



Religious Freedom and Catholicism in the American Political Order: In Defense of Truth

Steven J. Brust

This article argues that although Catholics are experiencing restrictions on their religious freedom, they should not couch their response primarily in terms of religious freedom because that tends to frame the issue as a conflict between unreasonable religious beliefs, on the one hand, and reasonable and scientifically based laws and policies, on the other. Rather, Catholics should focus more on demonstrating that the specific laws and policies that restrict religious freedom are not rooted in objective reality and so are unjust. In this vein, this paper explores how the meanings of words such as “rights” are abused and used in such a way as to establish unjust laws, and encourages Catholics to demonstrate how their objections to unjust laws are rooted in reason and the best scientific inquiry, not mere religious belief.

“When I use a word,” Humpty Dumpty said in rather a scornful tone, “it means just what I choose it to mean — neither more nor less.”

“The question is,” said Alice, “whether you can make words mean so many different things.”

“The question is,” said Humpty Dumpty, “which is to be master?—that’s all.”
—Lewis Carroll, *Through the Looking Glass*, Chapter 6

Over the past ten years, the federal and state governments have repeatedly attacked the religious freedom of U.S. Catholics. These attacks range from the Obama Administration’s salvo against the Little Sisters of the Poor, to the Commonwealth of Massachusetts forcing Catholic Charities of Boston out of the adoption business based on “sexual orientation discrimination.”¹ The United States Conference of Catholic Bishops (USCCB) along with many Catholic organizations and untold numbers of individuals have denounced these laws and policies as unconstitutional, arguing that they violate the religious freedom of Catholics and others protected by the First Amendment of the U.S. Constitution.

There is merit to their argument. However, I want to suggest that there is a more fundamental problem with these attacks on religious freedom: They are rooted in a confusion about or rejection of truth. In other words,

religious freedom is threatened not simply because some laws and policies are contrary to Catholic religious beliefs, but because they are contrary to fundamental truths about the human person and the natural moral law. Thus, Catholics must defend themselves not simply by claiming a right to religious freedom, but by explaining from principles of reason precisely why the laws and policies are fundamentally unjust. This article endeavors to advance an argument from this overlooked approach.

ARBITRARY DOGMAS?

Many in American politics reject the claim that certain policies and laws violate religious freedom because they understand religious beliefs in a particular way, namely, that they are simply alleged revelations by God, and therefore arbitrary and unreasonable. Sometimes characterizations like “dogma” are conferred upon religious beliefs, a term used to suggest irrationality or superstition. If one doesn’t believe in these revelations, then they are of no concern to him or her, let alone the political community as a whole. Unfortunately, too many Catholics base their defense of religious freedom in claims about their right to practice their religious beliefs and practices.² This approach unwittingly lends support to their opponents’ claims, resulting in a political debate in which Catholic dogma is pitted against law and policy based on reason and science. The debate is thus recast as a contest between religious dogma and the rights of others, or dogma/religion vs. discrimination against others or the violation of others’ rights.

In a recent U.S. Senate hearing for a Catholic candidate nominated to the federal judiciary, Senator Diane Feinstein (D-CA) exhibited this approach of marginalizing arguments as being rooted in arbitrary religious doctrine. In questioning the nominee, Amy Coney Barrett, a University of Notre Dame law professor, Senator Feinstein said she feared that Barrett’s Catholic dogma would come before constitutional law.”³ To Senator Feinstein, a Catholic who holds certain “dogmatic” beliefs might issue judicial rulings opposing American rights (e.g., abortion), which are thought to be well-founded on reason. By framing the judicial conflict in this way, Senator Feinstein effectively preempts any argument against her favored constitutional interpretations, because any opposition to them would be based on irrational religious dogma.

When Catholics and others who do not accept positions favored by Senator Feinstein and the Supreme Court are marginalized by such charges, the proper response is *not* defending religious freedom by seeking an exemption to the laws and policies that restrict it, but rather to reject the validity of the laws themselves because they are not based on moral truth,

i.e., because they are unjust. They are unjust not primarily because they violate the right to religious freedom (although they are unjust for this reason too), but because the laws and policies are not based on objective truth regarding human nature and the moral law. This is precisely what Martin Luther King, Jr. did in his *Letter from a Birmingham Jail*, when he argued that segregation laws were unjust laws because they violated the eternal and natural moral law.⁴

When Catholics defend their religious freedom by seeking exemptions to the government's laws, they implicitly—if not outright—concede that the laws they are opposing are indeed reasonable (that there are reasonable and legitimate compelling government interests for them), and that they would therefore unjustly discriminate against other citizens in seeking to defend their own religious freedom. However, whether a claim to religious freedom involves unjust discrimination depends on whether the law or policy in question is itself reasonable and just. At the root of this question is a battle over the very nature of reality and truth, and how this reality is expressed through language.

THE CORRUPTION OF LANGUAGE

Josef Pieper's essay on *Abuse of Language, Abuse of Power* can help us understand why this is so.⁵ Pieper provides a penetrating analysis of the purpose of language and communication and its importance to political society. He argues that the major problem with contemporary society is an abuse of language rooted in the corruption of the meanings of words so that they no longer signify objective reality, but rather become mere instruments to be utilized by the abusers of language to manipulate others. As a result of this manipulation, a whole pseudo-reality develops within the political community. Language, then, becomes a means to exercise power over others—not for the good of the others but for the good of the one with power. The abuse of language ultimately leads to the irrational and tyrannical exercise of political power.

What does this have to do with religious freedom for Catholics in America? The corruption of language is occurring precisely with regard to the laws and policies which threaten religious freedom in the United States—and is an example of the type of emerging tyranny against which Pieper warns. To provide an effective antidote, the right to religious freedom can only be vindicated by grounding one's argument in the objective reality that undergirds a claim to religious freedom because the language used in laws and policies that undermine religious freedom—and in the political rhetoric used to support them—has undoubtedly been corrupted. For instance, the anti-discrimination laws via which some of the attacks on

religious freedom occur hinge on whether genuine unjust discrimination is actually taking place. Consider the U.S. Supreme Court case *Masterpiece Cakeshop vs. Colorado Civil Rights Commission*. A lower court argued that someone who refuses to bake a cake for a same-sex ceremony, which attempts to equate a same-sex relationship with marriage, discriminates against the affected same-sex couple.

In this scenario, we can observe a couple of abuses of language. First, the meaning of the word “marriage” is distorted to include something—another type of relationship—which is wholly different. Second, the word “discrimination” is distorted. This word is used to erase any distinction between just and unjust discrimination, and implies that all discrimination is bad, or unjust. But in the case of the baker, it is not discrimination, or more properly, not unjust discrimination, because one cannot unjustly discriminate against something that is not rooted in the nature of human reality. Since a marriage is by nature a lifelong union between a man and a woman, then the baker cannot assent to the ceremony (by providing a cake) that tries to pass itself off as a marriage ceremony. He is not unjustly discriminating against the same-sex couple, because they are asking for something on which they have no rational basis to ask, and thus it is wrong for them to ask—and, even worse, to demand. It is as if someone were being asked to assent that a square is a circle; it is illogical. Thus, the law requiring the baker to bake the “wedding” cake must be rejected because it is not rooted in objective reality. Indeed, it proposes a metaphysical impossibility.⁶

If Catholics do not argue against the genuine deficiencies of such laws, they implicitly and unwittingly concede that what the law defines as discrimination is indeed (true/just) discrimination. If they claim an exemption to this law based *only* on the religious freedom to believe and practice *their* religion, they will effectively give the political community license to discriminate against *other* members of that political community. This capitulation would lend credence to the conviction that Catholic beliefs are based on superstition and thus unreasonable, and consequently it would be unjust to uphold those religious beliefs in law.

This is precisely what is being said of Catholics today in America, namely, that their claims to religious freedom (in examples like the baker) are in reality claims to discriminate unjustly.⁷ Hence, some in the mainstream media use the term “so-called” in front of the words “religious freedom” or put the words “religious freedom” in quotation marks in their headlines and/or articles to denote the illegitimacy of the claim to religious freedom. And so, the mainstream media concludes, if Catholics are

perpetrating unjust discrimination, they should not receive an exemption however sincerely they hold their beliefs.⁸

This charge of discrimination is very difficult, practically speaking, to overcome if it is initially conceded—who wants to appear as someone who discriminates? However, Catholics know that refusing to make the aforementioned cake is not discrimination, or certainly not unjust discrimination, because the law itself is not rooted in objective reality, namely, the nature of marriage and its distinction from other types of relationships.

The same goes when the language of rights is abused. For example, when Catholics accept the claim that there is a right to contraception and abortifacients (and even more fundamentally, that they are genuine health care) as was done in the Health and Human Services (HHS) mandate case, then they are setting themselves up as opponents of the rights of others. But if indeed they are true rights—i.e., claims rooted in justice—then it might be unjust for Catholics to violate or not provide for them. In addition, in *Dignitatis Humanae* (Vatican II's *Declaration on Religious Freedom*), the Catholic Church teaches that there are limits to religious freedom. These limits arise when the exercise of religious freedom would violate the public peace, or the rights of others, or public morality.⁹ So if rights to contraception and abortifacients are indeed genuine human rights, Catholics could not exercise their religious freedom to violate these rights, no matter how sincerely they hold their beliefs. The answer, then, is not merely to invoke religious freedom, but to claim there are no such rights and therefore that no unjust discrimination is occurring. Or, similarly, Catholics can insist that rights claims in question are false.

Furthermore, it would help to clarify rights claims themselves, at least distinguishing between a legal right understood as an immunity from coercion, and thus something not to be interfered with, as opposed to a right that obligates someone to supply another person something (non-abortifacient contraceptives). This distinction would remove any conflict between the moral claim of Catholics not to cooperate with providing contraceptives, and the legal permission to use contraceptives without criminal penalty. Ultimately, rights language as a whole must be clarified so as to determine true rights claims vs. false rights claims, or a genuine right vs. a mere desire someone has. Merely asserting that something is a right does not make it so.

THE NEED FOR MORAL REASONING

In summary, Catholics must make clear that their objections to these laws and policies are not simply religious, but moral as well. Interestingly, the Trump Administration's recent changes to the HHS mandate refer not

only to religious objections, but also moral objections. (Although, here too, one must notice that the Administration still accepts the legitimacy of the mandate itself.¹⁰) This is step in the right direction, as it moves away from the view that the objections are based on irrational religious beliefs, and instead opens the door to arguments based on moral reasoning which are very appropriate in public policy. Catholics need to argue that their objections are rooted in principled moral reasons and the best *scientific inquiry*—whether basic embryology with respect to the humanity of human life at conception; or genetics and chromosomes and biology with respect to one’s sex; or the science related to the purposes of human sexuality, which bears on contraception and same-sex relationships and marriage.¹¹ In other words, Catholic positions in these areas are very reasonable and not the unreasonable dogma or superstition implied, some say, in the term “religious.” These reasonable positions are actually realities to be discovered and then lived; they are not legal fictions fabricated by irrational dogmatists.

This is really the crux of the conflict: One can come to know an objective reality discoverable by reason and signify that reality with language, and then live in accordance with that reality; or one can believe that reality is willed into existence merely by claiming it or choosing it, and then manipulate language to support these choices. The former is the apprehension and embrace of genuine truth, whereas the latter is the pseudo-reality of which Pieper wrote. If one wills something into existence by merely declaring it, then that willful decision is eventually foisted onto others by the exercise of power, and in our day, political power. The quotation with which I began my essay—regarding Humpty-Dumpty’s desire to give the words the meanings that he wants to give them in order to be master over others—is thereby shown to be quite appropriate. This is exactly what is occurring to Catholics and others who adhere to the natural moral law today: They are being forced by political powers to accept pseudo-realities that are *not*, contrary to what government authorities assert, as reasonable as they are purported to be.

Words in some policies and laws are given new meanings by mere assertion, not reasonable arguments.¹² And some political rhetoric, as with Senator Feinstein’s use of “dogma,” is employed to preempt rational counterpoints. Terms such as “rights,” “equality,” “discrimination,” “love,” are used to assert purported self-evident rights without reasoned argumentation; and terms such as “hateful,” “intolerant,” “mean,” “bigoted,” etc., are used as *ad hominem* attacks to prevent reasoned debate from occurring, perhaps because right reason and scientific knowledge is not on the side of those who foment such attacks. Catholics should combat this distortion

of language, instead of simply resorting to seeking an exemption from the unjust policies which can be cast as a “just leave us alone with our peculiar religious beliefs” approach. Catholics should witness to the reasonable truths that give rational basis for their objections. The real underlying problem in the political fights, then, is not the desire of Catholics to legislate morality based simply on alleged divine revelation, but a desire of their opponents to re-define morality because of a refusal to recognize and assent to truths about human nature and the moral law, truths which are knowable/discoverable by human reason.

Having said this, I do have one caveat about putting forth arguments based on reason alone. Given that in many people the faculty of reason has been diminished or even blinded, it may be that they are incapable of arriving at reasonable moral understandings about marriage and sexuality, the origin and dignity of human life, etc., according to the natural moral law alone. Thus, it may be that for these basic truths to be known there is a need for faith, the aid of grace, and a culture based on faith.¹³ In other words, for reason to be exercised so that one can apprehend natural truths about the human person, faith is perhaps needed. Granting this possibility, though does not detract from my main argument that claims to religious freedom should be primarily based on explicating the objective truths upon which those claims are based, not a mere assertion of religious freedom to be upheld by gaining a narrow religious exemption to an existing unjust law.

Notes

1. See <http://www.usccb.org/issues-and-action/religious-liberty/discrimination-against-catholic-adoption-services.cfm>. For a sampling, see Greg Neumayer and Phyllis Schlafly, *No Higher Power: Obama's War on Religious Freedom* (Washington, D.C.: Regnery Publishing Co., 2012), esp. 1–21.

2. See the USCCB's defense: <http://www.usccb.org/news/2012/12-021.cfm>.

3. Matt Hadro, “Democrats’ Grilling of Judicial Nominee Denounced as ‘Anti-Catholic Bigotry,’” in *National Catholic Register*, September 7, 2017: <http://www.ncregister.com/daily-news/democrats-grilling-of-judicial-nominee-denounced-as-anti-catholic-bigotry>.

4. Martin Luther King, Jr., *Letter from a Birmingham Jail*: http://okra.stanford.edu/transcription/document_images/undecided/630416-019.pdf.

5. Josef Pieper, *Abuse of Language, Abuse of Power*, trans. Lothar Krauth (San Francisco: Ignatius Press, 1992).

6. Notice that the Colorado *Civil Rights* Commission is forcing the bakery shop to adhere to the law, rather than protecting the right of religious freedom,

the first right mentioned in the Constitution. Its understanding of reality and what counts as a civil right is fundamentally different from the Catholic understanding.

7. For example, <http://www.msnbc.com/msnbc/religious-freedom-or-discrimination>.

8. Current Supreme Court jurisprudence based on the First Amendment and the Religious Freedom Restoration Act emphasizes the fact that someone sincerely holds a religious belief, but prescind from the *content* of the religious belief. It is my contention that Catholics should not argue merely that they sincerely hold their beliefs, but that their beliefs are true according to reason, science, and revelation, and that is why the laws and policies in question are unjust and therefore a violation of their religious freedom.

9. *Dignitatis Humanae*, Vatican Council II, 1965, #7: http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

10. See <http://www.ncregister.com/daily-news/trump-administration-announces-broad-exemptions-for-hhs-mandate>.

11. See, for instance, <https://www.princeton.edu/~prolife/articles/embryo-quotes2.html>; <https://www.thenewatlantis.com/publications/number-50-fall-2016>.

12. Most notably in the Supreme Court decision *Obergefell v. Hodges* 135 S. Ct. 2584 (2015), where Justice Kennedy both equivocates on the meaning of marriage and begs the question on its very nature. He also creates a new content to the term liberty based on this equivocation and question begging.

13. On this point, see Steven J. Brust, "Aquinas' Second Reason for the Necessity of Divine Law: Certainty of Knowledge with Respect to Particular and Contingent Moral Actions," in *Natural Law Today: The Present State of the Perennial Philosophy*, ed. Steven Brust and Christopher Wolfe (Lanham, Md.: Lexington Books, forthcoming).