

# Right to Object?

Conscientious Objection  
and Religious Conviction

Edited by Alan Haworth

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The Humanist Philosophers' Group exists to promote a critical and rational approach to public ethical issues.

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## Introduction

### Alan Haworth

The concept of conscientious objection acquires its problematic character from the conflict between two powerful, but diametrically opposing, moral requirements. One is the requirement to obey the law; the other, the requirement to follow the dictates of one's own conscience. Let me take each in turn.

The former obligation falls upon individual citizens, even when the law enjoins them to do things they would not otherwise do, and even when it enjoins them to do things of which they would otherwise disapprove. So much ought to be clear, and, for a clear illustration of the point, take the practice of taxation. For example, other things being equal, I would not feel happily inclined to subsidise royal extravaganzas such as the recent wedding between Kate Middleton and Prince William, and especially not when so many public institutions and public services are having to impose severe financial cuts. (On this, I am sure that many readers will share sentiments similar to mine.) Other things are not equal however, and, as a British citizen, I do consider myself morally bound to pay taxes, some of which are used to do just that sort of thing. Moreover, as a British citizen who did not – as it happens – vote for the present government, I am no doubt paying taxes which are being used to subsidise all manner of policies of which I would otherwise disapprove. Even so, it would be implausible to argue that I should be excused from paying taxes on that account alone.

How might one defend the claim that the foregoing obligation actually exists? The answer seems fairly apparent. It is that a stable legal system is a necessary condition for the continued existence of civilised social existence. The point appears so uncontroversial that only a hopelessly romantic anarchist with an exaggeratedly optimistic view of human nature could take issue with it. To this I would add, secondly, that laws which are intended to regulate and guide the interactions between the individual members of large groups – in the limit between the citizens of nation states – cannot, as a rule, differentiate between individuals in terms of their tastes or moral preferences and accord them different treatment on that basis. On the contrary, a law which so discriminated between citizens would be unfair or unjust. Such uncontroversial considerations are sufficient to establish the claim that there is, in general, an obligation to obey the law 'simply because it is the law', and even when one would otherwise have reservations concerning the actions it commands. Moreover, and because most readers of this are likely to consider themselves democrats, it is worth adding here that the very operation of a democratic system requires compromise. Those who voted with the minority, for example, must recognise the legitimacy

of a majority decision. So, if you are a believer in democracy, you have a further reason for recognising the obligation in question.

Nevertheless, operative expressions here are 'in general', 'as a rule', 'for the most part', and so on. Nothing I have said up to this point can be used to support the more extreme claim that one must *always* obey the law *whatever* its commands, and however absurd or morally objectionable those commands may be. The latter may well be a claim with a distinguished history – if we are to believe Plato, it was, in fact, Socrates' own view<sup>1</sup> – but even so it is clearly threatened by some fairly obvious counterexamples. Thus, (i) there can be laws which must be considered thoroughly abhorrent by any normal moral standard. Relatively recent history yields examples. For instance, suppose that there is a Nazi law which requires you to shop your Jewish neighbours to the Gestapo. Unless you are a Nazi yourself, you will agree that, in this case, you are morally bound to defy the law rather than obey it. Then again, (ii) there may be occasions upon which one is morally bound to break laws which are, in themselves, perfectly acceptable. For example, suppose that you are a doctor and that a child is dying on the other side of town. In order to save the child's life, you must drive across the city at speed, thereby violating several traffic regulations. Unless you drive so recklessly that you put the lives of others seriously at risk in this case, it would be hard to argue that you should observe the regulations and let the child die. Yet again, (iii) there may be infractions which are so trivial that only a moral pedant would insist that one ought not to commit them. For example, suppose that the road is free of traffic, driving conditions are good, and so on. In this case, is there any good reason why you should not exceed the speed limit by, say, five miles per hour? (If not then, incidentally, this is a case in which the 'slippery slope' argument so frequently invoked in connection with this issue does not apply. 'Do you imagine that a city can continue to exist and not be turned upside down, if the legal judgements which are pronounced in it have no force, but are nullified and destroyed by private persons?', asks Socrates<sup>2</sup>. To this, the right answer must surely be that it would be ridiculous to claim that the entire legal system is threatened with nullification or destruction just because someone slightly exceeds the speed limit in good driving conditions.)

So much for the first of the two moral requirements at issue here. Directly confronting it, there stands the second, namely the requirement to do as one's conscience dictates. The latter is grounded in the fact that being morally adult necessarily involves being prepared to take responsibility for one's own actions. Such responsibility is inescapable – or so one might argue – and who could disagree that to rationalise one's less admirable behaviour on the ground that one is, for example, 'merely obeying orders' is an excuse, bad faith, a cop-out. Even so, does it follow that one must *always* yield to the dictates of conscience and never prioritise the requirements of law? One philosopher who takes the 'absolutist' view that it does is Robert Paul Wolff. In his best-selling essay, *In Defense of Anarchism*, Wolff argues that it is 'quite indisputable' that 'Each of us has an overriding obligation to be morally autonomous' and that 'A morally

legitimate state is' therefore, 'a logical impossibility'. <sup>3</sup>(The first edition of Wolff's book was published in 1970, at the time of the Vietnam War. It was a time when few potential conscripts can have been persuaded by a Socratic argument to the effect that expressing the gratitude they supposedly owed the US political system meant risking their lives in the killing fields of Southeast Asia.)

You could say that Wolff's position is the direct antithesis of that taken by Socrates. Be that as it may, Wolff's, like Socrates' appears threatened by some fairly clear counterexamples. In his case, the trouble arises from the fact that conscience is a subjective phenomenon; 'subjective' in the sense that the dictates of conscience can vary from individual to individual. This renders it conceivable that any course of action, however bizarre, could turn out to be dictated by the conscience of one individual or another. Your conscience may tell you that it is wrong to eat meat. Alternatively, it may enjoin you to demonstrate community spirit by supporting your local butcher. Your conscience may dictate that you serve your country by joining the military, or it may forbid you to do any such thing. But what if it instructs you to ignore red traffic lights, to torture animals, or – worse – to murder those who follow religions other than your own? In such cases it is less obvious that there is 'an overriding obligation to be morally autonomous' on the part of those whose consciences issue such imperatives.

Now, there is, no doubt, more to be said here. I am sure that there are arguments with which supporters of Socrates' view, and those of Wolff's, might attempt to deal with the counterexamples I have raised. It would be interesting to consider what these might be, and to examine whether they stand up to criticism. However, that would be inappropriate in an introductory essay such as this. Instead, let me summarise the upshot of my argument up to this point.

It is this: On the one hand there is a strong moral presumption that, other things being equal, one should prioritise the requirements of law over the dictates of one's own private conscience. On the other, there is an equally strong presumption that, other things being equal, one should prioritise the dictates of conscience over the requirements of law. Put it that way, and the tension between the two becomes obvious; and – given the tension – it is easy to appreciate why it should be thought desirable to define a sphere within which normally law-abiding citizens can be permissibly exempted from legal requirements where they find that the latter conflict too strongly with their own moral principles; in other words, to define the scope and limits of acceptable conscientious objection. I would add that such a definition must appear especially desirable in a society which prides itself upon its liberalism, tolerance, and its respect for the moral autonomy of individuals, each of whom is seeking to live his or her own life in his or her own way; in other words, to be guided by his or her own private conscience.

So, that is the issue to which the essays contained in this booklet are, in one way or another, addressed. They are the outcome of a symposium on the subject of religious exemptions which was organised by the British Humanist Association and held on 3 June, 2010. The papers by Jonathan Seglow, Peter Cave, and Andrew Shorten are extended philosophical treatments of the issue and the problems which surround it. Thus, in the opening paper, Jonathan Seglow subjects four familiar arguments for religious exemptions to close analysis, and argues that none is especially conclusive. Peter Cave explores the myriad complications which can arise when the question of religious exemptions arises in particular cases. One theme running throughout his paper is that, in such cases, a certain amount of 'muddling through' is inevitable. In his piece, Andrew Shorten argues that the virtues of equality and toleration, frequently invoked to support pleas for exemption on religious grounds, can – quite often – count *against* granting such exemptions.

David Pollock starts out by taking a more empirical approach. He opens by describing the present state of affairs in Europe where, in October 2010, the Parliamentary Assembly of the Council of Europe passed wrecking amendments to a report entitled, 'Women's access to lawful medical care; the problem of unregulated use of conscientious objection', but where attempts have been made by use of conscientious objection to subvert legislation on abortion by making it impossible in practice for women to exercise their right to choose. Pollock argues that the practices he describes present those who advocate the recognition of a right to conscientious objection with a serious challenge; one which arises because, in a democracy at least, the actions of conscientious objectors cannot be permitted to frustrate the intentions with which legislation has been formulated. Pollock goes on to suggest criteria on the basis of which claims to be exempt from legal requirements may be assessed. Finally, in his contribution, Richard Rowson describes how, in his work as a consultant, he has helped a number of professional bodies to develop an ethical framework within which individuals who derive from very different cultural and religious backgrounds can work together as colleagues. This is, if you like, a pragmatic solution to the problem, and it gives a refreshing counterargument to the stereotypical view that philosophers are, necessarily, ivory-tower dwellers incapable of making any practical contribution to everyday life.

There is no single humanist 'line' here, taken by every writer, which is as it should be given that each author is an independent thinker. Even so, the fact that this booklet is published by the British Humanist Association does suggest that the subject of conscientious objection is of special interest to humanists. It is, and I should add a few words of explanation as to why this should be.

The reasons why fall into two groups. First, there are reasons which derive from the way the world happens to be just at present. At present, the major religions are, as the phrase has it, 'organised religions'. There are definable groups, – Catholics, Muslims, Anglicans, and so on. Each has its own buildings (churches,

mosques) and its own representatives (priests, imams, and the like). By contrast, organisations such as the British Humanist Association are small in size, and, for the most part, the non-religious – insofar as they can be said to form a group at all – fall into a more amorphous, less easily identifiable, category. This can lend itself to a false picture according to which society consists of discrete cultural groups, most of which are defined – in part – by their adherence to a specific religion, and each of which has its own spokespersons; (individuals who can all too easily become the first port of call when governments need to consult the people on matters of policy.) This is a false picture, I am sure, and it would be especially mistaken to treat it as a representation of the way things are in the UK; at least it would be mistaken if I am right in thinking that, by and large, the British tend to be tolerant, sceptical, and secular by temperament.

This is a point upon which humanists should insist because, to the extent that the above false picture is accepted, there is a risk that claims for exemption from legal requirements on specifically religious grounds will be treated as having a special authority, – an authority which they do not, in fact, carry. Of course, it is easy to appreciate why considerations of religious conscience should be thought to carry a certain weight here. As the influential American philosopher, John Rawls, observes at one point, it is a mark of a conviction being genuinely religious that it should be treated with moral seriousness by the person who holds it. Those who hold such convictions, ‘cannot take chances with their liberty by permitting the dominant religious or moral doctrine to persecute or to suppress others if it wishes’. So Rawls says, and, he adds, ‘to gamble in this way would show that one did not take one’s religious or moral convictions seriously’.<sup>4</sup> In other words, it would show that they were not genuinely *religious* convictions at all. Rawls is surely right about this, which is why those who change the beliefs they proclaim according to fashion – just as they might change the style of their clothing – ought to be regarded with suspicion. It is also why only an out-and-out Stalinist could fail to sympathise in certain respects with, say, the plight of the Catholic doctor who has been instructed to terminate a pregnancy.

However, the question at issue is whether claims for exemption on specifically religious grounds should be held to carry any *extra* weight in these respects. After all, there is no reason to suppose that non-religious beliefs should not be espoused with equal seriousness by those who hold them. So, consider the following examples. First, there is a hospital in which doctors are sometimes required to terminate pregnancies. One doctor, a Catholic, is reluctant to perform the termination he has been asked to carry out, so he seeks exemption from the hospital regulations on grounds of conscience. Second, the roles are reversed. There is a hospital whose rules prohibit the termination of pregnancies. One doctor holds that it is the right of an adult woman to choose. The equipment is available, so this doctor requests exemption from the hospital regulations, and that she be permitted to carry out the termination. It is easy to sympathise with the doctor in the former case, but are there significant moral differences between that and the latter? If there are, then it would be interesting to know what they might be.

A second set of reasons for which humanists ought to take conscientious objection seriously derives from the historical dynamic which originally brought the philosophy of liberalism into being. It is, I believe, uncontroversial that liberalism, with its emphasis on the virtue of toleration, first rose to prominence during the later years of the Reformation as a response to the vicious religious wars by which Europe had been riven for the previous century or so. To cite Rawls again, ‘the historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries’. It was then, he says, that ‘something like the modern understanding of liberty of conscience and freedom of thought began’.<sup>5</sup>

Now, Rawls is certainly right to the extent that, in medieval times, the simple fact of someone holding a religious belief different from one’s own was thought perfectly sufficient to justify torturing or even killing that person for being a heretic. In modern times, this has not tended to be the case (which is why episodes such as Khomeini’s *fatwa* against Rushdie, or the outcry against the ‘Danish cartoons’ appear throwbacks to an earlier and – literally – less enlightened period.) It is also true that it was, specifically, religious toleration which the earliest liberal texts were intended to justify. Think of John Milton’s *Areopagitica*, for example, or Locke’s *Letter Concerning Toleration*.<sup>6</sup> It was only later that the argument became secularised (notably in J.S.Mill’s *On Liberty*).<sup>7</sup>

Consider the implications of this. One arises from the fact that toleration must inevitably carry scepticism closely in its wake; for it is a short step from acknowledging the other person’s beliefs as deserving the same respect as one’s own to supposing that the other person might be right. Another is that the historical movement cannot be stopped, logically, at the point of religious toleration. On the contrary, if the relevant difference between the medieval and modern periods here is that the latter, unlike the former, is characterised by the necessity to treat the beliefs of others with equal respect, then it is in fact belief-holders – i.e. *persons* – who merit respect. It can only follow that the same respect must be accorded, equally, to atheists. So, while humanists can hardly claim to have God on their side, they do have history.<sup>8</sup>

## Religious Exemptions

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### Jonathan Seglow

Should humanists ever support legal exemptions for religious groups? Should they support Sikh men who want to ride their motorbikes while wearing a turban in place of a crash helmet? Should they support Christian registrars who do not wish to perform civil partnership ceremonies? No, might be the obvious answer to this question. On the humanist view, religion is just another interest, and while religious people should be at liberty to practise their faith within the confines of the law, they don't have the right to be exempt from the law. In a democracy, all citizens are equal before the law, and there is therefore a compelling case against granting legal exemptions to anyone, religious or otherwise.

Although this may be an obvious answer, I don't think it is the correct one, or at least it is not obviously correct. One reason for that is that there are some exemptions which seem intuitively right, even for people without religious convictions. Under current English law, for example, no doctor can be forced, on pain of reprimand, to perform an abortion. Thus doctors who have principled objections to abortion on non-religious grounds are protected by the law. This seems fair and right, though it is worth asking how it differs from the civil partnership example above. Another example is pacifism. Not all pacifists are religious. If you have a principled objection to war then it seems fair that the law can accommodate that, whether or not your objection is on religious grounds.

Another reason why humanists should not dismiss religious exemptions out of hand is that it may be possible to justify some religious exemptions on non-religious grounds, that is, in a way that does not presuppose the truth of the religion at issue. This is, quite rightly, the way that courts that have adjudicated on religious exemptions claims have considered the issue. If some exemptions claims are well-founded then that is because they can be justified to everyone, not just co-religionists or those who stand to benefit. That may seem a curious thing to say. How can a claim for a religious exemption be justified to someone who rejects that religion? In what follows I shall explore four ways in which we might answer that question affirmatively. None of them assumes the truth of any religion and each of them represents religion 'from the outside', in a way that seeks to be intelligible to non-believers.

#### **First argument: religion as an intense preference**

The first strategy represents religion as an intense preference, not something which people merely like but something which they care about very much and which is intimately connected to their well-being. This – the intense preference

strategy – need not suppose that everyone desperately cares about their religion. Not everyone does. It just makes the assumption that some people do, in particular those who seek an exemption. Take the example of a Muslim woman who wants to wear a headscarf in contravention of her employer's dress code. It surely underestimates what is involved to treat the headscarf as the object merely of a wish or desire on her part. She has a principled reason for wearing it since doing so is bound up with her religious duties as she perceives them. It is an intense preference. Since, as a general rule, governments should allow individuals to do what they want provided they do not impose undue costs on others, the argument continues, so Muslim women should be granted an exemption from dress codes in order to allow them to wear headscarves without threat of any sanction. A similar argument can be made for other exemptions cases.

The intense preference strategy is clear and straightforward and appropriately non-sectarian since non-religious folk can still understand what an intense preference is. But it suffers from a fatal flaw which arises from precisely this last feature. For just about anything might be the object of an intense preference, and logically speaking the argument commits us to granting exemptions in an enormous range of cases. Suppose I ask my boss if I can leave work early on Wednesdays in order to go to football practice. When she raises her eyebrow, I explain that I *very much* prefer to play football than be at work. 'Football', I explain, 'is intensely important in my life. It's like a religion for me'. Of course, football isn't really an intense preference like religious observance is, but we can perfectly well imagine that it might be. And if that example is too farfetched how about a woman who asks her boss to leave work early one day a week to pick up her child from school (perhaps that's the one day her husband or the childminder can't pick up her child themselves). That too is an intense preference. Perhaps an enlightened boss might accede to this request if the woman makes up her hours on another day of the week. If so, the boss's thought might be that raising children is more important in an objective sense than playing football. However, it is important to understand that the intense preference argument does not allow that kind of thought because it assesses importance purely in terms of the intensity or magnitude of our preferences – that is what makes it a non-sectarian argument. As a matter of fact pretty much everyone accepts that having children is important which is why people with children are permitted to work part-time. But not everyone accepts that religion is objectively important which is just why it was represented as a kind of preference in the first place.

#### **Second argument: religion as world-view and source of felt duties**

Many people, including perhaps some humanists, might regard religion not merely as a preference but in more moralistic terms as a worldview, a commitment and a source of felt duties. Religion is a matter of conscience, something the non-religious person who adheres to non-religious moral values can still appreciate. On the second argument for religious exemptions, the argument from conscience, legal exemptions are justified if, in their absence,

an individual would be forced to do (or forced not to do) something she regards as unconscionable.<sup>9</sup> Thus a pacifist who was forced to serve in an army or a doctor who is required to perform an abortion are engaged in unconscionable acts. They could do them but only by betraying their own deeply held values, something which carries a heavy psychological price.

This is the way the Supreme Court of the United States approached a number of religious exemptions cases that have become famous to constitutional historians. In fact, the Court employed a two part test. It first asked whether the absence of an exemption would burden the litigant's conscience, and, if it was satisfied that it did, it next enquired whether there was nonetheless a compelling state interest in retaining an exceptionless law. The latter test was there to prevent exemptions inflicting harm on others. Thus even if a person were able to claim in good conscience that her beliefs required human sacrifice, to take a fanciful example, there is a compelling state interest in not permitting exemptions from the law against murder. Along similar lines, Article Nine of the European Convention on Human Rights which protects religious expression and has been used by citizens seeking exemptions in the European Union, states that such limits may be placed on the right to religious expression 'as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others'.

The freedom of conscience argument is a much stronger argument than the intense preference argument, in part because it seems to capture better the burden that some religious people face in the absence of an exemption, and in part because it treats the issue as a matter of human rights. The difficulty is that there are at least two relevant considerations which, even in its two-stage form, the argument omits. The first consideration is that whether someone comes into conflict with the law is quite often due to their own choices, and hence we cannot always say that the law forces people to do something that is unconscionable for them. Consider for example, the British case of *Begum v. Denbigh High School* (2006) where a fourteen year old Muslim girl, Shabina Begum, wished to wear the jilbab to school in contravention of its uniform policy. The judges who ruled on the case took into account the fact that Miss Begum could have attended two other local schools where the jilbab would have been allowed (as well as the fact that the school's uniform policy had been arrived at after extensive consultation with local mosques). Surely they were quite right to do so. The second consideration is that we generally expect people to bear the consequences of their beliefs. Suppose, for example, a Christian individual is not prepared to work on a Sunday since he regards it as a day of rest. Most of us would regard it as reasonable that his choice of jobs is therefore more limited, since a number of jobs do require working on a Sunday. Similarly if Shabina Begum had a choice of two schools to go to rather than three, while wearing the jilbab, that hardly seems unreasonable.

The principles that we are responsible for our choices and that we are responsible for our beliefs do not invalidate the freedom of conscience argument. It would be odd, after all, if religious exemptions had nothing to do with the right to freedom of conscience. But they do, however, show that there are *other* moral considerations which are relevant to the issue, and hence that individuals seeking an exemption cannot rely solely on their assertion of this right.

### **Third argument: the restoration of fairness**

The third argument for legal exemptions for religious minorities says that they are required to restore a situation of fairness. No doubt this is the way that many religious groups do consider their exemptions claims, but more needs to be said here about the precise way that the absence of an exemption constitutes an unfairness, in particular since the democratic principle that there should be one law for all itself seems fair. Anyone who wants to employ the concept of fairness in order to argue for a particular exemption needs therefore to spell out a deeper sense of fairness which explains why having a uniform law for all is actually unfair.

One way of spelling out the fairness argument says that it is unfair that the majority can engage in some common practice while a minority, on account of their religious beliefs, cannot. Thus for example, Sikh men, unless they are granted an exemption, are unable to ride a motorcycle since their wearing of the turban means they cannot also wear a crash helmet. It is not enough, so this argument goes, to point out that there is no law which forbids Sikh men from riding a motorbike, because the relevant notion here is not legal freedom, but actual ability. If a Sikh man takes his religion seriously and wears a turban riding a motorbike is something he is simply unable to do. Thus granting an exemption, while on the surface an apparent privilege (lots of motorcyclists might prefer not to have to wear crash helmets) is actually a way of restoring fairness.

This version of the argument, however, is subject to the principle enumerated above that individuals must be prepared to bear the consequences of their beliefs. If a man decides to follow the Sikh religion, something which no person is, or at least ought to be, forced to do, then he must accept the consequences of that belief. This includes certain limitations on his practical abilities (and it might be added that the inability legally to ride a motorbike is not a serious social disability).

However, matters are not quite so simple. As the political philosopher Peter Jones who has elaborated the consequences of belief principle points out, the circumstances in which people face choices about whether to relinquish their freedom or relinquish their religious principles are not of their own making.<sup>10</sup> Laws very often reflect the religious and cultural circumstances of the country whose laws they are – think about differences in the working week across Christian, Jewish, and Islamic states. There is after all no necessity in having a law that mandates the wearing of motorbike helmets. Presumably, in the Punjab, there is no such law. Thus, a Sikh man might argue, the situation in which he is

forced to choose between his Sikh beliefs and riding a motorbike is not a fair one. It is not *his* doing that he is presented with such a choice. It is hard to say, in the abstract, how far this latter consideration mitigates the consequences of belief principle, but I don't think it entirely removes its force. Suppose, for example, a Christian individual brought up in an Islamic state were to ask for their working week to be arranged such that she did not have to work on Sundays. It seems to me that the political authorities in such a state could still assert the consequences of belief principle, even though the situation in which she had to choose between working on Sundays and her Christian beliefs was not of her making.

#### **Fourth argument: equality of opportunity**

The final argument I want to consider appeals to the principle of equality of opportunity, a principle that is of course related to the concept of fairness. In its most general form the idea of equality of opportunity says that individuals should have roughly the same chance to achieve some good of generally recognised social value, such as a university place or a high paying job. Applied to the problem of religious exemptions, the argument is that each citizen should have an equal opportunity to pursue their religious commitments, whatever those may be. An individual who, in the absence of a legal exemption, is not able to realise her religious commitments is treated unequally, and hence unjustly. The equality of opportunity principle, therefore, supports her claim for an exemption.

The equality of opportunity principle is often advanced on behalf of ethnic and other minorities who are under-represented in top jobs, and thus it seems particularly well-equipped to assist those who are disadvantaged as a result of their holding minority religious commitments. As an example, consider the case of *Sherbert v. Verner* which came before the US Supreme Court in 1963 which involved a Seventh Day Adventist for whom Saturday is the Sabbath. The woman, Adele Sherbert, was asked by her employer to work on Saturdays on pain of losing her job. Although the Court did not invoke the equality of opportunity principle in siding with Mrs Sherbert, it certainly could have done so. Mrs Sherbert could have argued that Saturday working gave her a lesser opportunity to pursue her religious beliefs than the majority of Christians.

One issue for the equality of opportunity argument is that it is sometimes up for debate precisely what is required by one's religious beliefs. Thus in the landmark *Wisconsin v. Yoder* (1972) case, the US Supreme Court upheld the claims of three Amish families that in requiring their children to remain at school beyond eighth grade (age 14), the state of Wisconsin had violated their constitutional right to freedom of religious conscience. (The families had claimed that, were their children to be subject to the final two years of compulsory education, they would absorb the values of secularism, materialism, and individualism to which the Amish were deeply antithetical). Sometimes indeed, exemptions are claimed even though there is no religious requirement at all. Thus in *Eweida v British Airways* (2008) an Employment Appeals Tribunal found that a Christian employee of British Airways, who wished to wear a small cross in contravention

of its uniform policy, had not been discriminated against. No doubt the fact that Christian doctrine does not require its adherents to wear a cross figured in the Tribunal's reasoning.

The equality of opportunity argument has, as I said, a more common place in the justification of measures which promote the ability of ethnic minorities and other under-represented groups to achieve scarce social positions. Here, however, there is an important disanalogy with the case of religious commitments. For university education and well-paid jobs are universally valued in the sense that even people who have no interest in them can still appreciate their social value (and of course there are more applicants than places to top universities and for prestigious jobs). This is not at all the case with religion. A follower of one religion might perhaps be able to understand the value of a different religion for its adherents, but that is not the same as saying he recognises its value – especially as religions often make contradictory claims. Moreover, atheists, insofar as they do not accept the claims to truth made by any religion, do not recognise any religion's value either. (Of course, most atheists acknowledge an individual's right to pursue her religious commitments, but that is simply because they acknowledge each person's right to pursue their own beliefs provided they do not obstruct others from doing the same). The principle that each person should have an equal opportunity to pursue their religious commitments seems, therefore, much more sectarian than the principle that people should enjoy equal opportunities in education and employment. The value of religion per se, and any religion in particular, are both contestable, and that substantially erodes the appeal of a principle that seeks to ensure equality among believers of all types.

#### **Conclusion**

I have examined four arguments for religious exemptions which appeal respectively to the ideas of intense preference, conscience, fairness, and equality of opportunity. The first of these arguments is very weak, but none of the others should be dismissed in its entirety. None of the arguments unequivocally asserts the value of religious experience in general or any religion in particular, although I noted that the equality of opportunity argument seems to make some claims about its significance. Ultimately, humanists should be concerned as much as anyone to protect people's freedom to pursue their religious or other moral commitments. Sometimes, that may involve giving members of religious minorities specific and narrowly demarcated legal exemptions. Put another way, from the fact that claims for exemptions are very often not justified when the wider public interest is considered, it would be wrong to conclude that they never are.

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## Burqas and Bikinis: Morality and Muddles

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### Peter Cave

Safia works in a non-religious bank's head office – its investment arm – in the City of London. The dress code is smart suits for both women and men; but the bank has been persuaded to grant Safia an exemption: she is allowed to cover herself almost completely by wearing the burqa (the niqāb, chador, or yashmak). Sophie also works in the bank. One hot summer's day – such days occasionally exist in London – she turns up to work in a bikini. She is sent home, threatened with dismissal: no dress-code exemption is permitted.

On the surface, there is an inconsistency in the treatment outlined above. Safia and Sophie both choose to wear what is not standardly permitted by the bank's rules, yet Safia receives an exemption; Sophie does not. More usually, Sophie wants to wear skimpy dresses, yet they too are not permitted. Simon, another employee, is prevented from wearing his hoodie; and Sylvia has her bermuda shorts banned. The bank fears it will be guilty of religious discrimination, if Safia is not given the exemption. It has no such fears regarding Sophie, Simon, and Sylvia – nor indeed regarding Sylvester who has decided to 'come out' as a transvestite and would like to wear frilly dresses, despite his manly beard.

To emphasise the extent and importance of the matter, here are some actual cases:

- In the US, the owners of Elane Photography, because of their Christian belief, declined to photograph a same-sex commitment ceremony. Elane Photography was found guilty of unlawfully discriminating on the basis of sexual orientation. In Britain, a Christian couple running a small private hotel was found guilty of discrimination, when refusing to let a gay couple, yet in a civil partnership, share a bedroom.
- Catholic adoption agencies in Britain will not be permitted to discriminate against potential adoptive couples in same-sex relationships; yet medical practitioners may claim exemption from involvement in abortion procedures. Couples who would tell gay young people that gay sex is morally wrong have been barred by relevant authorities from fostering children, yet there is no bar on such couples receiving IVF treatment and having children.
- In Britain, only Sikhs are exempt from wearing helmets, when riding motorbikes. Some Muslims and Jews may secure exemptions from certain Friday duties because of religious requirements.

Although, for ease, this paper speaks of 'exemptions' and implies that differential treatments would arise as exemptions to law, regulation, or contract, the treatments could be built explicitly into the law, regulation or contract. Nothing of note hangs on whether, for example, prime ministers are 'above' a certain law or whether the law itself specifies application to all except prime ministers.

Exemptions are usually sought because, without them, the seekers would face burdens that others would not. A woman is oppressed by a bank's dress code. She needs to, or wants to, wear the burqa – or mini-skirt or bikini or less. Other women do not find the dress code oppressive. A tempting and quick response is: the bank should be free to adopt the same policy towards the Islamic Safia as to the bikini-yearning Sophie. At heart, this paper yields to the temptation. The burqa-requiring Safia needs to choose between maintaining her personal dress code with loss of employment and securing employment yet yielding on her personal dress code. To be consistent with this yielding, does that mean that this paper is committed to no exemptions for Sikhs regarding crash helmets, medical practitioners appalled at abortions and Elane Photography and private hotel owners who judge homosexual activities immoral – and, for that matter, ideological racists who regard employment of blacks, Asians or, indeed, whites as downgrading? Let us see – and let us note straight off that that a kaleidoscope of examples probably encourages us to reflect that we need to justify a differential treatment of the varied pleas for differential treatment.

### 1. Consistency

Demands for differential treatment can arise because people perceive inconsistencies in the law, regulation, or custom. People are not being treated in 'the same' way – well, not the same in a certain respect. That reminds us that some respects need to be seen as more important than others. Safia argues that the bank should have equal – 'the same' – regard and concern for what is important in its employees' lives. That requires differential treatment over dress: she deserves an exemption, but maybe Sophie does not. Of course, Sophie may claim that her preferred dress has the 'same importance' in her life as the burqa in Safia's. Yet can 'the same' be correctly applied here?

A background belief is that individuals merit at least some equality with regard to respect for their lives going well, for their flourishing: their welfare, interests, integrity, opportunities, and such. Equality in treatment is a requirement of reason. If differential treatment is to be delivered, not merely must a difference be spied between cases, but the difference must justify the difference in treatment. What reason cannot tell us – or not readily so – is which 'respect' takes highest priority. We have spoken of equality in respect for 'individual lives going well' as the highest priority; but the highest could perhaps be, for example, that of equality regarding 'resource allocation' or uniformity in behaviour.

Let us accept that a very high priority should be for arranging matters such that people's lives go well. After all, that is pretty much accepted by the religious and non-religious alike – though what that involves with regard to impinging on the prosperous to help the less prosperous is disputed and, of course, there are disagreements over what constitutes lives going well. For example, the religious often want to save souls or, at least, some souls – and that may require, according to believers, some practices at which non-believers may be appalled or at least amazed.

With living well – flourishing – as the aim, exemption-demands need judgements concerning which differences and similarities count. The structure of requests for exemption is simple. 'Currently, with regard to all individuals, only if they have feature F does constraint C not apply.' Exemption-seekers, pleading consistency, argue that G is relevantly like F and so the difference between G and F fails to justify the difference in C application. The relevant similarity may be that G is of as much value to certain individuals with regard to their way of living, their lives going well, as F is to others.

Christians and Muslims may be permitted privileged participation in government consultations because they are religious; scientologists lack such, yet may claim that they too form a religion and so deserve the 'same' treatment. Further, humanists may argue that their way of life is as important as a religious way of life; and so they deserve the same treatment with regard to government consultations. To take another controversy, some humanists may be as distressed by those Muslims predicting eternal torment for them and their families as those Muslims, who, distressed by non-Muslim cartoons of Mohammed, seek certain restrictions on free expression.

Consider: only if you are a Sikh do helmet-wearing demands not apply. 'Nature and machine' fanatics, though, may insist that experiencing wind gushing through flowing long hair is as important to them as the Sikh religion to Sikhs; so they too should be granted helmet exemptions. Indeed, it may be more important to those communers with machine and nature: riding motorcycles forms an essential part of such communing, whereas it is no essential part of Sikh religion. There is a cost involved in being a Sikh, if no exemptions be granted: the cost is that they need to travel by car, train, or foot – but they can still be Sikhs in such circumstances. In view of their religious belief, they may judge that the cost is worth it, either for its own sake or because they hope for heavenly prizes.

## 2. Liberty

Although the way in which laws are reached, even in Western democracies, is open to much question – which majorities count; how informed is the electorate? – let us assume, for this discussion, that there are some acceptable grounds whereby the laws do exist. And let us suppose that the law places high value on individual liberty, on people choosing for themselves how to make their lives go

well. The controlling thought is John Stuart Mill's *Liberty Principle*: that is, the law may constrain only when others may be harmed without their consent – and even then, further conditions may need to be satisfied before constraint is justified.

The *Liberty Principle* is often seen as manifesting the public/private distinction. Employments are examples of public ventures 'open to all' – to all who satisfy the employment requirements. This is an area where exemptions are often sought, where private beliefs intrude into public institutions. In the realm of the private, though – notably relationships with friends, relatives, and sexual partners – there is no question of needing to request exemptions: we simply do not and need not treat people alike. The private/public distinction, though, is blurred. Think if you're letting rooms in a large house in which you reside: ought you to disregard your preferences concerning gender and looks and the potential for romance in lodger relationships?

## 3. Beyond the pale – and not

However sympathetic we may be to the idea of exemptions, we should not forget that certain requested exemptions are beyond the moral pale.

Even though, with deeply-held 'conscience' beliefs, some individuals may sincerely claim that they could not live with themselves if not engaging in certain activities, those activities may yet be unacceptable to right-thinking people. Were conscience consultations, scriptures, or depth of belief sufficient to justify exemptions, deeply committed racists could avoid anti-racist laws, misogynist employers would be allowed to pay women less than men for the same work, and certain religious groups would be permitted to burn books and witches with impunity. Just because some people sincerely find it essential to their flourishing – via their religion, conscience, or culture – that they should be exempt from punishment if killing apostates, that is insufficient reason to permit exemption.

Such believers, seeking the exemptions above, being more burdened than others in their lives as a result of the law and lack of permitted exemptions, is not a relevant factor. The same indeed must surely hold even if society's majority were committed to such beliefs. Certain religious and culturally inspired behaviour – so-called 'honour' killings of others; stoning of adulteresses – merit no exemptions from the morality of not killing others. This stance contrasts with, for example, permitting suicide to maintain one's honour, assuming that such honour suicides do not result from external compulsion.

Some exemption requests, though, make a moral appeal that holds force for both religious believers and non-believers. Even the most fervent admirer of just wars may respect people who judge all war morally beyond the pale. Even the strongest defenders of women's rights may recognise that abortion poses genuine moral dilemmas. The grounds for exemptions relating to war and abortion make recognisable appeals to how we should respect lives. Indeed,

moral dilemmas are bound to arise because of incommensurable values pointing in different directions; and religious believers may well draw upon reasons and principles that resonate as morally relevant even for the non-religious. Appeals to the right to life, avoiding harm, the value of autonomy: these 'other regarding' concerns are ones that believers and non-believers alike can and should uphold.

The different sides in abortion and euthanasia disputes should, for example, understand the possible danger of slippery slopes. Of course, some unqualified opposition to abortion and euthanasia is based on certain readings of ancient texts deemed 'holy'. Such reasoning is closed to non-believers (and often to certain other believers); but given the existence of accessible and recognisable reasons for the different sides of the disputes, reasons that resonate for all, we have at least some justification for offering relevant exemptions to contracts for medical practitioners.

Such exemptions may also be necessitated by practical circumstances: without accepting certain exemptions, there could be insufficient medical practitioners to deal with other medical conditions. Circumstances, though, could point in the opposite direction: if there are still likely to be sufficient medical practitioners, no exemptions need be permitted and maybe no exemptions should be permitted as of right. The cost to those medically inclined – yet, because of their beliefs, unable to associate with abortion procedures – may be loss of entry to the medical profession. In such cases, though, we may be more inclined to come down in favour of the exemptions. We juggle with competing factors.

While law-makers and judges, philosophers and politicians, may speak of weighing up such factors as the above, striking a 'balance' between competing interests, the factors may be incommensurable. The 'weighing' and 'balancing' are smokescreens for 'muddling through'. John Maynard Keynes, when discussing practical probability assignments, uses a far more elegant phrase, namely 'elements of caprice'; Frank Plumpton Ramsey, when discussing the early Wittgenstein and the nature of meaning and understanding, points to an 'excessive scholasticism' that fails to recognise the role of vagueness. Here, I humbly settle for 'muddle'.

We may even wonder whether there should be a separation of contracts: some for geriatric care which include, and others which exclude, euthanasia practices – or gynaecological, some including, some excluding, abortion procedures. Once again there arises the question of how we should carve up activities – whether certain procedures are sufficiently the 'same' to be grouped together.

When there are genuine moral dilemmas such that exemptions would seem to be justified, consequential factors, as noted, may come into play. Circumstances may be so desperate – too few soldiers; too few doctors – that relevant exemptions cannot be granted. Practical considerations, though, may boost granting the exemptions. Pacifists are unlikely to be good soldiers, but they may

provide excellent care to the war-wounded. Of course, some believers, if not exempted, may refuse to do whatever it is to which they object – they may resign their posts – but, as a matter of fact, practical disadvantages can often cause 'deeply-held beliefs' to be less deep. People compromise, juggling principles with comforts – and chats in the canteen with abortionist 'murderers'.

Contrast the above cases with kosher or halal meat provisions, where animals need to be bled to death and not stunned beforehand. If those religiously required procedures do cause unnecessary pain in contrast to other procedures, our morality should have no truck with exemptions from the relevant animal welfare regulations. After all, there is no common agreement between the religious and the non-religious about the justification for such kosher or halal killings. That is not to say that the non-religious means of killing animals for the dining table are morally acceptable. Serious attention should be paid to those rejecters of meat eating – those rejecters who argue that the standard practices at Western abattoirs cannot be morally justified. We non-religious carnivores should not feel superior at our opposition to the kosher and halal, while complacently accepting what goes on in secular slaughterhouses.

#### **4. Exemptions justified by...**

There are two distinct ways in which exemption demands may understandably arise. One makes essential reference to abilities (in practice, usually physical incapacities). The other makes essential reference to beliefs. Let us not muddy waters with combinations.

Consider some disabled individuals: they may seek certain employments, requesting exemptions from certain tasks. The employment – and required exemptions – may aid their well-being and may even benefit the business. Further, permitting such exemptions may promote the public good: the able-bodied may become more accepting of the disabled. Further still, any possible additional cost and 'unfairness' for the co-workers, who may be required to take on extra duties, need not be great. Attempts to weigh up such competing factors may lead to muddle, but, even with muddle, we can recognise the importance of the exemptions – and the advantages (and costs) to the parties involved.

The framework to the above is that the individuals concerned are able to perform the jobs at least reasonably adequately and sometimes, indeed, even better than colleagues. Of course, job requirements will quickly rule out many people and rule out acceptance of certain exemption-requests: for example, employers should need to rule out individuals eager to be lapdancers, yet who are adverse to laps; would-be strippers who are awkward when naked – and applicants for the role of Tarzan with only one leg (each).

There are, obviously, many employments where certain individuals cannot fulfil the employment conditions and where exemptions cannot be justified. There are, too, grey areas. Many television presenters may be selected because they are photogenic, attractive, young, and female. Are such requirements essential for sufficient audience numbers? If they are, should a society accept that audience numbers determine the criterion? The question raised here is whether, for certain jobs, the requirements should exist in the first place. Consider a newspaper that refuses to employ columnists with certain political opinions. Should that type of institution be allowed? The question arises because we are casually accepting that companies and charities, clubs, businesses, and other institutions, should be at liberty to decide upon, for example, dress codes – just as individuals are at liberty to decide upon those matters.

### 5. Back to the burqa

Safia's desire, even need, to wear the burqa is essentially tied to her religious (or culturally inspired) belief. Suppose the bank – and other employers, schools, hospitals, photographers – grant no exemptions. She is still free to take up those occupations, if she follows their required dress codes. Are the codes a block on her? Well, 'no'. The Muslim faith does not, according to many Muslim scholars, demand the burqa or similar: indeed, many women considered to be good Muslims do not wear such dress. Of course, Safia may insist that her particular deeply-held Islamic belief does require her adherence to the burqa. Other factors are relevant: nearby there may be similar occupations for Safia without a dress code deemed undesirable by Safia. Of course, Safia may insist that she is being mistreated simply by not being allowed the exemption even if she can easily find similar work elsewhere that is acceptable to her. Yet the bank may insist that it is being mistreated if having to provide the exemption: such exemptions may offend its tradition, cause other staff to feel uneasy and even put off customers, hence lowering profits.

There are additional factors. Did Safia adopt the burqa because of cultural pressures? We may ask the same question of Sophie and her dress preference predilections. Paradoxically – and contrary to exemptions only being justified by deep moral beliefs – some exemptions may be reasonably permitted just because the individuals lack any deep commitment, but have been pressurised by others into their dress demands.

The comments above largely involve practical matters – considerations that may intrude in particular circumstances – so let us consider a pure case. Suppose that wearing the burqa or similar really is the teaching of the Qur'an: there is no dispute. Suppose, too, that the women involved genuinely believe the religious teachings; they are acting freely on their deeply-held beliefs. They would suffer an outrage to their moral and religious sensibility, if they failed to wear the burqa, be it as teacher, student, or bank employee. Let us also assume that the women 'en-burqa-ed' can physically perform the employments perfectly adequately, with or without the burqa. Now, those are questionable assumptions; but given those

assumptions, ought the exemptions be permitted? Let us turn again to Mill. 'An opinion on a point of conduct not supported by reasons can only count as one person's preference,' writes Mill. In utilitarian calculations, he would appear to ignore, for example, the distress of certain Sabbatarian religious believers at the existence of Sunday trading. That is because their distress results from ill-grounded moral beliefs or even beliefs that are just false: they should therefore be counted as nothing but preferences. Let us now extend Mill's approach to the liberty of businesses, institutions, and other bodies to reject godly or scripture-based appeals for exemptions.

In contrast to abortion and euthanasia disputes, there exist no good publicly accessible reasons, reasons that resonate with non-believers and believers alike, to justify the belief that the burqa is essential wear. Such beliefs, therefore, merit treatment as if they are nothing but ungrounded or ill-grounded preferences. Any distress caused by not permitting the relevant exemptions is solely the result of those preferences – and should carry no more weight in themselves than, for example, Sophie's distress at being prevented from wearing her skimpy dresses or Simon's for his hoodie garb or Sylvester's for his transvestite clothing.

Requests for exemptions to dress codes (a company's, a local custom's, a club's) on the bases given manifest one set of preferences against the institution's preference for dress conformity. The company should not be swayed into acceding to exemptions just because they result from 'religious belief' as opposed to Sophie's young female desire to appear sexually alluring. The company presumably takes into account how its dress code and any permitted exemptions affect fellow employees, shareholders, and customers. It may indeed simply value retaining a certain tradition and culture.

In a liberal society, businesses and clubs and similar should be autonomous, within the law; so the mere preferences of religious believers ought to hold no special weight with regard to the conduct of non-religious institutions; and non-religious preferences ought to hold no special weight concerning how religious organisations should be run. On that basis – but be warned of forthcoming caveats – Elaine Photography deserves to be free to run itself as an Evangelical Christian agency and decline business concerning same-sex ceremonies; and Catholic adoption agencies deserve to be free to select solely from heterosexual couples – and banks should be free to set dress codes as they think fit. For that matter, the small private hotel ought to be at liberty to turn away double-bed requests from those in civil partnerships. After all, current UK law apparently allows such hotels to reject double-bed requests from those who are neither married nor in civil partnerships. That itself manifests some muddle in the thinking that grounds public policy.

Here, though, are two significant caveats to the liberality encouraged above.

One big caveat is that there be no restriction on the existence of businesses and other organisations that operate in the opposite direction – in these examples,

photographers who specialise in same-sex ceremonies, adoptive agencies for same-sex couples and Islamic banks that require believers as staff.

The second big caveat is that permitting such liberalism with regard to public preference discriminations should not lead to the oppression or significant segregation of those at the sharp end of the discriminatory impulse. Because of such potential dangers and historical realities, shops and offices should typically employ and serve individuals without discriminating on the basis of colour, religion, or sexual orientation, when those features are inessential to the employment and the nature of the business. Such potential dangers set public policies which forbid exemptions; but policies need to be nuanced. Evangelical Christian grocers who refuse to serve homosexuals rightly fall foul of anti-discrimination laws – by serving them, they are not celebrating them – but that case of discrimination may well feel different from the case of the Elane photographers, where the photography is an important part of the same-sex ceremony. After all, would those people who believe that the Elane photographers ought to have accepted the commission also believe that puritanically-minded photographers none the less must accept nude photography work and liberally-minded photographers must be prepared to take as clients right-wing groups such as the British National Party?

Liberalism, supplemented with the important caveats above, leads inevitably to some ‘muddling through’ by way of weighing up imponderables and incommensurables. Here is another factor as example: if people refuse to take work for which they are well qualified – purely because of, say, religious preferences – should they be entitled to the various unemployment benefits?

In assessing these matters, account needs to be taken of the society’s customs and expectations: ‘this is what we do here.’ With regard to unemployment benefits, in Britain we should acknowledge that a modest woman who is otherwise admirably suited for lapdancing would have good reasons for declining the work, yet we arguably should not similarly succumb so readily to the woman who declines the banking job because she would not be permitted the burqa wear.

## 6. Yarmulke or yashmak?

The above position gives priority to reasons and evidence, arguments and principles, which can be understood as good or relevant to non-believers as well as to believers – with regard to the flourishing of individuals. That priority should determine the law, the framework, within which individual preferences – including belief-based preferences that lack a common grounding – may then be exercised without unduly affecting the satisfaction of others’ preferences.

Individual preferences manifest themselves not merely in private, but also in public and, in particular, in the market place by way of both sellers and buyers.

A pharmacy should be at liberty to avoid contraception business, if that is its preference – just as another pharmacy should be at liberty to embrace such business and employ only staff happy to be so involved. That is so, it is suggested here, assuming the background that sufficient accessible pharmacies exist for those customers seeking contraceptives.

A liberal stance is to permit a thousand preferences to bloom, be they by individuals or clubs, businesses and other institutions, yet always with the caveat of ‘depending on the wider social effects’. The stance outlined here needs to be tempered with awareness of the dangers of segmentation, of divisions and divisiveness. Certain preferences cannot be permitted public manifestation, if the dangers of social disruption – of, for example, ghettos and confrontations developing – are great.

Of course, societal transformations occur: some are morally benign; others are not. If institutions become more casual over dress concerning ties and suits, mini-skirts and bikinis – presumably resulting from interplays between customers, employees, and profits – although some of us may rail against the changes, in the end, well – so be it. That is not to say that we should automatically succumb to transformations encouraged by businesses ever keen to grow their profits. Arguably, for example, the preferences of religious believers for a ‘holy day’ each week and of the non-religious simply for a more peaceful day each week have been trampled on by the preferences of big business.

In contrast to the couple of examples above, some transformations are distinctly dangerous – morally dangerous. Let us end with a controversial observation: yarmulke or yashmak?

There is little risk of British society succumbing to enforced rituals of Judaism by permitting Jews to wear the yarmulke: Judaism, if anything, seeks to keep others out (though it carries dangers of promoting isolated communities). In contrast, certain Muslims (note: only certain ones) understand Jihad as the struggle to spread Islam worldwide. So, exemptions permitting wearing of the yashmak (niqāb or burqa) could encourage such Muslims to push for further steps along that unhappy Jihadic path which, on certain Islamic understandings, leads to horrendous punishments, mistreatments of women and considerable repression. That danger may provide sufficient reason for prohibition of the yashmak and similar, but not the yarmulke, in schools and state institutions. Mind you, prohibition may only serve to promote those Jihad understandings; so, assessments of policy and likely consequences are far from easy.

Our liberalism, toleration, and concern to respect others should not blind us to resultant dangers such as the ones just given. However liberal, tolerant, and respectful we may seek to be, let us not ignore the fact that a society morally ought not to be one that encourages or is tolerant of the stoning of adulteresses, the lashing of women who do not wear the burqa and the criminalisation of

homosexuality. On those matters, we ought not to muddle. On other matters, we cannot but help to try to weigh competing factors that lack commonality; we cannot help but muddle.

A basic problem is that once an all-powerful deity – be it God or Allah or Yahweh – is believed to be setting the scene, mere human reason and fellow-feeling may fall by the wayside with the potential for horrendous consequences supported by a blinded theistic faith. In contrast, there is no all-powerful deity supporting Sophie’s skimpy dress and bikini preferences; and even if the mini-skirt and bikini become common in the most traditional of banks, it is unlikely to generate any horrendous outcomes.

Allow me to add, quoting John Maynard Keynes, ‘...the author must, if he is to put his point of view clearly, pretend sometimes to a little more conviction than he feels.’ And if an author must indeed do that, then this author has indeed done what he must do.<sup>11</sup>

## Justifying Exemptions Without Religion: Why Toleration and Equality are Not Enough

### Andrew Shorten

Most people, at some time or another, will find themselves in disagreement with the policy of their government or the laws of their state. In the ordinary run of things, experiencing the burden of having to go along with the policy (or obey the law) is an unremarkable feature of democratic life. It is part of the give and take that we should expect when sharing in a political community. However, some laws or policies may impose burdens on some people that seem unreasonable or unacceptable. For example, the (involuntary) conscription of an absolute pacifist, who objects *morally* to all wars, strikes many people as unacceptable. Even though we disagree about whether the conscription of individuals in the prosecution of a war is ever justified, many of us share the intuition that conscripting those with deeply felt moral objections to the practice of war-making violates an important threshold. Accordingly, if a state conscripts individuals, we think that it should allow for some form of conscientious objection.

Appeals to conscience have been used to justify a wide range of ‘exemptions’ from generally applicable laws. Long-established examples in English law include Sikh exemptions from mandatory headgear legislation, Muslim and Jewish exemptions from humane slaughter legislation, and exemptions to allow religious organisations – including schools – to discriminate in their employment practices. Perhaps unsurprisingly, many of the exemptions currently recognised in law have been sought by (and on behalf of) religious groups. However, as the conscription case indicates, holding religious beliefs is not a necessary condition for either advancing or recognising a claim of conscience. There is no philosophical reason why a state should not recognise the claims of conscience advanced by non-religious people on equal terms as those made by their religious counterparts.

Nevertheless, humanists might be sceptical about encouraging wider legal recognition of a right to conscientious objection on the grounds that such practices tend to privilege *religious* claims of conscience. One reason for this is that religious believers often find it easier to convince others about the sincerity of their convictions (for example, they can point to their texts and traditions). Thus, humanists might worry that wider recognition of conscience-based claims to exemptions will further entrench the presumption that religious convictions, because they are religious convictions, should be granted special standing, or even immunity.

Perhaps, however, this problem has more to do with the appeal to conscience than with exemptions themselves. Might it be possible for humanists to formulate a general argument for exemptions that does not rely upon values traditionally associated with religion (such as living according to conscience), but is instead based on widely-endorsed nonreligious values (such as toleration and equality)? This, at least, is what I propose to attempt here. Specifically, I want to find out if exemptions are one of the policies that should be favoured as part of what it means to live in a tolerant or egalitarian political community. What is required is an argument that not only avoids taking sides in debates about the truth or falsity of any religious view, but also refrains from taking a view about whether religious beliefs are themselves valuable. In other words, it must be non-sectarian *both* in the sense of not favouring one religious tradition over another, *and* in the sense of not privileging religious convictions above other kinds of deeply held beliefs.

As shall become clear, justifying exemptions in non-sectarian terms is no small order. Not only do the values of toleration and equality fail to deliver a knock-down argument in favour of exemptions, but they can also be taken to count *against* them. What this suggests, I think, is that it may be very difficult to separate the case for exemptions from the idea that religious commitments should be offered special forms of protection.

### Justifying exemptions

Exemption clauses permit selected persons (or institutions) to ‘opt-out’ of a law or policy. They can be granted both by states and organisations. Even when they are granted by organisations, the decision is often taken under a wider legal framework (for example, whether a student should be exempt from an examination that falls on a day of religious significance is covered by laws concerning indirect discrimination in England). Exemptions are justified when two conditions are satisfied. First, if the application of a rule would impose an unjustified burden upon some (but not all) of those who are subject to it. Second, if an exemption is the most appropriate means to alleviate that unjustified burden. The most difficult philosophical questions concern specifying exactly what it is that makes a burden *unjustified*. Meanwhile, the importance of the second condition can be captured by considering a powerful objection to the very idea of granting exemptions.

This objection was suggested by Brian Barry, who pointed out that when we conclude that a rule imposes an unjustified burden, the usual (and appropriate) course of action is to abandon, replace, or refine the rule.<sup>12</sup> For example, if it is decided that a taxation policy is too burdensome for rural families, then the natural solution is to draw up a new tax policy, rather than exempt some subgroup from it. Why shouldn’t we say the same about Sikhs and motorcycle helmets, or about any of the other cases in which exemptions have been sought or extended? Indeed, in many of these cases it may be more appropriate to formulate a new rule. Hence the second condition: if an exemption really is

the most appropriate response to an unjustified burden, then there must be a compelling case for the original rule *and* a convincing reason for exempting some people (or institutions) from that rule. Moreover, the reason for exempting some from the original rule must not ‘carry over’ to also justify abandoning or modifying the general law.

What about the first condition, and the idea of an unjustified burden? Three helpful but ultimately inadequate accounts of an unjustified burden crop up in writings on the topic – that a burden is unjustified when it is distinctive, when it is unintended, and when it is the product of ethical disagreement or deep cultural diversity. The first explanation starts from the (true) observation that laws and policies often have an *uneven* impact. This is because our preferences vary, because we have different understandings of cultural practices, and because we attribute different significances to the actions and circumstances in which law or policies are applied. From this, it seems plausible to infer that a law or a policy can impose a *distinctive* burden, in the sense that it burdens some people more than others. However, in many cases, the distinctive burden imposed by a law or policy is not only acceptable but intentional, as when anti-smoking legislation has a greater impact on smokers, or when laws prohibiting theft have a greater impact upon burglars. Thus, a burden being distinctive is insufficient reason to infer that it is unjustified, and we should not exempt people from rules whenever those rules impose a distinctive burden on them.

The second explanation is that a burden is unjustified when it is both distinctive and *unintended*, in the sense that it was not the purpose of the law or policy to bring about the distinctive burden. The reasoning here is that when a law or policy imposes an unintended burden, we should grant an exemption to affected parties in order to better uphold the original *spirit* of the law. So, for example, because it was not the intention of Prohibition in the United States to burden Catholics seeking communion, Catholics should have been (and were) granted an exemption. Similarly, because it is not the intention of laws that ban carrying weapons in public to burden Sikhs who want to carry a *kirpan*, English law should (and does) grant Sikhs an exemption. A system of laws is likely to impose more unintended burdens if the affected parties were absent – either physically or in the imagination – when the legislation was drawn up (as has often been the case for religious minorities, indigenous peoples and national minorities, and is always the case for recent immigrants). Since the legislators did not intend to burden these groups, so the argument runs, we should relieve them of their distinctive burden by granting an exemption.

However, it would be a mistake to infer that because a burden is unintended it is unjustified. For instance, whether or not legislators intended to burden Native Americans – for whom the use of Peyote has religious significance – by passing laws restricting drug use has no bearing on whether or not such rules actually do impose an unjustified burden. In other words, if Native Americans are entitled to an exemption, it is not because their interests or views were neglected during

the legislative process, however insulting that may have been, but because the burden imposed by the rule is unjustified.

The third explanation is that a burden is unjustified when it is distinctive, unintended, and the product of ethical disagreement or deep cultural diversity. Often, demands for exemptions are framed as manifestations of an underlying conflict between incompatible world views, such as a clash between secular and religious values, or between the worldviews of settled and nomadic peoples. Take, for example, the request of Muslims and Jews to be exempted from laws requiring that animals are stunned prior to slaughter. Perhaps, in this case, there really are radically different views about the relationship between humans and animals, and about how animals should be treated, and that both cannot be accommodated under a single rule. Or take the demand of the Anabaptist Amish community in the US to remove their children from public schools in order to reduce their exposure to corrupting worldly influences. Perhaps this is a case in which a minority group disagrees fundamentally with majority society about the nature and purposes of an education, and about how it contributes to the human good. Supposing that this is the case, that the disagreement is permanent and intractable, and that it is unfair to impose an unfamiliar worldview on people, then an exemption may be the fairest way to alleviate the distinctive and unintended burden.

However, the fact that an unintended and distinctive burden is rooted in ethical disagreement, cultural difference, or incompatible worldviews is still not enough to conclude that the burden is *unjustified*. This is the case even if following the rule is seriously unpleasant for that person, as it might be when someone's worldview is at odds with rules that outlaw racial discrimination, or with laws that provide for private ownership of the means of production. The need to regulate oppositional world views under a single framework of law will often push the strains of social co-operation to their limits, but we should be wary about moving too quickly from the fact of disagreement to the exemption strategy. One reason for this is that talk of incompatible world views is often over-inflated. Another is that in many cases, the case for the initial rule is reason enough to justify burdening those who deeply disagree with it.

In summary, the case for an exemption is forceful when it is the most appropriate means to alleviate a burden that is distinctive, unintended and rooted in ethical disagreement. However, an exemption is required only if the burden imposed by the original rule cannot be justified, and the three conditions surveyed so far provide only a partial account of what it is that makes a burden unjustified. To fill out the story we need to take a wider view, and take into account some of the ways in which an unintended and distinctive burden can threaten things of fundamental value. In the following I focus on toleration and equality, as these seem to be the two most promising values for the advocate of exemptions.

## Toleration

One way in which a society can cope with deep and intractable ethical disagreement is through the doctrine of toleration. Individuals practise toleration when they disapprove of something but refrain from interfering with it. A society practices toleration by institutionalising this kind of principled non-interference, for example by providing its members with protected spaces inside of which they can give free expression to their distinctive commitments. Thus, political toleration can involve 'insulating' groups and individuals from certain forms of external interference. The spirit in which such toleration is extended can range from grudging acceptance to something closer to indifference. In any case, there is always a sense in which being tolerated is a second-best outcome for the tolerated party, if they would prefer not to be subject to social disapproval.

The rule-and-exemption strategy is a form of tolerant insulation, in the sense that it permits (on an exceptional basis) some action that would ordinarily be prohibited, and insulates minority practices from majority disapproval and sanction. But on what grounds, and for what practices, should this kind of protection be extended? Traditionally, the insulation argument has been advanced on behalf of religious practices. For example, prior to the 1980s, the Free Exercise Clause in the Constitution of the United States of America was widely understood to require that only laws justified by a *compelling* state interest were permitted to incidentally burden religious freedom. This meant that although religious practices were not granted immunity from interference, they were accorded stronger protections than other practices.

This manifestation of the tolerant insulation argument unjustifiably granted religious beliefs a special status because they were religious. Underlying it, however, was the plausible proposition that we have reasons to favour toleration when restricting individual freedom imposes an unjustified burden. Filling this principle out into a non-sectarian argument for tolerant insulation will require an account of why protecting *some* freedoms is especially important. Unfortunately, the traditional liberal appeal to *autonomy* will not work here, as individual autonomy is potentially constrained by all laws. A more promising suggestion appeals to the idea of *moral integrity*. In particular, perhaps burdening someone by forcing them to go against their conscience undermines their moral integrity, and for that reason is unjustified.

Suppose that this rudimentary sketch of moral integrity could be expanded into a satisfactory account of when a burden is unjustified.<sup>13</sup> One thing worth noting is that such a theory would generate, at most, a very limited range of exemptions. This is because nearly all of the laws and policies for which exemptions have been sought do not threaten moral integrity. For example, the moral integrity of a Sikh is not compromised by being unable to work on building sites or ride motorcycles, nor is that of Jews and Muslims if they are unable to eat meat, and nor is that of a religious order if they feel that they can no longer offer adoption agencies. Perhaps all of these groups are unjustifiably burdened by the relevant laws, but if they are it is for some reason other than their compromised moral integrity.

## Equality

An alternative way to capture the idea of an unjustified burden is in terms of disadvantage. For instance, perhaps a burden is unjustified when it disadvantages people in ways that compromise the ideal of society as a community of equals. There are two ways in which a burden might fail to treat people with equal respect. First, a burden might undermine equality of opportunity, and could for that reason be unjustified. For example, unless Sikhs are granted an exemption from the requirement to wear protective headgear on building sites, they will be disadvantaged by virtue of lacking an opportunity held by other members of society (namely, to work on a building site). One reason for thinking that this burden violates equality of respect (and is consequently unjustified) is the egalitarian principle that people should not be disadvantaged by factors for which they are not responsible. Thus, one advocate of multiculturalism, Bhikhu Parekh, distinguishes between ‘possibilities’ and ‘opportunities’, and suggests that working on a building site whilst wearing a hardhat is only a possibility for a Sikh, and not a genuine opportunity.<sup>14</sup>

If Parekh is right, then Sikhs lack a valuable opportunity and are disadvantaged with respect to their fellow citizens. The burden this imposes on them is unjustified because it fails to respect their equality. Against this, critics contend that if Sikhs endorse or value their religious beliefs, or are capable of revising them, then they are responsible for them, and as a consequence should bear the relevant costs. This means accepting that the opportunity to work on a building site comes attached to the condition of wearing protective headgear. This disagreement raises difficult questions about the relationship between responsibility and equality of opportunity, about which philosophers continue to disagree.<sup>15</sup> It also raises a difficult question about whether proponents of the multiculturalist view should favour equalising *all* opportunities, or just some. For example, perhaps there are special reasons to grant particular exemptions in order to equalise employment or educational opportunities, because of the importance of these things for individual well-being.

Still another difficulty with this account of an unjustified burden is that some groups reject equality of opportunity, and object to equal opportunities legislation on the grounds that it imposes an unjustified burden on them. For example, Roman Catholic Adoption Agencies have sought exemptions from the Equality Act, 2008, in order to allow them to discriminate against gay people. Whether or not one thinks that equality legislation really does impose an unjustified burden on adoption agencies with a religious ethos, *egalitarians* should be untroubled by a law that removes the opportunity to discriminate. At the least, this suggests that those who believe that religious adoption agencies are unjustifiably burdened by the Equality Act need to appeal to values other than equality of opportunity to make their case.

The second way in which a burden imposed by a general rule might fail to treat someone with equal respect has to do with recognition. The gist of this argument is that a rule may burden someone when it fails to recognise their

distinctive identity (by ignoring it, or by mischaracterising it). This burden is unjustified when it violates the principle of treating each individual, as a bearer of a distinctive identity, with equal respect. Theories of recognition are often highly nuanced and intricate.<sup>16</sup> An important idea many of them share is that a community of equals is one in which members are not demeaned by virtue of their identities, and in which social hierarchies have been replaced with something closer to equal standing. So, for instance, on this view the burden imposed on a Sikh by mandatory headgear requirements has less to do with restricting his opportunities, and more to do with undermining his status as an equal holder of a valued identity. Recognition arguments have the strength of drawing attention to the ways in which a system of rules may unintentionally privilege a majority identity, by taking it for granted, and in so doing may marginalise and demean holders of minority identities.

What exemptions might be justified by the equal recognition argument? Conceivably, it could justify a wide range of exemption claims. For example, failure to provide alternative examination arrangements for school children from minority religious groups might be thought to fail to recognise their distinctive identity; failure to accommodate the traditional practices of indigenous peoples in laws concerning hunting and land use might fail to recognise their distinctive identity; and failure to exempt religious adoption agencies from equal opportunities legislation might fail to recognise their distinctive identity. Herein lies a serious difficulty for the recognition argument: there seems to be no principled limit to what may and may not be demanded in the name of recognition. Because so many different policies can conceivably insult or demean someone by failing to recognise the value of their distinctive identity, appeals to recognition risk encouraging a politics of grievance, in which disaffected social groups participate in games of misrecognition one-upmanship.

## Conclusion

So, is it possible to formulate a general argument for exemptions in terms amenable to a humanist outlook? The cases in favour of exemptions that I have considered are, at best, inconclusive. By way of a conclusion, I want to suggest some ways in which appeals to toleration and equality can also tell *against* exemptions. With regard to toleration, an important objection against the insulation model is that it may potentially facilitate intolerance of dissenting group members. For instance, although exemption rights can usually be waived, their availability might intensify social pressures to conform to group orthodoxy. This seems particularly likely in cases concerning religion, and is particularly worrying in cases concerning vulnerable group members. Thus, critics have worried that accommodating requests to allow some Muslim schoolgirls to wear a niqāb might increase social pressure on their peers, and for that reason should be resisted.

Meanwhile, an appeal to equality of respect might be used against exemptions in two different ways. First, formal equality before the law, in the sense of

applying the same rules to everyone, has traditionally been understood as an important precondition for genuine equality. For example, societies that discriminate in the application of the law – whether according to class, gender, race, or religion – have not without reason been considered the enemies of equality. But this seems to be exactly what exemptions entail. Second, by providing an ‘opt-out’ clause, exemption rights distort equality by granting some citizens supplementary freedoms. For instance, atheist motorcyclists with a strong preference to feel the wind in their hair might object that Sikhs have more freedoms than they do, and that this undermines equality. This kind of objection is likely to be especially compelling for people already sympathetic to robust theories of equal citizenship, including many republicans, socialists, and liberals.

## Is Conscientious Objection an Absolute Right?

### David Pollock

#### A case study

On 7 October 2010 the Parliamentary Assembly of the Council of Europe debated a report<sup>17</sup> entitled ‘*Women’s access to lawful medical care: the problem of unregulated use of conscientious objection*’. It recommended that member states regulate the exercise of conscientious objection, guaranteeing it only to individuals directly involved in providing lawful medical treatments (particularly but not exclusively abortion) and not to institutions (such as publicly funded religiously sponsored hospitals), and requiring practitioners to inform patients promptly about any conscientious objection they might have and refer them to another healthcare provider. It also recommended that practitioners should be obliged to provide the lawful treatments despite conscientious objections in cases of danger to the patient’s health or life or when referral was not possible.

The Parliamentary Assembly passed the resolution in an amended form.<sup>18</sup> They changed its title to ‘*The right to conscientious objection in lawful medical care*’ and turned it into a declaration of the right of any ‘person, hospital, or institution’ to ‘refus[e] to perform, accommodate, assist’ in abortion or euthanasia ‘for any reason’.

The question was strongly contested and the vote was close – indeed, the amended resolution is incoherent as it still includes large sections of the original. But this skirmish is significant, as it is one corner of a much larger battle. Having for the present lost the war against legalisation of abortion and other contentious procedures such as *in vitro* fertilisation (IVF) and (increasingly) euthanasia and assisted dying, the ‘pro-life’ forces, largely but not exclusively Roman Catholic, are trying to subvert the legislation by maximising the scope and exercise of conscientious objection.

Their claims, as articulated by a powerful conservative Christian lobby organisation, are that conscientious objection applies to both individuals and institutions, to both direct and indirect participation, and even when referral is impossible; it includes complete immunity from liability and from discrimination; and it cannot be balanced with any rights patients have to treatment.<sup>19</sup> The result they hope for is that, whether or not such treatments are lawful, they will in practice be unavailable. There are two routes to this end: by one, enough individuals concerned, even remotely, will be pressurised into exercising their right to conscientious objection to make provision of treatments impossible. Thus, in 2007 in Italy nearly 70% of gynaecologists and over 50% of anaesthetists refused to perform or assist with abortions – proportions that had

risen sharply in the previous four years<sup>20</sup> in a process that will, if continued, end with a few doctors finding their lives intolerably dominated by providing abortions and therefore themselves pretending conscientious objection and opting out. The other route is that hospitals will increasingly be taken over by religious institutions and will impose total bans on such treatments, even by staff willing to provide them. Thus, in the Belgian town of Mechelen, the Catholic Church progressively acquired all the hospitals and ended the previous ready availability of abortion, forcing women to travel considerable distances or to continue with unwanted pregnancies.<sup>21</sup>

### **The broader picture**

We are faced here with a religious totalitarianism: the attempt by a powerful minority to impose their own patterns of behaviour on everyone against the democratic will of the majority which itself seeks not to impose an alternative pattern of behaviour but to provide lawful options in a liberal, open society. There are clear parallels with the generally deplored religious autocracy of Islamic republics such as Iran and Muslim extremists' visions of a caliphate in western Europe.

This highly political context is at odds with the implicit assumptions of most discussions about conscientious objection. Building on the current emphasis on individual human rights, most commentators focus exclusively on the individual conscience without regard to the consequences. The assumption is that only a few individuals with unusual, normally religious, beliefs are affected, and that society can afford to accommodate them.

This was the case when a right to conscientious objection was first recognised – in wartime. It clearly marked an advance in civilised values that pacifists were allowed to apply to tribunals to prove their objections were based on genuine religious or moral principles. When, after hard-fought campaigns, abortion was legalised it seemed a logical extension – and a politically useful concession – to allow doctors and nurses not to take part if they had conscientious objections. But in recent years claims for conscientious objection have extended to many new contexts, with claims being made implicitly or explicitly (as indicated above) that conscientious and religious objections should always supervene over other considerations.

Examples include magistrates refusing to handle adoptions by lesbian and gay couples; nurses refusing to take part in IVF; pharmacists refusing to dispense the 'morning after' contraceptive pill; doctors refusing to reveal their conscientious objection or to refer patients wanting an abortion<sup>22</sup>; Exclusive Brethren refusing to let their children use computers or the Internet in school; Muslims refusing to allow their children to draw human figures – or indeed anything from nature – in art classes at school, or to take part in physical education unless in single-sex groups and unless the girls especially are swathed in modesty-protecting garments; people employed as cooks claiming a right not to work with pork, or

with non-halal or non-kosher meat, or with alcohol; and people refusing to work on Fridays, Saturdays, or Sundays, depending on their religion. People who let rooms in their own houses already have the right to refuse gay people as lodgers: now there is a religious lobby to extend this right to hotels run as businesses – and then to allow all businesses – 'Christian' garages, 'Muslim' printers, and so on – to pick and choose whom they will and will not do business with. There are many other examples and potential examples.<sup>23</sup>

Are all these claims for conscientious objection acceptable? Many of us would think not. In past ages, far less respect was paid to people's conscientious feelings, and they had unenviable tough decisions to make about the extent to which they took the risk of obeying their own principles. That might seem undesirable to our more tender age, but we need to examine the consequences, in particular for other people and for society as a whole, of allowing unlimited appeal to conscience. A right to opt out of a duty may entail the public losing access to a service, colleagues having to take on extra work of the 'objectionable' kind, or individuals being conspicuously singled out for discriminatory, unfair treatment.

As for society, it depends on people's behaviour being to a large extent predictable and reliable – the more so when public officials and public services and laws are involved. This is threatened when conscientious objection becomes widespread. Ultimately, it becomes impossible to run reliable public services – and that day will be precipitated if religious organisations seek to generate artificial conscientious objections for political ends.

Conscientious objection in that case, one might decide, is a luxury that society cannot afford to indulge. But the other end of this spectrum, opposite this *carte blanche* for tender consciences, is an enforced uniformity that does not accommodate deeply held principles of pacifism, or religious duty, or other deep conscientious beliefs.

### **Drawing lines**

Lines have to be drawn. But religious lobbyists advocate that this is not permissible under human rights law. Is that true? Human rights treaties endorse an absolute right to freedom of thought, conscience and religion – but they permit restrictions on manifestation of religion or belief when necessary 'in the interests of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others.'<sup>24</sup> The Organization for Security and Co-operation in Europe's Guidelines for Review of Legislation pertaining to Religion or Belief<sup>25</sup> state that:

It is important . . . that specific statutory exemptions be drafted and applied in a way that is fair to those with conscientious objections but without unduly burdening those who do not have such objections.

So, it is legitimate to draw lines, but where? How to tell the difference between a conscientious objection and a prejudice? Is there in the last analysis a difference? Was it religious principle that led the Christians in the Dutch Reformed Church in apartheid South Africa to treat blacks as an inferior species – or sheer race prejudice? If people's baser instincts or culturally induced hatreds can be dressed up as matters of principle, religion or conscience, where shall we end up? – inevitably with a society that offers legitimacy under certain conditions to discrimination that would otherwise be illegal, against gays or divorcees or single mothers (and their children), other ethnic groups (in a recent case a Jewish school pleaded religious exemption from the laws against race discrimination), or religions (remember how Roman Catholics suffered in Protestant countries over centuries).

Criteria are needed by which we can decide which exercises of conscientious objection are acceptable and should be accommodated in our laws and procedures – and which not. What would those criteria be? Or at least, without defining them in detail, what would they be about? We need to examine the problems involved in each case and the way that plausible criteria would work out in practice, what the logic of each would be, how each could be justified, and what objections to it might be raised.

#### **Some potential criteria**

So, what criteria should inform our laws? One, of course, is that the *claimed conscientious objections should be genuine, not pretended*. But that does not get us far.

Is it, then, to do with the *strength of the conscientious feeling itself*? One might well imagine that the revulsion someone feels against being forced to kill might be greater and more compelling than someone else's objection to dispensing a medicine. But our criteria need to be capable of objective administration. The strength of internal feelings is not in that class. Besides, it would be odd if one person's objection was ruled legitimate and another person's identical objection was rejected because his feelings were judged less profound.

Or is it that *religious objections* should carry more weight since they are based on divine commands and immortal souls are at stake? But religious objections are not the only or even the most profound ones at stake: non-religious people have as strong consciences as the religious. Albeit they are more aligned in general to the patterns of liberal democratic societies, some non-religious people have strong ethical objections to euthanasia, some to abortion in particular circumstances. Moreover – as mentioned – religious objections are to some extent learnt before being felt – formulated and generated outside the individual's conscience – whereas typically a non-religious conscientious objection is very strictly personal, arising from freestanding deep feelings or principles. Besides, new religions can be created all too easily and might well be created to provide 'cover' for prejudiced behaviour.

One might argue therefore that the acceptability of a conscientious objection is to do with comparatively objective criteria, for example:

- Whether the person claiming the right of objection is in a public or private role;
- The centrality of the principle at stake to a recognised religion or lifestance;
- The proximity of the action the person refuses to perform to the matter to which conscientious objection is taken;
- The social consequences of the objection being accepted;
- The effects on other individuals involved.

Let me look at each of these in turn.

Should the criterion be whether the person claiming the right of conscientious objection is in a *public or private role*? Certainly there is something odd about someone taking on a public official role – as a magistrate, for example – and then objecting to performing the required duties. Should people with objections to carrying out the duties of a public position take it on in the first place? – especially if dispensation of the law is involved, in which case an agent of the state would be seen casting doubt on the laws of the state – an anomalous and basically unacceptable situation. In the days of capital punishment, judges with personal objections to the death penalty had to overcome their objections or else direct their careers into areas of the law where the question did not arise.

So we could certainly say that a pick-and-choose attitude to official duties is unacceptable. But that does not mean that conscientious objection should be unfettered in the 'private' realm. Discriminatory behaviour based on religion or conscience is still unacceptable in commerce and trade, in social relations: we cannot allow hotel chains to proclaim 'no gays' or 'no unmarried couples', pleading religious principles, and get away with it. What about 'no blacks' or 'no Jews'?

There may be a difference between public and private roles – especially where 'private' means domestic private life, not just 'not involving public office' – but it does not provide a clear criterion of what is or is not acceptable conscientious objection.

Is it an adequate criterion then to require that the principle at stake should be *central to a recognised religion or lifestance*? This may seem logical at first sight but it raises unresolvable questions. It would require that the conscientious objection related to a wider framework of belief. If you simply held as a matter of conscience that vivisection was wrong, without rationalising your feeling or fitting it into a wider explanatory framework of belief, you might find that your conscientious objection was overruled. Again, it would require official or judicial inquiry into what was or was not central to a religion or lifestance. Are judges

to be required to become theologians? Anyway, most religions do not have the central authoritative direction of the Roman Catholic Church – one of the subsidiary objections to any official endorsement of sharia law is its uncertainty; and Humanism allows wide personal discretion in the application of its basic principles and shades off on all sides into various non-Humanisms that may be equally moral in nature.

Beyond that, it would open the way for religious authorities to become legal authorities, being called in to adjudicate on the authenticity or centrality to their religion or belief of an essentially personal conscientious objection. This would give powerful backing to religious authorities in any attempt they made to regulate the behaviour of their followers, imposing a group-think in moral and religious matters that would quickly become itself a denial of personal consciences.

Our next suggestion was that the criterion might be the *proximity of the action the person refuses to perform to the matter to which conscientious objection is taken*. You might feel more sympathy with a doctor refusing to carry out an abortion than with one refusing to recognise that an abortion is a possibility – and more with the latter than with one who refuses to admit to his patient that his own conscientious objection is involved and to refer her to another doctor. In such a case the agency involved is very remote and certainly not final or definitive.<sup>26</sup> So this is a sensible distinction to make – but it still raises big difficulties for those with absolutist principles. After all, the contention that ‘if you will the means, you will the end’ does have some logical force.

Besides, this will never be an adequate criterion in itself, since it would give *carte blanche* to all conscientious objections of any nature that were based on first-hand involvement. Even so, it may have a contributory role to play in our formulation of sensible criteria.

Next on my list was the *social consequences of accepting the objection*. These would include the practicality of society coping with it – such as the possibility of someone else taking on the role – and the effects on social cohesion of any widespread incidence of such conscientious objections.

With this criterion we begin to find some solid ground. If the conscientious objection is exceptional and can be accommodated, little damage may be done to society’s fabric and arrangements – services will generally be provided by others taking the place of the conscientious objector. If one nurse will not assist at an abortion or in IVF treatment and another is available to take on the work, then surely this is acceptable? It amounts to something like the ‘reasonable accommodation’ which is found in some legal frameworks for employment.

But it too is problematic. The same person with the same conscientious objection may at one time find that she is accommodated, at another not but instead (perhaps) liable for disciplinary action, simply because of the extraneous

circumstance that at one time a substitute is available, at another not. And this is not just a black and white question – if the substitute can be found only by complex juggling of duties or of work schedules in a large workforce, then there is a cost in making a substitution and it is borne by the employer or institution – and therefore ultimately by the public through prices or taxes – not by the conscientious objector. It also means that the more common a conscientious objection is, the less likely it is that it can be accommodated so that the necessary work can be done.<sup>27</sup>

Also important is the effect on the rule of law: it is not acceptable that one person’s conscientious objection to obeying a law or fulfilling a lawful duty should prevent someone else from exercising a lawful right: nobody should be above the law.

Moreover, there is likely to be an effect on the cohesion of the whole society – on the commitment of its members to maintaining its institutions – if a group within the society is seen to have arrogated to itself a privileged position, standing apart from the whole and not contributing on the same basis.

Lastly, I suggested the criterion might be *the effects on other individuals involved*. Maybe such people would have problems accessing services to which they were entitled or not receive them at all; maybe they would suffer demeaning treatment, being discriminated against despite legal guarantees against it. Or maybe - a special case - children are involved because of their parents’ conscientious objections.<sup>28</sup>

With this we confront the crux of the matter. We need to have regard not only to the feelings of those with conscientious objections to some duty or obligation but also to those others who will be personally affected if the conscientious objection is indulged. These will variously be:

- patients not receiving treatment they are entitled to or medicines they have been prescribed or having to go to special trouble to obtain such services;
- citizens not being treated in the fair or non-discriminatory way to which they are entitled by law but receiving demeaning treatment from public institutions or from individuals in official positions;
- patients finding that the health professionals they rely on are not fully competent because they refused owing to a conscientious objection to undertake part of their training – a conscientious objection that they may no longer feel at a later stage in their careers;
- employees being expected to take on extra duties or to work more weekend shifts or otherwise suffer some cost as a result of accommodating colleagues’ conscientious objection;
- people being subjected to demeaning discrimination that would otherwise be illegal but is permitted when in fulfilment of some religious conscientious objection – having some aspect of their identity held up to moral opprobrium as a pious demonstration of the conscientious feelings of someone whose views neither they nor society at large shares.

The price of accommodating the conscientious objections of the few is paid, in other words, not by the conscientious objector (who may instead receive a moral uplift from his or her conspicuous virtue) but by random members of society at large who are unhappy enough to encounter such strong upholders of what they consider virtue.

There is a special case where the third parties involved are children, notably the children of parents whose consciences will not allow them to receive the full education that their contemporaries receive (incidentally being made awkwardly 'different' from their friends) or (worse) to receive the medical treatment they need. Children of the Amish in the US are permitted to leave school to work on the land before completing statutory education: as a result they lack the basic qualifications they need for employment – a substantial disincentive to leaving their isolated communities and a substantial disadvantage if they do. Children of Jehovah's Witnesses who need blood transfusions may even die unless society steps in and through the courts overrules their parents' conscientious objection.

### Conclusions

Where does all this leave us? Undoubtedly with a need for more hard thinking. Conscientious objection sounds virtuous but its effects are by no means wholly benign. A free-for-all unregulated endorsement of conscientious objection cannot be allowed, even on the unlikely assumption that all alleged conscientious objections are based on genuine beliefs and feelings. If a free-for-all is ruled out, then criteria are needed for deciding what is acceptable. The European Convention on Human Rights gives us some broad pointers when it talks of public safety, protection of public order, health or morals, and (especially) protection of the rights and freedoms of others – but that is too broad a formulation to be sufficient in itself.

Let me venture some tentative and interim suggestions. Conscientious action is the basis of social functioning and conscientious objections arise from the same consciences that produce altruistic and self-sacrificing behaviour based on principles and beliefs. The obligation on society to look indulgently on conscientious objection is strong, but it is not unconditional. Among the conditions placed on it might be the following:

- the conscientious objection should be deeply felt and preferably the conscientious objector should be able to give a coherent account of it;
- the conscientious objection should be to a proximate action and not to some remote or associated matter;
- society should not in accommodating conscientious objections put at risk the rule of law or (by seeming to favour one group over another) its social cohesion;
- holders of public office, representing the state, the law or the community, should have fewer or no rights to conscientious objection, their acts being not their own but those of the public authorities or the state;
- the rights of others involved must have at least equal regard – the right not to suffer discrimination, to be able to access facilities and services (especially public services);
- children in particular must be protected from damage to their education or their health: there must be limits to their parents' power over them.

The price of accommodating conscientious objection should be paid or at least shared by the conscientious objector himself. It may mean restricting career options or choosing between overcoming moral objections and accepting penalties such as disciplinary measures or dismissal. In wartime, after all, conscientious objectors were not let off to continue their normal lives but were assigned to alternative war work – and if they were unwilling to do that, they went to jail.

Conscientious objection may be a luxury, albeit one that society should strain to afford – but it is a luxury that should sometimes carry a price that the conscientious objector may on consideration choose not to pay.

# Applying an Ethical Framework to Decisions about Religion-based Exemptions in the Professions

## Richard Rowson

### Introduction

In this paper I explain how a framework of values I have developed with professions may help professionals and people in the public space – community leaders, voluntary workers, councillors, and MPs – make ethical decisions about faith-based exemptions.

At the end of the paper I comment briefly on how its ideas relate to ethical theory.

### Working with professions

As a moral philosopher I have spent much of my life analysing views about ethics from Plato to the 21<sup>st</sup> century. But I have also had a more practical activity – helping organisations and professions develop their ethics policies. People I have worked with include nurses, doctors, social workers, teachers, psychotherapists, the police, universities, and government departments.

My work with the professions came about as a result of having a year away from my full-time lectureship at the then Glamorgan Polytechnic in 1987/88. Having long been interested in how people in the ‘real world’ deal with knotty ethical issues, I spent much of that year at the Institute of Medical Ethics and the London Medical Group – organisations which worked with medical and nursing schools and healthcare professional bodies. During that year I carried out a survey on the teaching of ethics in medical and nursing schools and as a result wrote a slim volume on nursing ethics.<sup>29</sup> This was used by several nursing schools and they invited me to sit on committees developing new nursing degrees. The Royal College of Nursing also invited me to join their ethics committee. At the same time I began contributing to medical ethics courses at Swansea University and at the medical school of St Mary’s Hospital, Paddington.

As it happens many nurses are married to police officers, and my slim volume became lodged in the library at the police Staff Training College at Brams Hill. I was asked why I did not produce something similar for the police. I did not do so, but I was invited to join a committee at the Home Office developing a statement of shared values for adoption by all the UK police services. This led to a consultancy to advise on ethics and to develop a training programme. Thereafter, my entry into other organisations and professions has been as a result of word of mouth, or by invitation from readers of the book on nursing ethics or a later book<sup>30</sup> on ethics for all professions.

When I am invited to visit an organisation I meet a few staff who may or may not be members of an already-constituted committee which has ethical responsibilities. More and more they are concerned about the plethora of ethical perspectives in the public space, and two questions frequently asked are:

- ‘What do we mean by ethics?’ and
- ‘Whose ethics should we adopt, since there are so many ethical perspectives around?’

In our discussions it soon becomes clear that we should not base the policies of the organisation or profession on the values of any specific religious or secular perspective, because its members work with people of different faiths and of no faith. If they were to base their policies overtly on, say, Christian or humanist ideas, then non-Christian or non-humanist patients, clients, students, and the general public might fear that its members would not be sympathetic to their interests and might discriminate against them. Such lack of trust could prevent the organisation or profession achieving its objectives. Nurses, for instance, are more likely to bring care, comfort and cure to patients who trust them to value their wellbeing and to respect their cultural views.

So having decided not to base policies on the values of any religious or non-religious tradition, the next question is where to find the values that are the appropriate ethical basis for the organisation or profession concerned.

We have sought the answer by looking at the organisation’s own objectives and at the context in which it operates. What values would help it achieve its objectives in our culturally complex society?

Let’s consider an example.

### Values appropriate for an interprofessional team

In 2006 the government said that nursery nurses, early years professionals, teachers, social workers, probation officers, and police officers must form statutory interprofessional teams to coordinate their services to children and young people.

At Kingston University it was thought that these teams needed a framework of shared core values to help the different professions work together with trust and confidence, and I was invited to join a group developing courses for people who would work in the interprofessional teams. The group included members of relevant professions, academics, stakeholders from the voluntary and private sector, and strategic managers of local authorities who would be responsible for assembling the teams.

To identify what would be an appropriate framework of shared values we considered the teams’ fundamental objective. This was seen as ‘to promote

the interests and well-being of 0 to 19 year olds regardless of their cultural affiliation, race, religion or belief, sexual orientation, level of disability, etc'. The next questions were 'What values are implicit in this objective?' and 'What values would facilitate its achievement?'

Two values seen as implicit in the objective are *seeking the best results* for young people, and aiming for these results in a way that is *fair and non-discriminatory*.

Values that will facilitate the objective are ones that will enable members of the teams to trust each other and to be trusted by young people. To generate this trust interprofessional teams need two values: *integrity* – honesty with each other and with their clients – and *respect for autonomy* – respecting each other's professional judgments and respecting their clients' informed decisions about what they want to do and how they wish to be treated.

So the appropriate shared core values for the interprofessional teams were seen as fairness, seeking the best results, acting with integrity, and respecting autonomy. By re-arranging the sequence of these values we have the easily remembered mnemonic FAIR: **F**airness, **A**utonomy, **I**ntegrity and **R**esults – hence it is known as the FAIR framework.

Discussions with other professions have produced similar results. The basic objective of nursing, for instance, is to care, comfort, and promote cure for all patients regardless of their cultural affiliation, race, religion, sexual orientation, or level of disability. So again, implicit in this objective are the ethical concerns to seek the best results for patients and to be fair by not discriminating between them. Also as before, to gain the trust of patients nurses need to act with integrity towards them and to respect their informed wishes.

### **The values in the FAIR framework**

The concepts of fairness, autonomy, integrity, and 'best results' may be given different interpretation, but when used in the FAIR framework they are understood as follows:

'Fairness' is seen as: treating people alike unless there are differences between them which are relevant to the way we treat them, in which case we should treat them appropriately for their individual differences.

In other words, we should treat alike people who are alike in relevant ways and treat individuals differently who are different in relevant ways. So a mathematics teacher should have equal concern for the interests of all the children in her class and should treat them all alike, irrespective of their race, since race is irrelevant to the teaching of mathematics. However she should treat individual children differently if they have different mathematical abilities. It would be unfair not to do so.

By 'respecting autonomy' it is meant respecting a person's ability to make decisions about what they want to do and how they wish to be treated. We should therefore give people relevant information so they can make informed decisions about their situation, and we should build into professional and organisational procedures opportunities for them to make choices.

'Integrity' – professional integrity – requires us to integrate our actions with the standards of good practice, aims, and stated values of our organisation or profession, so we should genuinely strive to act in accordance with the expectations it raises.

'Seeking the best results' is seen as aiming to minimise harm and maximise benefits to everyone who can be affected by our actions. This involves using all our available resources as beneficially as possible.

Of course the demands of these four core values will sometimes conflict – for example, respecting someone's wishes may cause harm to others. When such conflicts occur we have to either prioritise some demands or seek a compromise between them. Should we, for instance, give priority to the person's wishes or to preventing harm? Or should we point out to the person that complying with her wishes would harm others, in the hope that she would then change her mind? The FAIR framework cannot make such decisions for us but it points out the ethical perspectives to consider when making a decision about particular circumstances.

In this way the framework respects the autonomy of individuals, since it does not produce rules they are expected to follow, merely general guidelines for them to interpret and apply as they think appropriate in their specific situations. It is their responsibility to carry out these considerations as carefully as they can in their situation.

The FAIR framework has been taken up as an aid to decision-making in several professions and institutions – including three universities. One uses the framework as the ethical terms of reference for its committees, and requires staff to bear it in mind when considering the acceptability of teaching and research programmes and when appraising the appropriateness of procedures in support services – e.g. the running of halls of residence, administrative procedures, etc.

Most recently – to my surprise – the framework has been incorporated in a Muslim de-radicalisation programme.

Some readers will doubtless think that the FAIR framework's approach to ethics is facile and naïve in the extreme. All I can say is that experience shows that busy professionals find the framework of practical value when they are setting up policies, appraising procedures, and making day-to-day decisions.

## Applying the FAIR framework to exemptions for religion-based requests

I will now show how the FAIR framework might help make judgements about exemptions from normal professional practice on religious grounds.<sup>31</sup>

### 1) ***A Christian nurse asks to be excused from caring for women undergoing termination of pregnancies. Because of her religious beliefs she regards the procedure as murder.***

In this situation there are several issues to consider from the perspective of the framework. The integrity of the nursing profession requires it to fulfil its obligation to provide support for terminations, since that is one of its expected services. It also has both an obligation to respect the autonomy of women requesting termination if medically approved and a potentially conflicting obligation to respect the request of the nurse not to participate in the procedure. There is also a potential conflict between seeking the best results for the patient and those for the nurse. Finally, unfairness to employees might arise if acceding to the nurse's request made her workload less than normal and the workload of other nurses more than normal.

By bearing in mind these considerations the employer decides it would be ethically appropriate to accede to the nurse's request, so long as nurses who do not object to terminations are available to take part in the procedures, and so long as the nurse who made the request can be fully employed in other ways. While the employer will strive to ensure other nurses are always available, if that is not possible the nurse may be required to provide support for a termination. In other words, her request will be acceded to so long as it does not prevent the profession from achieving its objectives in a way that accords with the values in the framework.

While this is the ethical view reached by applying the FAIR framework, the question remains as to whether it complies with the law. Professionals using the framework are constantly reminded that ethical judgements should not take precedence over legal compliance, and that it is their responsibility to be aware of relevant legal requirements. Interestingly discussion of ethical perspectives tends to increase professionals' awareness of their legal obligations.

### 2) ***A Muslim nurse working in a hospital asks to wear a veil to protect her modesty.***

The employer in this case decides to allow the nurse to wear the veil for a week and monitors how it affects her work. In the hospital the majority of patients are not Muslim and some of these – particularly the old, the confused, and children – are frightened by her appearance. Some cannot relate to her because they cannot see her face. Even though she treats them well it is clear that they are not comforted or reassured by her attention. The ethical importance of acceding to her wishes is seen as outweighed by the harm and lack of benefits that doing so would cause to patients. Moreover, since one of the objectives of nursing on a ward is to give care and comfort it is decided that wearing the veil interferes too much with this objective and damages the integrity of the service given to

patients. The conclusion reached is that her request should be rejected provided there are no countervailing legal considerations.

### 3) ***A Muslim female police officer asks to vary her uniform by wearing a hijab to cover her hair.***

In this case the authorities decide that though the hijab is not part of the normal uniform she should be allowed to wear it. They consider that it does not impair the effectiveness and integrity of her work and that they have no obligations arising from the FAIR framework.

### 4) ***A male police officer asks not to have to deal with gay members of the public. Because of his religious views he finds it difficult to treat them with the same respect as he should give to all members of the public – as he is required to do by police regulations.***

In this case the authorities consider that since it is impossible to arrange an officer's duties to ensure he does not encounter gay people, if they were to try to accede to his request he could not be a fully contributing officer and this would be unfair on his colleagues. Moreover, they take the view that the importance of delivering police services in a fair and non-discriminatory way – which they regard as vital to the integrity of the service – outweighs the importance of respecting the officer's views. Their ethical conclusion is that he should either comply with the regulation to treat gay people with respect or leave the service. The legal implications of adopting this approach have then to be considered.

In these examples the employers balance the ethical demands that:

- the profession and its members achieve their professional objectives with integrity;
- they respect the autonomy of their employees and the users of services;
- they seek the best results for all affected by their decision; and
- they do not discriminate unfairly against employees and service users.

You may not agree with the ethical conclusions reached in the cases outlined here, but they show an approach to making decisions about religion-based exemptions which is impartial between the religions. When the employers refuse a request from a particular religion they do not do so because they disagree with that religion, nor because they wish to promote the view of a rival religion or to take an anti-religious stance. The FAIR values are neither specific to any religion nor are they anti-religious – they are simply non-religious.

## FAIR values in religious traditions

In fact, though they are non-religious, the values of the FAIR framework are found in the thinking of all the major religions, as well as in secular traditions, and so are usually acceptable to most people working in the professions and public space.

However, in many of these traditions there are fundamentalist strands with followers who reject the value of respecting autonomy. There are, for instance, fundamentalist Christians, Muslim, and Marxists who consider that everyone should be obedient to a particular authority, whether it be God or a Marxist perspective. They think that individuals should not make independent judgments but should submit to the will of their authority. If other people do not submit they are living in error and so the fundamentalists are entitled to impose their authority on, and not respect the autonomy of, other people.

Such fundamentalists may encounter a conflict between their personal values and the values their profession or organisation requires them to adopt. This is so whether or not that profession or organisation is using the FAIR framework, since most codes of conduct are based on values close to those of the framework. When such conflicts occur the view from an ethical perspective is likely to be that the fundamentalists must either show respect for the autonomy and lifestyles of their patients, clients, students, and members of the public or must leave their profession or organisation. Whether or not this view accords with the law is, of course, something which must be found out before action is taken.

### **The FAIR framework and ethical theory**

I must point out – before I am the target of misplaced attacks from moral philosophers – that in putting forward the FAIR framework as a useful ethical tool I am NOT arguing for any *theoretical* ethical position. I am NOT saying that these four fundamental ethical concerns constitute a coherent theory of moral thinking. I am merely saying that taking these ethical concerns into consideration is appropriate for people – professionals and those with public roles – who work with all sections of culturally complex democratic societies, and that if they do this they will take into account the basic ethical concerns that the general public expects them to consider.

### **Conclusion**

In this paper I have put forward the case for using the FAIR framework as an ethical guide for people working in the professions and the public space.

I have also argued that it provides an ethically appropriate, impartial basis for making decisions when faith-based requests demand exemptions from normal practice, and I have given examples of how the framework is and might be applied in such cases.

I leave it to readers to judge how useful such a framework might be for them and I would welcome hearing their views.<sup>32</sup>

## **THE CONTRIBUTORS**

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**Richard Rowson** is a moral philosopher who helps professions and institutions develop ethics policies. He teaches and carries out research at the Institute for Child Centred Interprofessional Practice, Kingston University. His latest book is *Working Ethics: how to be fair in a culturally complex world* (London and Philadelphia, Jessica Kingsley Publishers, 2006).

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**Andrew Shorten** is a lecturer in political theory at the University of Limerick. His interests are in contemporary political theory, and especially in theories of liberalism, toleration, citizenship, and multiculturalism. His recent articles include 'Cultural Exemptions, Equality and Basic Interests' Ethnicities, 10/1 (2010) and 'Cultural Diversity and Civic Education: two versions of the fragmentation objection', Educational Philosophy and Theory, 42/1 (2010).

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## NOTES

### ALAN HAWORTH: INTRODUCTION

<sup>1</sup> See Plato, *The Crito*, in Hugh Tredennick, ed., (1954) The Last Days of Socrates, London: Penguin

<sup>2</sup> Plato 1954 p.90. In the dialogue, Socrates personifies the laws of Athens and puts these words into their mouth.

<sup>3</sup> Wolf, R.P. (1998),. p.vii

<sup>4</sup> Rawls, 1972, p.207

<sup>5</sup> Rawls, John 1993 .xxiv

<sup>6</sup> Milton, John (1644), *Areopagitica*, in Patrides,C.A.,ed;, (1974), *John Milton: Selected Prose*, London: Penguin; Locke, John (1689), *A Letter Concerning Toleration*, in David Wooton, ed., (1993) *John Locke: Political Writings*, London: Penguin

<sup>7</sup> Mill, (1859), *On Liberty*. For a discussion of the parallels between Milton's argument and Mill's, see my *Free Speech* (1998), especially chapter VII.

<sup>8</sup> I am grateful to Peter Cave and Richard Norman for their helpful comments on earlier versions of this introduction.

### JONATHAN SEGLOW: RELIGIOUS EXEMPTIONS

<sup>9</sup> Nussbaum, 2008

<sup>10</sup> Jones, 1994

### PETER CAVE: BURQAS & BIKINIS

<sup>11</sup> This paper uses material from my Do Llamas Fall in Love? 33 Perplexing Philosophy Puzzles – and is a radically reduced and revised version of my talk delivered at the Differential Treatment Workshop, University of Pavia, January 2011. I thank Alan Haworth, Richard Norman and Ardon Lyon for suggestions that have led to some improvement.

### ANDREW SHORTEN: WHY TOLERATION AND EQUALITY ARE NOT ENOUGH

<sup>12</sup> Barry, Brian (2001) Culture and Equality: An Egalitarian Critique of Multiculturalism (Cambridge, Polity Press) p. 39.

<sup>13</sup> One such argument can be found in Ceva, Emanuela (2011) 'Self-legislation, Respect, and the Reconciliation of Minority Claims', *Journal of Applied Philosophy*, 28/1, pp. 14-28.

<sup>14</sup> Parekh, Bhikhu (2000) Rethinking Multiculturalism: Cultural Diversity and Political Theory (Basingstoke, Macmillan) p. 241.

<sup>15</sup> I give an account of why the multicultural appeal to equality of opportunity cannot succeed in Shorten, Andrew 'Cultural Exemptions, Equality and Basic Interests' *Ethnicities*, (2010) 10/1, pp. 100-26.

<sup>16</sup> Many recent theories of recognition take their inspiration from Charles Taylor's landmark essay 'The Politics of Recognition', in Gutmann, Amy (ed.) (1994) Multiculturalism: Examining the Politics of Recognition (Princeton, Princeton University Press).

#### **DAVID POLLOCK: CONSCIENTIOUS OBJECTION AND ABSOLUTE RIGHT?**

<sup>17</sup> 'Women's access to lawful medical care: the problem of unregulated use of conscientious objection' - report from the Social, Health and Family Affairs Committee (rapporteur Ms Christine McCafferty) - Document 12347, 20 July 2010 - see <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12347.pdf>, accessed 28 October 2010.

<sup>18</sup> The right to conscientious objection in lawful medical care' - Resolution 1763 (2010) - see <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/ERES1763.htm>, accessed 28 October 2010.

<sup>19</sup> Memorandum on the PACE Report, Doc. 12347, 20 July 2010, . . . ' Grégor Puppinck and Kris J. Wenberg, (European Centre for Law and Justice, Strasbourg, September 2010) - see [http://www.eclj.org/pdf/ECLJ\\_MEMO\\_COUNCIL\\_OF\\_EUROPE\\_CONSCIENTIOUS\\_OBJECTION\\_McCafferty\\_EN\\_Puppinck.pdf](http://www.eclj.org/pdf/ECLJ_MEMO_COUNCIL_OF_EUROPE_CONSCIENTIOUS_OBJECTION_McCafferty_EN_Puppinck.pdf), accessed 28 October 2010

<sup>20</sup> Republic of Italy, Ministry of Health, Report of the Ministry of Health on the Performance of the Law Containing Rules for the Social Care of Maternity and Voluntary Interruption of Pregnancy: 2007-2008, quoted in the original PACE report.

<sup>21</sup> Address by the Mayor of Mechelen to the European Parliament Platform for Secularism in Politics, 17 March 2010. In this case the town authorities were so incensed that they opened their own abortion clinic - a recourse that will rarely be possible.

<sup>22</sup> Similar provisions were written into the recent timid Bill from Lord Joffe to allow assisted dying for the terminally ill - a Bill nevertheless massively opposed by religious interest

<sup>23</sup> For example, medical students may refuse to undertake parts of their training - say about contraception or abortion or about embryonic research; doctors may refuse to provide treatments developed with the use of foetal tissue or embryonic stem cells (this and much more were proposed for legal recognition in a Bill in the US state of Wisconsin a few years ago - see BMJ 2006; 332;294-297).

<sup>24</sup> Article 9 of the European Convention on Human Rights [http://www.osce.org/publications/odihr/2004/09/12361\\_142\\_en.pdf](http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf) - accessed 14 December 2010

<sup>26</sup> In English law the courts have ruled that remote (e.g., nursing or administrative) involvement in an abortion does not qualify under the Act as conscientious objection.

<sup>27</sup> Sometimes, as already indicated, the objective of the conscientious objector may be to bring about that the work cannot be done - but that is not conscientious objection, which is an individual matter, but political action, which may be a defiance of democratic decision-making about the availability of

services or about guarantees of non-discrimination

<sup>28</sup> Another special case, which I ignore here, involves Muslim and (especially) Jewish claims to the right to inflict cruelty on animals in fulfilment of religious injunctions about methods of slaughter.

#### **RICHARD ROWSON: APPLYING AN ETHICAL FRAMEWORK TO THE PROFESSIONS**

<sup>29</sup> Rowson (1990) An Introduction to Ethics for Nurses, (1990)

<sup>30</sup> Rowson (2006), Working Ethics – how to be fair in a culturally complex world,

<sup>31</sup> The case studies discussed here are taken from Rowson (2006)

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