How Could Religious Liberty Be a Human Right?

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Objections to “religious liberty”

• The *unfairness objection*: singling out religion for special protection is unjust to comparable nonreligious conceptions of the good.

• The *distraction objection*: oppression sometimes occurs along religious lines, but the underlying conflicts often are not really about religious difference.
Two forms of the unfairness objection

– Other goods are as important as religion.
– *liberal neutrality*: state action should never be justified on the basis of any contested conception of the good.
– Both motivate the search for substitutes that do not privilege “religion.”
What is a human right?

– Joseph Raz: a right should be understood as an aspect of human well-being that “is a sufficient reason for holding some other person(s) to be under a duty.”

– But is religion an aspect of human well-being?
Does “religion” exist?

It may be a culturally specific category that emerged from encounters with foreign belief systems associated with geopolitical entities with which the West was forced to deal.

It’s certainly not uniquely important for people. People are intensely committed to a lot of things.
Religion as a distraction

Rohyngya in Myanmar:
State Department calls their mistreatment a violation of religious liberty, but the abuse they confront is also ethnic, racial, economic, political, postcolonial, and national.
Can something else be substituted for “religion”? 
Equality – not clear what the comparator is 
Conscience - underinclusive 
Integrity – imperfectly detectable by the state.
Hobbes on opacity

Happiness is “a continuall progresse of the desire, from one object to another; the attaining of the former, being still but the way to the later.”

“since different men desire and shun different things, there must need be many things that are good to some and evil to others.”
“to have stronger, and more vehement Passions for any thing, than is ordinarily seen in others, is that which men call MADNESSE.”

No appeal to “such diversity, as there is of private Consciences” is possible in public life for Hobbes.
The answer to opacity is mutually intelligible ends that we can know and share.

Charles Taylor: hypergoods, “goods which not only are incomparably more important than others but provide the standpoint from which these must be weighed, judged, decided about.”
Different hypergoods are recognized in different places. Locally recognized hypergoods. If hypergoods are locally salient, then political conditions ought to facilitate access to them. Recall Raz: rights are rooted in interests. “Religion” describes hypergoods valued by many people.
Remainders

There are other deep and valuable concerns.

But law is necessarily imprecise. Vagueness of “religion” allows the state to avoid deciding what’s good about it.

At least in some parts of the world, religion is an adequate (though somewhat overinclusive and underinclusive) proxy for multiple goods, some of which are not ones that can be officially endorsed.
Protest

Justice Sandra Day O’Connor: endorsement of any specific religious view “sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.”

Singling out “religion” alienates some people.
Alienation is a chronic condition

- All categories need supplementation, but there will always be a remainder.
- To the extent that preferential treatment is given under any description, people will inevitably try to recharacterize themselves in order to fit that description.
- You can’t please everybody.
- Unfairness and distraction you will always have with you.