

# THE PROBLEM OF JUSTIFYING THE RIGHT TO FREEDOM OF RELIGION

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## 1. Introduction

The topic of human rights is one of the most important questions in philosophy. It demands urgent attention because, sadly, the violation of human rights is both a common and global phenomenon. Many different types of human rights violations exist, but in this paper I want to focus exclusively on the persecution of people because of their religious beliefs. Consider, to take just a few contemporary examples, China's harsh treatment of Tibetan Buddhists, Uighur Muslims, Christians, and Falun Gong members, the Sudan's genocide against Christians and other non-Muslims, Iran's torture and execution of Baha'is and Christians, and North Korea's almost complete suppression of religious freedom.<sup>1</sup>

The awareness of this global problem is not new. In 1948, after the horrors of the second World War, the General Assembly of the United Nations adopted and proclaimed the *Universal Declaration of Human Rights*, declaring in Article 18: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."<sup>2</sup>

Unfortunately, as many scholars have noted, the declaration provided no foundation for human rights. For example, Jacques Maritain, who inspired several of those who drafted the declaration, once commented: "Yes, we agree about the rights, but on [the] condition no one asks us

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<sup>1</sup>*Annual Report of the United States Commission on International Religious Freedom*, 2 May 2005. <http://www.uscirf.gov/countries/publications/currentreport/index.html>

<sup>2</sup>*Universal Declaration of Human Rights* (1948), Article 18.

why.”<sup>3</sup> More recently, Mary Ann Glendon has argued that providing this missing foundation is an important, yet still unfinished, task.<sup>4</sup>

It is also a very difficult task, for several reasons. First, there is widespread disagreement among philosophers concerning the proper definition and justification of human rights. Some philosophers, such as Alasdair MacIntyre, have even argued that human rights do not exist at all, calling them “fictions” and equating them with belief in witches and unicorns.<sup>5</sup> Second, in order for any justification to be successful globally, it must provide arguments that are acceptable to as many cultures as possible. Some academics have argued that this is a near-impossible task.<sup>6</sup> With respect to justifying the right to religious freedom, which is the task of this paper, the fact that the religions of the world are so different further complicates this task. Indeed, these differences are often so great that some academics and lawyers have given up hope that a universal definition of religion can be found.<sup>7</sup>

Despite these difficulties, I am optimistic that progress can be made with respect to global human rights. Accordingly, I discuss two possible justifications for the right to religious freedom, arguing that the first is stronger, but that the second has a greater chance of global acceptance.

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<sup>3</sup>Mary Ann Glendon, “Reflections on the UDHR,” *First Things* 82 (April 1998), 24.

<sup>4</sup>Mary Ann Glendon, “Foundations of Human Rights: The Unfinished Business,” *The American Journal of Jurisprudence* 44 (1999), 1-14.

<sup>5</sup>Alasdair MacIntyre, *After Virtue*, 2nd ed., South Bend, IN: University of Notre Dame Press, 1984, 69-70. Even though MacIntyre is now content to speak of natural law, it seems his position that human rights are fictions remains basically unchanged. See Mark C. Murphy, “MacIntyre’s Political Philosophy,” *Alasdair MacIntyre*, ed. Mark C. Murphy, New York: Cambridge University Press, 2003, 152-175.

<sup>6</sup>Chris Brown, “Universal Human Rights: A Critique,” *Human Rights in Global Politics*, ed. Tim Dunne and Nicholas J. Wheeler, New York: Cambridge University Press, 1999, 103-127. For a more optimistic view, see Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150-1625*, Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Co., 2001), 343-348.

<sup>7</sup>See William E. Arnal, “Definition” in *Guide to the Study of Religion*, ed. Willi Braun and Russell T. McCutcheon, London and New York: Cassell, 2000, 21-34; and for problems concerning the legal definition of religion see T. Jeremy Gunn, “The Complexity of Religion and the Definition of ‘Religion’ in International Law,” *Harvard Human Rights Journal* 16 (Spring 2003), 189-215.

Although some significant differences between them exist, both justifications have a foundation in human nature. I also argue that acceptance of the second does not preclude eventual acceptance of the first. This is important because it provides the global community with an avenue for continued growth with respect to human rights.

## **2. Human Rights in the Global Community**

Let us begin the discussion by briefly clarifying the role that human rights are supposed to play within the global community.

The preamble to the *Universal Declaration of Human Rights* states: “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.” By this the drafters of the Declaration wanted to remind the world of the Nazi atrocities and prevent anything resembling them from ever occurring again. To help accomplish this, the Declaration calls on Member States to protect human rights “by the rule of law.” Implicit in this, is an understanding that human rights are prior to, and thus non-reducible to, civil law. Although the Declaration does not give a detailed account of the foundation of human rights, it does suggest, in the preamble, that the foundation is human nature itself by speaking of the “inherent dignity ... and worth of the human person” and of “the equal and inalienable rights of all members of the human family.”

If human rights are to provide the strong type of protection outlined in the Declaration, they must satisfy certain conditions. For example, human rights must have an objective foundation, not a relative one. If human rights were relative to culture, for example, then, as history has demonstrated, certain groups of people will lack protection. Human rights must be inalienable, that is unable to be forfeited or lost. If they are not, governments and other political entities will find a way to deprive certain human beings of them. Human rights must be universal, that is belonging equally to all human beings. If they are not, certain human beings will be excluded from their protection.

Thus, in order to play the protective role they are meant to, human rights must be prior to civil law, objective, inalienable, and universal. This is not meant to be an exhaustive list, and certainly there are other useful distinctions we could discuss, such as positive and negative rights. But it is enough, given my limited amount of space here, to clarify what is meant by the human part of human rights. To this we must add a general

definition of rights, which I adopt from Thomas D. Williams, who states: “A right is the moral capacity or power to possess, to do, or to demand one’s due. In still simpler terms, a right is the moral capacity to claim from another what one deserves.”<sup>8</sup>

The next task is to justify, or establish the correctness of, human rights. This entails two things. First, if possible, we must find a suitable foundation for human rights, one that meets the conditions of priority, objectivity, inalienability, and universality outlined above. Second, we must demonstrate how human rights follow from the foundation. I will not be able to treat these two steps in the detail they deserve, however, due to space constraints and because I want to focus primarily on justifying the right to religious freedom. Concerning this last point, let me give a brief understanding of what religion is, otherwise it will be unclear as to what the right to religious freedom entails.

Religion is a view of the world, which the adherent believes to be true, which answers questions about the meaning of existence, which orders values, which influences the actions of the adherent, which has an object or objects of reverence, and which has as one of its primary goals the improvement of the adherent’s existence. Thus, the right to religious freedom is the right to believe in a certain view of the world and the right to live in a way that reflects such belief. Religion is distinguished from philosophy and science because, unlike them, religion allows for views to be held on faith. Religion differs from a cult, which I use in a pejorative sense, because a cult does not have as one of its primary goals the improvement of the adherent’s existence. Cults such as the *People’s Temple*, which was led by the charlatan James Warren “Jim” Jones, abuse and exploit their members.

I think this understanding of religion is adequate enough to cover most, if not all, of the religions of the world, and so we are ready to examine the first of two justifications for religious freedom I intend to offer. Let us start with the one that is, in my judgment, stronger: natural law.

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<sup>8</sup>Thomas D. Williams, *Who is My Neighbour? Personalism and the Foundations of Human Rights*, Washington, DC: Catholic University of America Press, 2005, 13.

### 3. Natural Law

In Western philosophy, the theory of natural law has had a long history replete with many different versions. The version offered by Jacques Maritain, which is based on Thomas Aquinas, is, in my judgment, one of the strongest and, thus, will occupy our attention here.

Concerning law, Maritain follows Aquinas, who said that law is “an ordinance of reason for the common good, made by the authority who has care of the community and promulgated.”<sup>9</sup> Concerning nature, Maritain also follows Aquinas, who said that the word ‘nature’ meant “the essence of a thing as directed to its specific operation” and that “a natural thing ... has an inclination to its proper operations and to its proper end, which it achieves by operations.”<sup>10</sup> To talk about nature, then, is to talk about the kind of being something is (ontological structure), the actions proper to it, and its end (purpose). For example, it is in the nature of bees, which are flying insects (ontological structure), to gather nectar from flowers to make honey (proper action) in order to have food for the winter and to help flowers reproduce through pollination (purpose).

The nature of a thing determines how that thing should function and for what end it should act. Knowing the nature of an individual thing allows us to judge whether or not the individual thing in question is good or bad. For example, a worker bee that cannot fly is a bad (defective) bee because it does not function the way it should and because it does not achieve its proper end (the production of honey and the pollination of flowers). To talk about natural law, then, is to talk about a thing’s normality of functioning, and its purpose or end. Natural law, unlike civil law, is an unwritten law that is immanent in things. As Maritain expresses it, “Any kind of thing existing in nature, a plant, a dog, a horse, has its own natural law, that is, the normality of its functioning, the proper way in which, by reason of its specific structure and specific ends, it should achieve fullness of being either in its growth or in its behaviour.”<sup>11</sup>

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<sup>9</sup>Thomas Aquinas, *Summa theologiae*, I-II, 90, 4, responsio, trans. Thomas Gilby, Blackfriars Edition, New York-London: McGraw-Hill, 1964-1969, 28: 17.

<sup>10</sup>Thomas Aquinas, *De Ente et Essentia*, chap. 1, in *On Being and Essence*, trans. Armand Maurer, 2nd. ed., Toronto: Pontifical Institute of Mediaeval Studies, 1968, 32.

<sup>11</sup>Jacques Maritain, *La loi naturelle ou loi non écrite*, in *Natural Law: Reflections on Theory and Practice*, ed. William Sweet, South Bend, IN: St. Augustine’s Press, 2001, 28.

Maritain explains that this *metaphysical should* becomes a *moral should*, in the case of humans, because humans are free agents and, thus, can choose to act in harmony with their nature or against it.<sup>12</sup> To take a simple example, smoking cigarettes is bad for humans because it impairs proper functioning (it damages the lungs) and because it can, by causing cancer, lead to death. Even though many humans know this, as free agents, some of them choose to smoke anyway. It would be wrong to conclude, however, that defiance or ignorance of natural law is evidence that no universal natural law for humans exists. Maritain distinguishes knowledge of natural law from its ontological foundation: “[Natural law is] an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the essential and necessary ends of the human being.”<sup>13</sup> Thus, while our knowledge of natural law might change over time, natural law itself is objective and unchanging.

Natural law, as immanent in human nature, would seem to be a good foundation for human rights because it meets the conditions of priority, objectivity, inalienability, and universality we outlined above. Human nature is clearly prior to civil law, is a matter of objective fact, is something that cannot be forfeited, and is something common to all humans. Not surprisingly, Maritain says: “The same natural law which lays down our most fundamental duties ... is the very law which assigns to us our fundamental rights.”<sup>14</sup> Because human beings, by nature, are animals that are free and intellectual, human beings require, of necessity, access to certain goods (food, sleep, liberty, knowledge, etc.) if they are to be able to live and fully realize their nature. Such necessary goods constitute the domain of natural human rights.

The right to freedom of religion has its basis in human nature as well. As Aristotle correctly remarked, “All men by nature desire to know.”<sup>15</sup> As intellectual beings, humans are curious by nature. It is natural for humans to ask questions about life, death, the meaning of life and death, and about whether or not a supreme being exists. The religions

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<sup>12</sup>Maritain, *La loi naturelle ou loi non écrite*, 29.

<sup>13</sup>Maritain, *La loi naturelle ou loi non écrite*, 27.

<sup>14</sup>Jacques Maritain, *Man and the State*, Chicago: University of Chicago Press, 1951, 95.

<sup>15</sup>Aristotle, *Metaphysics*, book I, in *The Basic Works of Aristotle*, ed. Richard McKeon, New York: Random House, 1941, 689.

of the world provide answers to these deep questions, often going beyond whatever human reason alone could ever supply. Since it is natural for humans to search for such answers, every human should be allowed to study the religions of the world and choose the one that he or she thinks provides the best answers.

The right to freedom of choice follows from the fact that humans are, by nature, free beings. With few exceptions – for example, the very young and the very old – it is impossible to live as a human being and not make personal choices on a daily basis. Each of us must choose what clothes to wear, what food to eat, what to do during our day, and so on. Of course, we do not have the right to do whatever we want. Natural rights come from natural law, which concerns the common good. Therefore, I do not have a right to act in such a way that damages the common good. For example, I cannot set fire to my city, as Nero, allegedly, set fire to ancient Rome. For the same reason, some religious practices, such as forced conversion, which historically have been performed by practitioners of various religions, are not protected under the right to religious freedom.

This highlights an important distinction between the right to religious belief, and the right to practice one's religion. The first right is inalienable and inviolable, but the second right, while inalienable, is violable under certain circumstances. For example, Christians have certain beliefs about life, death, judgment, heaven, and hell. The right to believe these things is inalienable (it cannot be forfeited) and inviolable (it cannot be infringed upon by the State under any circumstances). But Christians, as part of their religious life, also congregate in churches for public prayer, and evangelize by speaking to people who are willing to listen to them. The right to practise these things is inalienable, but under certain circumstances the State has the right, for sake of the common good, to infringe upon these rights. For instance, suppose one Sunday there was a violent riot occurring throughout a city. The State, in order to prevent loss of life, might order everyone to stay in their homes while the police try to quell the riot. As a result of this order Christians would be unable travel to church to practise their religion. This type of infringement is allowable only because it is for the sake of the common good. For the same reason, the State has the right to investigate allegations of abuse and exploitation of members of a religious group.

#### 4. Objections to Natural Law

Although natural law seems to be a good foundation for the right to religious freedom, there are some objections to it that must be answered if it is to have any chance of global acceptance. For example, whereas Aristotle affirmed the presence of teleology (things acting, according to their nature, for a purpose) in the world, the majority of contemporary scientists do not. A Darwinian evolutionist who believes that life on planet Earth is simply an accident – the result of natural selection acting on random variation – might argue that the only natural law is survival of the fittest. Thus, while it might be true that humans necessarily require certain goods to live, that does not mean that humans have a right to these goods. Just as it is natural for some species to be driven to extinction by other species, so are some human civilizations conquered and destroyed by others. How does anyone have the right to claim from another what one, allegedly, deserves?

Maritain's answer to this objection is that God is the ultimate foundation of natural rights, because the natural law is a participation in the eternal law, which is God's plan for the universe:

[E]very right possessed by man is possessed by virtue of the right possessed by God, Who is pure Justice, to see the order of His wisdom in beings respected, obeyed, and loved by every intelligence. It is essential to law to be an order of *reason*, and natural law, or the normality of function of human nature known by knowledge through inclination, is *law*, binding in conscience, only because nature and the inclinations of nature manifest an order of reason, – that is of *Divine Reason*. Natural law is law only because it is a participation in Eternal Law.<sup>16</sup>

To understand Maritain's point, suppose that God does not exist and that life on this planet is nothing more than the result of blind forces and chance. Any resulting "order in nature" would be non-rational (since it was not caused by reason), contingent (since it could have developed another way), and mutable (since it could change in the future). This would certainly be a weak foundation for morality and human rights. Maritain, discussing this scenario, asks: "[W]hy should I be obliged in conscience by a purely factual order?"<sup>17</sup> In this he seems to echo David Hume's point

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<sup>16</sup>Maritain, *Man and the State*, 96.

<sup>17</sup>Maritain, *Natural Law*, 46.

that we cannot derive an ought (how things should be) from an is (the way things are).<sup>18</sup>

The reason why we could not derive an ought from an is in this atheistic scenario is simple. The absence of God (the intelligent cause of the universe) precludes nature (human or otherwise) from having a teleological dimension. Without what MacIntyre calls “functional concepts” (defining things in terms of their function and purpose), no ought can be derived from an is:

[T]hose who have insisted that *all* moral arguments fall within the scope of such a principle [‘No “ought” conclusion from “is” premises’] may have been doing so, because they took it for granted that *no* moral arguments involve functional concepts. Yet moral arguments within the classical, Aristotelian tradition – whether in its Greek or its medieval versions – involve at least one central functional concept, the concept of *man* understood as having an essential nature and an essential purpose or function.<sup>19</sup>

God, as a supremely intelligent cause, provides the teleology in nature required for natural law. God, as the supremely good creator of the world, orders the world with reason for the common good of all, thus providing the character of law required by natural law. As Maritain puts it, “If the Natural Law does not involve the divine reason, it is not a law, and if it is not a law, it does not oblige.”<sup>20</sup> Thus, without God there are no natural human rights.

It might be objected that this argument is circular because the right to religious freedom ultimately comes from God, but God’s existence is a part of my religious belief. In other words, I have a right to religious freedom because of my religious beliefs. This objection would stand if human beings were unable to prove God’s existence using reason alone. Maritain, however, disagreed with this, stating, “This concept of Eternal Law is not solely theological... [I]t is a philosophical truth as well, one which the philosopher with his means alone can reach and establish.”<sup>21</sup>

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<sup>18</sup>David Hume, *A Treatise of Human Nature*, book III, part I, section I, ed. L. A. Selby-Bigge, 2nd ed., Oxford: Oxford University Press, 1978, 469.

<sup>19</sup>MacIntyre, *After Virtue*, 58.

<sup>20</sup>Maritain, *Natural Law*, 47.

<sup>21</sup>Maritain, *Natural Law*, 40.

The majority of contemporary philosophers, of course, disagree with Maritain that God's existence can be demonstrated. Some philosophers – for example, existentialists and postmodernists – even deny that humans share a common nature. Add to this the fact that the majority of scientists do not recognize teleology in nature, and it seems difficult to get even Western countries to accept natural law as the foundation of human rights. But even if these problems did not exist, there is one problem that I think precludes many cultures from accepting natural law as the foundation for the right to religious freedom. It is an objection raised by Damien Keown:

If human dignity is the basis of human rights Buddhism would seem to be in some difficulty when it comes to providing a justification for them. The theistic religions, on the other hand, seem much better equipped to provide an account of human dignity. Christians, Muslims and Jews typically refer to the ultimate source of human dignity as divine... [I]t is difficult to see how any of these things [i.e., *Nirvāṇa*, *nyata*, and *Dharmakāya*] can be the source of human dignity in the way that God can, since no school of Buddhism believes that human beings are created by them.<sup>22</sup>

The fact is that other religions of the world, not just Buddhism, do not believe that only one God, who is a transcendent creator, exists. Therefore, if we are to appeal to cultures where such religions are dominant we need a justification for the right to religious freedom that does not require, as natural law does, a Western notion of God. Alan Gewirth's ethical rationalism provides such a justification, though it is not as strong, in my judgment, as the one provided by natural law.

## 5. Gewirth's Ethical Rationalism

In his book *Reason and Morality*, Gewirth spends over a hundred pages to justify the *Principle of Generic Consistency (PGC)*: “Act in accord with the generic rights of your recipients as well as of yourself.”<sup>23</sup> He considers this to be the supreme principle of morality, and he claims that it can be derived from a rational analysis of voluntary and purposive action. The generic rights of which he speaks are rights to freedom and well-being,

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<sup>22</sup>Damien Keown, “Are There ‘Human Rights’ in Buddhism?” *Journal of Buddhist Ethics* 2 (1995), 12-13.

<sup>23</sup>Alan Gewirth, *Reason and Morality*, Chicago: University of Chicago Press, 1978, 135.

which he holds are the necessary conditions of action and, thus, are required by all agents. To be an agent a person must be able to control his or her behaviour by unforced choice, must have relevant circumstantial knowledge beyond what is present to immediate awareness, and must have the ability to reflect rationally on his or her purposes.<sup>24</sup> Gewirth's understanding of rationality is very narrow: "[Reason comprises] only the canons of deductive and inductive logic, including among the latter its bases in particular sense perceptions."<sup>25</sup>

According to Gewirth, the *PGC* along with the necessary conditions of human action provide the justificatory basis of human rights. He summarizes the four main steps of his argument as follows:

First, every agent holds that the purposes for which he acts are good [from his standpoint, based] on whatever criterion (not necessarily a moral one) enters into his purposes. Second, every actual or prospective agent logically must therefore hold or accept that freedom and well-being are necessary goods for him because they are the necessary conditions of his acting for any of his purposes; hence, he holds that he *must* have them [to the extent that he desires to fulfil his purposes]. Third, he logically must therefore hold or accept that he has rights to freedom and well-being; for, if he were to deny this, he would have to accept that other persons may remove or interfere with his freedom and well-being, so that he *may not* have them; but this would contradict his belief that he *must* have them. Fourth, the sufficient reason on the basis of which each agent must [personally] claim these rights is that he is a prospective purposive agent, so that he logically must accept [on pain of contradiction] the conclusion that all prospective purposive agents, equally and as such, have rights to freedom and well-being. This conclusion is equivalent to the *PGC*.<sup>26</sup>

According to Gewirth, there is no way for an agent to avoid the conclusion of this argument, "all prospective purposive agents, equally and as such, have rights to freedom and well-being," without contradiction. If, for example, an agent tries to avoid the conclusion by claiming that he has

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<sup>24</sup>Gewirth, *Reason and Morality*, 120.

<sup>25</sup>Gewirth, *Reason and Morality*, 22.

<sup>26</sup>Alan Gewirth, "Introduction," in *Human Rights*, Chicago: University of Chicago Press, 1982, 20.

rights to freedom and well-being but other agents do not, he contradicts himself because other agents are merely claiming the same rights he claims for himself for exactly the same reason he claims them: because freedom and well-being are necessary conditions of action. If an agent tries to avoid the conclusion by holding that he does not have rights to freedom and well-being because he has no purposes that he desires to fulfil, then he ceases to be an agent, which contradicts our initial premise. Thus, every person is forced to admit either: (1) that he or she is not an agent, and thus has no purposes that he or she desires to fulfil – but almost no one could admit this, or (2) that, as an agent, he or she has rights to freedom and well-being and, thus, “all prospective purposive agents, equally and as such, have rights to freedom and well-being.”

There are many advantages to Gewirth’s argument for human rights. Unlike natural law, the metaphysics of Gewirth’s argument is minimal and it does not require God for the foundation of human rights. Human rights are natural rights, for Gewirth, to the extent that humans are, by nature, agents. As such, it seems Gewirth has given us a foundation for human rights that meets the conditions of priority, objectivity, inalienability, and universality we outlined above. The fact that humans are agents is prior to civil law and it is an objective fact. Concerning inalienability and universality, however, natural law is stronger.

The reason for this is that only agents can claim the rights to freedom and well-being. Young children, the mentally handicapped, and other marginal agents only possess rights to a lesser degree. Gewirth explains: “varying degrees of having the abilities of agency justify varying degrees of having the rights, because of the way in which the having of the abilities bears on individuals’ inherent capacity for exercising the rights without harm to themselves or others.”<sup>27</sup> Unlike natural law, under which human rights are perfectly inalienable, humans can lose their rights, according to Gewirth, to the degree to which they lose their ability to act as agents. Old age, disease, and other factors can cause this. For the same reason, unlike natural law, human rights are not as universal. As we have seen, marginal agents do not possess the rights in equal measure as do prospective

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<sup>27</sup>Alan Gewirth, “Replies to My Critics,” in *Gewirth’s Ethical Rationalism: Critical Essays with a Reply by Alan Gewirth*, ed. Edward Regis, Jr., Chicago: University of Chicago Press, 1984, 226.

purposive agents. Still, under most circumstances, Gewirth is able to provide a fairly strong foundation for human rights.

The right to religious freedom is contained in the general right to freedom to the extent that freedom is a necessary condition of purposive action. As Gewirth explains, “In general, the *PGC* requires that each person be left free to perform any actions he wishes so long as he does not threaten or violate other person’s rights to freedom (by coercing them) or to well-being (by harming them).”<sup>28</sup> Thus, the *PGC* justifies limiting the practice of religious freedom, when necessary to protect the rights of agents to freedom and well-being, in a similar way to how natural law limits the practice of religious freedom for the sake of the common good.

## 6. Objections to Gewirth’s Ethical Rationalism

For all of its strengths, Gewirth’s ethical rationalism is not without weaknesses. One obstacle to global acceptance might be the sheer complexity of the argument. The compressed form of the argument I have given does not give a sense of the dozens of steps and hundreds of pages Gewirth spends in order to present his argument in full. The fact that hundreds of philosophers have attacked his argument at virtually every stage further complicates prospects for global acceptance.<sup>29</sup>

Another weakness concerns what is probably the most controversial step of Gewirth’s argument, the third one. MacIntyre, for example, has argued it does not follow that because an agent recognizes that freedom and well-being are necessary conditions for acting that an agent has a right to freedom and well-being.<sup>30</sup> In other words, it does not follow from the fact that I have a need to X that I have a right to X. This essentially raises the is-ought problem we discussed earlier.

Gewirth has addressed such concerns in a lengthy article titled “The ‘Is-Ought’ Problem Resolved,” which requires more treatment than I can afford it here.<sup>31</sup> However, in replying to W. D. Hudson’s critique of the article, Gewirth suggests that his argument is still valid even if it crosses the is-ought gap:

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<sup>28</sup>Gewirth, “Introduction,” in *Human Rights*, 17.

<sup>29</sup>Deryck Beyleveld has collected many of these arguments in *The Dialectical Necessity of Morality: An Analysis and Defense of Alan Gewirth’s Argument to the Principle of Generic Consistency*, Chicago: University of Chicago Press, 1991.

<sup>30</sup>MacIntyre, *After Virtue*, 66-67.

<sup>31</sup>Gewirth, “The ‘Is-Ought’ Problem Resolved” in *Human Rights*, 100-127.

My main concern is not with the ‘is-ought’ problem; it is, rather, to show that every agent logically must accept certain moral ‘ought’-judgments. Hence, if being an agent, or engaging in action, is not something that can be stated as a “pure, unadulterated statement of fact,” this does not affect my general thesis. What it would show instead is that the *factual world* of human action is “loaded with values” for every agent; and this is something I would gladly accept so long as the facts and values in question are acknowledged to be ineluctable for every agent. It is the *necessity* of the argument that is crucial, not its crossing some logical gap.<sup>32</sup>

Whatever the final verdict is, of Gewirth’s success in dealing with the is-ought problem, I do not think he is able to handle it as effectively as natural law can. The reason for this is that natural law overcomes the is-ought problem by employing a teleology that has as its ultimate foundation God, who is unchanging and the supremely intelligent and good creator of the world. Gewirth does not have an option as strong as this available to him within the confines of his argument.

## 7. Conclusion

The two justifications for the right to religious freedom we have analyzed have their strengths and weaknesses. Gewirth’s ethical rationalism, because it has a minimalist metaphysics that does not require a western notion of God for its justification, is more likely to have a greater chance of global acceptance. Natural law, however, provides a stronger justification for the right to religious freedom, to the extent that it provides a stronger foundation for human rights in general, especially with respect to inalienability and universality, and because of how well it handles the is-ought problem.

Both views, despite some significant differences, have a foundation in human nature. Both theories, for example, place important emphasis on humans as free and rational agents. To this extent, acceptance of Gewirth’s argument does not preclude eventual acceptance of natural law theory. Natural law theorists can incorporate much of what Gewirth has argued by adding an understanding that human agency is part of natural law, which ultimately is a participation in God’s eternal law for the world.

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<sup>32</sup>Gewirth, “Replies to My Critics,” in *Gewirth’s Ethical Rationalism*, 223-224.

I do think that there will come a time in the future when a majority of scientists and philosophers re-affirm both the presence of teleology in the world and the existence of an intelligent cause of the universe. But until then, I suggest that a global attempt be made to promote Gewirth's argument for human rights. This seems to have been Gewirth's final wish as he was working on a new book titled *Human Rights and Global Justice*, which, sadly, remained unfinished at his death in 2004.<sup>33</sup>

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