,” universal support hardly signals genuine concurrence.

So what is religious liberty? In looking at this question, we should parse the two questions that are embedded in the larger question, looking at religion and liberty for religion separately. From this, especially given the nature of religion, I hope to give some insight into what religious liberty should be, why that is so difficult to achieve, and why Christians have an abiding confidence despite this difficulty.

What is Religion?

If ever there was a question that was too big to take on in the short space we have here, this might be it. To help scale things down a bit, then, the primary question I want to raise concerns the nature of religion: do we view it as primarily individual or communal in nature?

If religion is a primarily personal matter, then freedom of religion is primarily a matter of upholding freedom of conscience. This is not a new view of religion, but it is probably the most dominant view of religion today. This view echoes Thomas Jefferson, who famously said, “religion is a matter which lies solely between a man and his God.”¹)

There are some strengths to this perspective. First, it recognizes the reality that most religions say that we answer for our beliefs and actions in a personal capacity. That is, in virtually all religions, people must give account individually for what they’ve done. Giving full respect to that weighty responsibility then necessitates a strong protection for people in their individual capacity to live within the dictates of their consciences, professing faiths that may be well outside the mainstream or changing their religious affiliations with relatively little interference. In other words, this perspective is good in that it respects a wide spectrum of belief and disfavors any sort of government coercion to prevent conversion, possibly even protecting individuals from the wrath of their former fellow believers.

However, I don’t think that this view captures the essence of what religion truly is. Michael McConnell, the eminent Richard and Frances Mallery Professor of Law at Stanford University describes religion in this way:

“[R]eligion bears resemblances to, and has differences from, a wide variety of other human concerns. Religion is a special phenomenon, in part, because it plays such a wide variety of roles in human life: it is an institution, but it is more than that; it is an ideology or worldview, but it is more than that; it is a set of personal loyalties and locus of community, akin to family ties, but it is more than that; it is an aspect of identity, but it is more than that; it provides answers to questions of ultimate reality, and offers a connection to the transcendent; but it is more than that. Religion cannot be reduced to a subset of any larger category. In any particular context, religion may appear to be analogous to some other aspect of human activity – to another institution, worldview, personal loyalty, basis of personal identity, or answer to ultimate and transcendent questions. However, there is no other human phenomenon that combines all of these

aspects; if there were such a concept, it would probably be viewed as a religion.”²

At its core, then, religion is something communal in nature, something deeply personal, but also a concern and a phenomena that is separate from the individual. In other words, a proper respect for religious liberty is not just about making space for individual liberty but creating a space for religion *itself* to flourish (or die out) on its own terms.

What is Liberty?

If the last question was broad, this may be even more so, but again, I will try to raise a few concerns that adhere to a more narrow scope. My primary concerns here are with what sort of freedom the government gives to religion and what sort of freedom the government can take away from it.

The Government Giveth

The United States has some of the most expansive protections of religious liberty in the world, protected, as most of you will be familiar, by the wording of the First Amendment to the U.S. Constitution, which reads “Congress shall make no law respecting an establishment of religion (the Establishment Clause), or prohibiting the free exercise thereof (the Free Exercise Clause).” The case law regarding exactly what these two clauses mean is nuanced at best, murky and self-contradictory at worst; however, there is a general consensus that these provisions, as interpreted today, are meant to stand in some sort of balance.³ The government should not go so far in avoiding religion as to disenfranchise adherents, and it should not go so far in accommodating religious practice as to allow religion belief to totally trump the law of the land.

As a grossly simplified summary of current law, the basic rule in the U.S. is this: The government may make some limited exceptions to accommodate religion, but it is not compelled to do so.⁴ The government is the entity in modern society which possesses the power of the sword, and this means that most of the benefits, exemptions, and accommodations that Christians enjoy in a nation like the United States come at the pleasure of the government. I absolutely believe that the government *should* provide these benefits, but it’s important to recognize as a practical matter that the government does not *have* to provide them.⁵

So what does this mean for Christians? For the culture warriors among us, it means that if the church fails to be seen as feeding the sick and caring for the needy, sliding public opinion will foster growing sentiment questioning or opposing the role of religion in society. At the same time, the gospel stands in antithesis to culture, and we are not called to order our faith in line with what will best retain government favor, so what exactly is at stake?

The Government Taketh Away

Given our consideration so far, there are many reasons why we should not be surprised that religious liberty is not the norm around the world. If religion is this all-encompassing aspect of life that I believe it is, then it is a fundamental threat to tyrannical government. At a basic level, religion claims our loyalties in a way that transcends patriotism and national identity, something that inevitably threatens a suspicious sovereign. At the same time, religion is culture-defining, operating on a level that has the ability to transform or be conformed to general society. To the extent that religion is transformative, it is a threat to the established powers, and there will always be at least some sense of unease toward it.

True religious freedom requires tolerance of beliefs and behaviors we may not personally like, and it involves a delicate balance of permitting religions to flourish without giving them tyranny over the consciences of their adherents. If religion is to be protected, society must have checks and balances in place that respect it as something good and yet separate from individual adherents. However, this state of

protected pluralism is relatively fragile, and it is on some level not surprising that so many nations have a fundamental unease with religious freedom, at least on a broad basis. It's virtually impossible to keep all of this in perfect balance at all times.

Ultimately, however, particularly for Christians, while the government can raise the price on participation in a religion, and while it can even kill individuals, it cannot grapple directly with religion. Nations can be conquered and cities occupied, but ousting the Lord from Zion is beyond mortal power. This week, we've been thinking about persecuted Christians across the world, and I've tried to provide some thoughts here that might point to a legal structure that could help lessen that danger of persecution, but the real message is a call to unite ourselves in prayer and community with our too-often forgotten brothers and sisters, with whom we share the great assurance that "neither death nor life, nor angels nor rulers, nor things present nor things to come, nor powers, nor height nor depth, nor anything else in all creation, will be able to separate us from the love of God in Christ Jesus our Lord."⁶

Footnotes

1. Thomas Jefferson, [Letter to the Danbury Baptists](#) (Jan. 1, 1802) ↩
2. Michael W. McConnell, *The Problem of Singling Out Religion*, 50 DePaul L. Rev. 1, 42 (2000). ↩
3. As to what the clauses originally meant, Donald Drakeman makes a convincing case that the extent of their initial purpose was to prevent the establishment of European-style state churches. See, Donald Drakeman, [Church, State, and Original Intent](#) (Cambridge University Press 2010). ↩
4. That is, under Establishment Clause jurisprudence, certain expressions of civil religion, exemptions from different tax provisions, and accommodation of personal preferences is permissible, while religion is not an exception to the requirement to comply with neutral laws of general applicability, even if those laws forbid fundamental aspects of that religion. ↩
5. In fact, the U.S. has a very spotty record when it comes to respecting the religious liberties of minority religious groups, for example, the persecution of Mormons and Jehovah's Witnesses was at times rather severe, the spirit of some early proponents of church/state separation were driven by anti-Catholic animus, and even recently, such as with the City of Hialeah, Florida, townships have shown themselves to be less than accommodating to religious groups well outside the mainstream. For more on the development of views on religion, see John Witte's excellent book, [God's Joust, God's Justice: Law and Religion in the Western Tradition](#) (Eerdmans 2006). ↩
6. [Romans 8: 38-39 \(ESV\)](#). ↩