



Friday Feature for October 11, 2019

Mars Hill Audio

David L. Schindler & Nicholas J. Healy, Jr. on modern assumptions about freedom & personal identity

Synopsis:

Theologians **David L. Schindler** and **Nicholas J. Healy, Jr.** talk about the historical and intellectual context from which the Second Vatican Council's declaration on religious freedom, *Dignitatis humanae*, emerged. As scholars have interpreted this document on religious freedom, the central question has been whether or not a religious philosophy is embedded in the articles of the First Amendment. Does upholding a right to religious freedom have, paradoxically, an inherently secularizing effect? And what might a right to religious freedom imply about the human person? In what sense is the human person religious and in what sense is he free? Schindler and Healy are co-authors of *Freedom, Truth, and Human Dignity: The Second Vatican Council's Declaration on Religious Freedom* (Eerdmans, 2015).

Transcript

Ken Myers

It's widely assumed that the First Amendment of the U.S. Constitution, if interpreted properly, provides Christians with all the protection they need to live out the consequences of their faith with integrity. But there's a minority report about the First Amendment, which has long been raising troubling questions about whether it contains assumptions about the nature of freedom, and about the nature of religion, which weigh against the freedom of the Church, understood with any theological depth.

There are a number of reasons to suspect that the understanding of religion assumed by the First Amendment is biased in favor of the dualism that I've been considering, a dualism that keeps religion in private spaces. This dualism marks off a public sphere, which is guided by reason — deprived of revelation's guidance — and a private sphere, in which a religion that has no public consequences can safely be practiced.

But is that allegedly neutral secular space called the public space really entirely free from theological assumptions? The assumption that public life can be well

lived without any reference to God, or to the image of God in human beings, or to the supernatural ends for which we were created — that is not a theologically neutral position. I'm reminded here of the remark of constitutional law scholar Stephen D. Smith, that there's no religiously neutral definition of religious neutrality.

According to the now conventional understanding of religious freedom, religion is defined as a purely spiritual, otherworldly set of beliefs and practices that have no basis in reason and no necessary earthly consequences. And freedom is defined only in terms of the absence of coercion in the making of personal choices, including choices about what is true and what is good. With those definitions in place, the protection of a kind of religious freedom might be possible.

But those definitions of religion and of freedom are contestable. To regard religion as purely spiritual and private contradicts the truth about the kind of creatures we really are. We are made to honor God in every aspect of life, not just in our hearts and heads. And to regard freedom as indifferent to the truth, or indifferent to God, presents an equally false picture of human nature. Freedom, rightly understood, is never freedom *from* the truth, but always freedom *in* the truth.

In his 1993 encyclical *Veritas Splendor*, Pope John Paul II declared that “the essential bond between truth, the good, and freedom has been largely lost sight of by present-day culture. As a result, helping man to rediscover it represents nowadays one of the specific requirements of the Church's mission.”

I recently talked with two Catholic theologians about the definition of religious freedom, and about whether or not the First Amendment really does provide a satisfactory framework for Christian faithfulness within public life. Together, they've written a book entitled *Freedom, Truth, and Human Dignity: The Second Vatican Council's Declaration on Religious Freedom*. The declaration in question, *Dignitatis humanae*, is a theologically complex document which went through five heavily debated drafts before being promulgated in its final form in 1965.

In one of the principal essays in the book, David L. Schindler writes, “It is not uncommon today for the right to religious freedom to be claimed as the most

basic human right and indeed the foundation of all other rights. What is not so common, however, is to make explicit the sense in which such a claim rests on an ontological judgment regarding the nature of religion, or the natural religiosity of man, man as *homo religiosus*. It is because religion goes to the innermost depths of the human person, and comprehends the whole of his life and experience, that the right to freedom in matters of religion has priority over all other rights. Loss of the depth and comprehensiveness of the relation to God that is structured into man's original nature as a creature would undermine the warrant for speaking of the right to religious freedom as the most fundamental right."

I talked with Schindler and his co-author, Nicholas J. Healy, Jr., who began by giving me some of the background to the convening of the Second Vatican Council. Nicholas Healy.

Nicholas Healy

Not long after he was elected pope, John XXIII surprised everyone by announcing his intention to convene an ecumenical council, which is a major event in the life of the Church. Vatican II was the twenty-first ecumenical Council. And from the beginning it wasn't very clear what he had in mind.

Very often when a Council has been convened, it's been in response to a crisis of sorts, very often a doctrinal crisis, going back to the Council of Nicaea, dealing with the crisis of Arianism, all the way forward in the life of the Church. In the case of the Second Vatican Council, there was no immediate, or at least obvious, crisis. John XXIII said he hoped to hand on the deposit of faith anew. He hoped for a renewed encounter between the gospel and the modern world. But that's a fairly open-ended program.

After he announced the council, he then formed various commissions that were tasked with first soliciting responses from bishops all around the world and heads of the major Catholic orders for suggestions for the agenda and work of the Council. And they collected various letters and proposals and then draft documents were prepared in the two years or so immediately prior to the start of the Council. Quite a few — in fact over seventy schema or draft texts — were prepared.

Interestingly, for the most part, those were not used by the Council Fathers. There was a sense during the Council, especially beginning with a famous debate in regard to the proposed Constitution on Divine Revelation, that the document that had been prepared didn't quite reflect the Catholic tradition as a whole — especially the writings of the Church Fathers and the priority of Scripture — so that there was a decision made during the Council to draft anew what would become *Dei verbum*. And following that there was a lot of work done reworking in a pretty basic way these draft schema that had been prepared.

KM

David L. Schindler.

David L. Schindler

A point that I think gives all of this unity—even though it is, as Professor Healy mentioned, sort of broad—is the engagement with modernity that really is at the heart of it. And what's the shift that has occurred in the modern world? It's a shift that has affected every major institution, the presence of the Church in the world, and in that sense the nature and mission of the Church.

But that issue from the beginning in terms of setting the agenda and the terms in which the debates were going to go on, it was this problem of modernity at root: What were the new assumptions about the nature of the human being and the nature of society, the emergence of democracy, capitalism, and so on? But the issue constantly came up regarding the relative priority. Do you start with the modern world and then think about how the Church can more or less accommodate the modern world or do you start with the tradition; and then how can the tradition accommodate while correcting modernity? I mean, that's stating it in an over-simplified fashion. But that really runs through all the documents.

KM

In their book on *Dignitatis humanae*, Schindler and Healy chronicle the debates that took place during the Council over the larger and the finer points of theological arguments about religious freedom. As Schindler notes, “it became clear that the Council bishops did not agree regarding the foundations underpinning the right to religious freedom. Granted that this right is founded

in the dignity of the human person, on what does the dignity of the human person itself finally rest? And how does one's conception of those foundations affect the nature of the right? Can one assert a civil right to religious freedom without thereby at least implicitly invoking some claim about the nature of the person, and so far the question of truth? And if rights are not tied in some significant sense to a claim of truth, what assurance can we have that the State will adjudicate justly in the case of conflicting claims of rights, thus avoiding arbitrary repression of one group's rights in favor of another's?"

It's obvious that these are not arcane questions only of interest to Roman Catholic bishops in the mid-twentieth century but matters of concern for Christians at the present moment, which makes the debate during the Council of special interest to contemporary readers.

A central issue discussed in this book is the claim of one of the participants in those arguments, the American theologian John Courtney Murray, that the religion clauses of the First Amendment contain an adequate description of the civil right of religious freedom. Murray described the religion clauses as articles of peace rather than articles of faith. By this he meant that the First Amendment was neutral. It contained no religious content. Murray maintained that the First Amendment did not present articles of faith.

DLS

His fundamental question is, Is there a religious philosophy implied in the articles of the First Amendment: freedom on the one hand and no establishment of religion on the other? And his argument is that there is no conception of the human being or the nature of religion or the nature of God implied in those clauses. Articles of faith mean the contrary. That is, that those articles really do imply, if not explicitly, they presuppose a definite conception of religion. They presuppose that religion is a sect, and so on. They presuppose the conception of the human being. And he says that's the question, the fundamental question, that has to be answered.

KM

And central to that, as I read your critique of him, is his assumption of making a strong distinction between what the State does and what society does, is that right?

DLS

Exactly, which is bound up with that. In other words, you have articles of peace — that's what the Constitution, that's what the State, embodies. They embody the freedom, giving people freedom, and then it's up to the institutions of society as distinct from the State —so family, Church, and so on — then to provide a conception and a formation regarding the nature of the human being and virtue and so on.

NH

So against the charge that the First Amendment clauses privatize and marginalize religion, Murray might say no because American life is not just governmental life, it's civic life. There's a social order there as well. And religious commitments and beliefs could be very rich and fertile in the setting of society.

DLS

That's a key point, and that's a key a linchpin of his argument. And that is that this is not a secularizing, it's a new way of strengthening religion, really, and how do you strengthen it? You remove it from the power of the State. All that the State does is guarantee the freedom. And then the point of that, then, is that society is to provide in its institutions the robust view of virtue and religion that are needed. That's absolutely the core of his argument.

KM

We're currently watching the State redefine marriage and gender, matters which Murray assumed would have been up to society rather than the State. This experience leads one to wonder whether the modern State is really capable of granting independence to society, let alone to religion, if, for example, the State can assert the power to define what constitutes a family. How can the social institution of the family have any real freedom to serve the common good?

David L. Schindler describes Murray's view of government with the term "the juridical state." The State in its juridical role is a neutral adjudicator of competing truth claims, but not a partisan defending any of those claims.

DLS

So when you adjudicate matters of truth — matters that affect the truth about religion — the adjudication has nothing to do with the truth as such. It has to do with fairness between competing expressions of the truth.

KM

So the umpires, in adjudicating these debates over the truth of religion, have no investment in any particular truth claim, allegedly — that's his point.

DLS

Exactly. The State as such has no interest. The State remains neutral in matters bearing on the truth of religion. And it seems to me that that's the question that has to be answered. And basically the heart of my criticism is that there is hidden — in the claim of articles of this neutrality or articles of peace — there's hidden in that a definite conception of freedom and a definite conception of truth that are already loading the deck, stacking the deck.

From the point of view of the State, it sees the human being as an exerciser of freedom as freedom of choice. And what's the problem there? The problem is just that — that the State is emphasizing a notion of freedom that's abstracted from truth, which means that from the point of view of the State, always and everywhere, truth is the *option* exercised by an act of freedom. So that there's a transformation: that freedom becomes an act of power on the one hand, and truth becomes an option chosen in that act of power. So that's not *no* conception of freedom or religion or the truth about religion — it already implicitly contains one.

KM

Nicholas Healy.

NH

One really interesting place to think about the supposed neutrality of the State is looking at how the modern liberal State conceives the nature of the family, and why it is that it has trouble acknowledging the natural givenness of familial relations as a realm of constituting personhood and personal identity that is outside the realm of where the State has competence or authority. But the only

kind of family that the modern liberal state can accept is one based on contractual choices — but that isn't really a family.

KM

You also point out that the juridical state, even on on Murray's best formulation, separates the person as citizen from the person as a religious being.

DLS

That's a very subtle but important point. In other words, once you affirm the supremacy of freedom in a negative sense, then religion by definition is going to be an option. A relationship to God is going to be, from the beginning, voluntary. It's something I choose.

Now that may seem innocent enough, but that already favors a certain conception of religion. In the ancient religions, and I would say my own religion — in Catholic religion — you would say that the human being is *homo religiosus*. That is, by nature, most fundamentally, what I am is I'm from God and I'm made for God. That doesn't mean that I don't have to choose that, but it means I am already made for that, a movement for that.

KM

You're oriented.

DLS

I'm oriented from the depths of my being. And therefore, religion isn't just an option. And that really does, then, affect the nature of religious freedom. In other words, if you go back to this conception of articles of peace, if you're simply adjudicating options regarding freedom —and that's balancing interests — then by definition, from the point of view of the State, you're treating religion as something exhaustively voluntary. Which means that privately if I say — [within] a world religion, Islam would be one, or Judaism — where I would say by nature I'm made for God, I can still say that privately, but vis-a-vis the State, that's turned into an option.

So I mean it's always the point that it says, fine if citizens hold this or that view, but as a nation, as reflected in our laws, we're not going to make any judgment

about that. And the burden of my argument is that's impossible. This procedural vision is not neutral. Now we can argue about whether it's good or bad, but it is not neutral to religion as such. And therefore the question of the truth of religion can't be set aside. It simply can't. All you do is hide a different vision.

KM

There is a claim of neutrality in the liberal view of the State as a juridical referee concerned only with fairness. In his 1996 book, *Heart of the World, Center of the Church*, Schindler called this claim a con game. He wrote that liberalism claims to defend, "a commitment to formal juridical procedures which make possible a free market of religious truths and rational debate about such truths. My contention," Schindler continued, "is that liberalism to this degree draws us into a con game, inviting us to dialogue with the putatively open and pluralistic market of religions, all the while having hiddenly filled the terms of that dialogue with a liberal theory of religion."

That liberal theory of religion presupposes that religion is a matter of private choice of autonomous individuals, that a relationship with God is an optional extra added onto a purely natural humanity. As Schindler notes in that earlier book, "worldviews that favor silence about God in the affairs of the earthly or temporal order, therefore always retain an official public theoretical advantage over worldviews that favor speech about God."

It is Schindler's claim that the First Amendment in particular — and the conventional American understanding of religious liberty in general — presupposes a liberal theory of religion, a theory which embodies the modern assumption that nature and supernature are mutually exclusive spheres, as opposed to the Christian view in which nature is permeated with the presence of God, and that man is oriented toward God.

In a 1990 lecture at Notre Dame called "The Privatization of the Good," moral philosopher Alasdair MacIntyre said, "It is a central tenet of recent liberal moral and political theory that public institutions, and more especially the institutions of government, should be systematically neutral as between rival conceptions of what the human good is. Allegiance to any particular conception of human good ought, on this liberal view, to be a matter of private

individual preference and choice. And it is contrary to rationality to require of any one that he or she should agree with anyone else in giving his or her allegiance to some particular view.”

There is, of course, a glaring contradiction in this modern liberal view, the fact that it *imposes* the privatizing of the good. It insists that it is good for everyone that everyone have their own view of the good. It is good for public life that no view of goodness inform public life. It is true that no specific truth claims about reality should shape public life. Claiming to be a neutral umpire, the State actually is one of the players in the game — and the only player with the authority to use coercive means to win.

As Schindler observed near the end of our conversation, there are forms of political order that suppress freedom in the name of freedom.

DLS

This is a problem that’s been debated from the times of Plato, which is, *Does democracy really free, or does it in the end* — I mean in a certain liberal conception of democracy — *does it tyrannize? Does it end in a kind of imposed relativism?* And that’s been an abiding question.

KM

And Tocqueville is asking that question.

DLS

Tocqueville asked that question. You know, for Plato, he has the hierarchy, and the last one [is], democracy leads to anarchy leads to a form of tyranny. And for us the order is almost completely inverted. And I think this goes back to what I said before: it seems to me you have to come to terms with the assumption of this nature of freedom, and whether or not the notion of freedom that operates in liberal democracy as Murray interprets it — that is, for legal purposes — is neutral or not neutral. And it seems to me, first, it’s not neutral, and second, its content hiddenly coerces people into a unity.

And what I mean by that, you can take that very concretely. You know, there’s not a person in America that doesn’t get into a debate about this, where as the evening goes on the trump card will be played: “Well, that’s your opinion. And

you don't have a right to impose that on me." Now that seems in a certain sense obvious, but the point is that's always the trump card, and there's a certain sense in which this certain conception of democracy imposes opinion always and everywhere and all it does is it never adjudicates the truth. And therefore it always is implying that the truth finally is a matter of opinion.

So I think when these controversial questions of today, it's not surprising that the notion, the classical sense of nature, is no longer normative. It's, *What's your opinion about nature?*

So the questions today are obvious, but the question about whether there is a gender identity — and these are absolutely heated and prominent questions — but there's a sense in which this assumption about democracy is going to lead in a certain direction, which is that what's going to win out is opinion and not nature. That nature is oppressive but its opinion is hidden. But in fact, then, everyone has to follow legally the opinion that the nature of gender is that it's just chosen or constructed.

NH

Hopefully this book will help at least Christians to think in light of the current debate and all of the intense discussion about religious freedom, not simply to accept as given or obvious the way our liberal democracy conceives what religion is and what freedom is. So in a certain way, of course, an argument needs to be made in defense of and in support of religious freedom, but at the same time we have to challenge the assumptions about *What do we conceive religion to be? And what is freedom?* And underlying both of those questions is a certain vision of the human person. *What does it mean to be a human being, the nature of the human person?* And in a certain way that's where the key debate is — not just *Will I be able to be given this exemption for my quaint beliefs?*

KM

Nicholas J. Healy, Jr., Assistant Professor of Philosophy at the Pontifical John Paul II Institute for Studies on Marriage and Family at the Catholic University of America in Washington. He and his colleague, David L. Schindler, the Edward Cardinal Gagnon Professor of Fundamental Theology at the Institute, edited and co-wrote the volume *Freedom, Truth, and Human Dignity: The Second Vatican Council's Declaration on Religious Freedom*.

And that brings to a close Volume 131 of the Mars Hill Audio *Journal*, which was produced with help from radio stations WSUI, KWBU and CHUOFM, from Gordon Conwell Theological Seminary, Media Services, and from the Australian Broadcasting Corporation. Thanks also to audio engineers Jim Davies, Joe Bartley, Phil Shirakawa, and Brody Bashaw. Our office manager is Mike Montoya. Eve Ruotsinoja is our editorial assistant. I'm Ken Myers.