



Protection of Conscience Project

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Freedom of Conscience

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Sean Murphy, Administrator
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Introduction

Thank you for inviting me to speak to you this evening. C.S. Lewis once observed that a lifetime of learning leaves a man a beginner in any subject, so I am here as a beginner who is still just beginning. The specific focus of the Protection of Conscience Project is freedom of conscience in health care. However, rather than address issues specific to health care I am going to speak more generally about freedom of conscience. I think a broader approach, a bigger picture, will be more useful for you as Rotarians. I'll begin with some notes about the history of freedom of conscience and religion.

1. Freedom of conscience

Our modern notion of freedom of religion began in Europe with the Reformation. Freedom of conscience was at the service of freedom of religion. It was the necessary (though not sufficient) condition for freedom of religion, since the decision to convert from one religion to another depended on the judgement of conscience. For the next four hundred years, when "freedom of conscience" appeared in law, it was - almost without exception - always in its Reformation context, directly linked to freedom of religion.

The proclamation of the *Universal Declaration of Human Rights* in 1948 marked the first time that freedom of conscience and freedom of religion were clearly distinguished in law.¹ Since that time, freedom of conscience has appeared in numerous national constitutions that used the *Declaration* as a template. But the *Declaration* had a limitation that has been inherited by subsequent constitutions and charters - including our own.

French philosopher Jacques Maritain was one of the driving forces behind the *Declaration*. He identified the limitation at the time. He explained that the *Declaration* was, in a sense, only an action plan. It was an agreement only about how people and states ought to behave. There was no agreement about why they should behave that way, and - important in the present context - no agreement about the origin, definition or nature of freedom of conscience.²

So, historically speaking, freedom of conscience is a relatively new idea in law. That may explain why so many seem to see freedom of expression, association and assembly as blessings to be celebrated, but freedom of conscience and religion as problems to be solved.

2. The importance of belief

On the other hand, we also hear that freedom of conscience and religion are problematic because conscience and religion depend upon “blind faith:” upon “mere belief,” not scientific knowledge. And it is true that belief is something less certain than knowledge. We say that we *know* something only if we see it directly or if it can be demonstrated with scientific or mathematical certainty.

Nonetheless, belief is essential to society in a way that scientific certainty is not. Human society exists wherever people live together, whether or not they are scientifically or technologically advanced. But society cannot exist without belief - without faith in other people. If people were unwilling to trust one another or accept the learning handed down from their forebears, human society could not function or progress. Every generation would have to start from scratch to re-invent the wheel or re-discover decimal numbers.

This is also true of science. No physicist, for example, would work through every experiment performed for the last hundred years in order to personally verify everything learned during that time. This does not mean that scientists need never verify what other scientists tell them. It does mean that they must accept far more on faith than they could possibly establish by experiment.

So the next time you hear someone pontificating about the stupidity of blind faith or the foolishness of mere belief, ask him if he *knows* his date of birth.

3. Everyone is a believer

On reflection, it is reasonable to believe that knowledgeable and trustworthy people can teach us things that we, ourselves, know little or nothing about. We believe what trustworthy people tell us unless we have some reason to doubt them. This is not “blind faith.”

However, people are also believers in a more profound sense. Rotarians, for example, believe in “the practical ethical principle that ‘One profits most who serves best.’”³ Your 4-way test demonstrates that you believe that truth exists and that we can know what is true, and that justice exists and we can know what is just.⁴ If you didn’t believe that, your 4-way test would be meaningless. I have no doubt that everyone here also believes in human dignity and equality.

But if you believe these things, it will not be because they are facts demonstrated by science. Science can prove many things, but the reality of justice and of human equality are not among them. That human dignity exists - or that it does not - or that human life is worthy of unconditional reverence - or merely conditional respect - these views are not the products of scientific enquiry. They rest upon faith: upon beliefs about human nature, the meaning and purpose of life, the nature of good and evil. The classic ethical question, “How ought I to live?” cannot be answered by any of the disciplines of natural science, though natural science can provide raw material needed for adequate answers.

The fact is that our lives, and the right ordering of our lives and of society, depends primarily upon reasonable belief. This is not a bad way to live. On the contrary: it is the only way we can live as human beings, and I think the principles of Rotary implicitly acknowledge that.

4. All beliefs influence public behaviour

All public behaviour - how one treats other people, how one treats animals, how one treats the

environment - is determined by what one believes. All beliefs influence public behaviour, and the history of Rotary demonstrates that Rotarians have always recognized this. Your public service is a product of your beliefs.

Many people willing to accept this nonetheless claim that *religious* beliefs should be an exception. Take, for example, Dr. James Robert Brown of the University of Toronto. In 2002, Dr. Brown offered advice to health care workers who don't want to be involved with things like abortion or contraception. These "scum" - that was his word - should "resign from medicine and find another job." His reasoning was very simple.

Religious beliefs are *highly emotional* - as is any belief that is affecting your behaviour in society. You have no right letting your *private* beliefs affect your *public* behaviour.⁵

Well, listen to Martin Luther King Junior's "I have a dream" speech.⁶ It is abundantly clear that the Reverend King was acting publicly upon his religious convictions. Moreover, he was, at times, "highly emotional." Should he have resigned from the civil rights movement and found another job?

Notice, also, what Dr. Brown was doing when he spoke to the reporter. He was doing exactly what he said that *others* should not do. He was acting publicly upon *his* private belief that *other* people should *not* be allowed to act publicly upon *theirs*. Even though Dr. Brown was not being "highly emotional," it is important to recognize that, in his world, Rotarians would be denied the freedom to act publicly upon Rotary's principles. Rotary is, after all, a private organization.

I suggest that Rotarians are in good company with the Reverend King, and that society has been and continues to be well-served by good people acting publicly on their beliefs, whether or not they are religious.

5. A secular state includes both religious and non-religious believers

The public square is populated by people with any number of moral viewpoints, some religious, some not: some tied to particular philosophical or ethical systems, some not: but all of them believers. Of course, this can generate disagreement and conflict, especially in societies marked by pluralism. Secularism is a currently popular movement that purports to create common "neutral" ground for public affairs by banishing what it calls private, personal, moral or religious beliefs from the public square.

By now I think what I have already said suggests some of the problems with this approach, but here I want to draw your attention to a rather neglected judgement of the Supreme Court of Canada, *Chamberlain v. Surrey School District No. 36*. All nine Supreme Court judges agreed with the finding by Mr. Justice Gonthier that "secular" does *not* mean "non-religious."

"[Nothing] in the *Charter*, political or democratic theory, or a proper understanding of pluralism," he wrote, "demands that atheistically based moral positions trump religiously based moral positions on matters of public policy," since "everyone has 'belief' or 'faith' in something, be it atheistic, agnostic or religious."

"[W]hy," he asked, "should the religiously informed conscience be placed at a public disadvantage or disqualification?"

I here quote from the judgement:

To do so would be to distort liberal principles in an illiberal fashion and would provide only a feeble notion of pluralism. The key is that people will disagree about important issues, and such disagreement, where it does not imperil community living, must be capable of being accommodated at the core of a modern pluralism.⁷

Thus, as a matter of law in Canada, the notion that a secular state or a secular public square is faith-free or must be purged of the expression of moral or religious belief is radically false.⁸ On the contrary: precisely because Canada is a secular state, it must make room for the full participation of all believers, religious or not, in public life.

Of course, on this point, I am preaching to the choir. The Rotary *Code of Policies* states, “Rotary is a secular organization whose membership includes persons of all faiths, religions, and beliefs.”⁹

Perhaps Mr. Justice Gonthier was a Rotarian.

6. The limitation of freedom of conscience

As I noted at the outset, there is a tendency to treat freedom of conscience and religion as problems to be solved, especially by activists whose political or social agendas are hampered by those with differing beliefs. Not infrequently, they legally attack and coerce their opponents, using “the violence of law” to suppress their viewpoints and force their compliance.¹⁰ Those pursuing this strategy typically chant two mantras provided by the Supreme Court of Canada in *Trinity Western University v. College of Teachers* :

[F]reedom of religion. . . is not absolute. It is inherently limited by the rights and freedoms of others.

and

The proper place to draw the line is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them.¹¹

The mantras are not new. Oliver Cromwell adopted precisely this approach to Catholicism in Ireland almost 400 years ago. Papists, he declared, were free to *believe* whatever they wished, for the thoughts “in their own breasts I cannot reach.” However, he would set the law on any Papists who *acted* upon their beliefs, by celebrating mass, for example.¹²

Thus, Oliver Cromwell and the Supreme Court of Canada agree that freedom to act on beliefs is less extensive than the freedom to hold them. Well, for that matter, so do those who support freedom of conscience and religion. The principle is not in dispute.

What is in dispute is where the line is to be drawn, and what is to be done with those who cross it. The Irish did not share Cromwell’s views about where the line should be drawn, nor is it clear that there is anything approaching a consensus in Canada on this point. So it is instructive to remember Oliver Cromwell and the Irish when judicial, social and political elites or activists begin to sound like the Lord Protector.

7. Distinctions and limits

Now, in fact, the distinction between belief and action is valid and can be useful, but it is inadequate. Further distinctions are required if we are to avoid imposing Cromwellian ‘solutions’ to a purported ‘problem’ of freedom of conscience and religion. One of them is the distinction between what I call perfective and preservative freedom of conscience.¹³

A traditional view holds that one who freely chooses a moral good - say, helping someone in need - *perfects* himself to the extent that what is chosen is truly good and not just apparently so. The decision to pursue an apparent good can be called an exercise of *perfective* freedom of conscience because it is potentially perfective of the human person.

On the other hand, one who refuses to participate in wrongdoing - refusing to steal, for example - *preserves* his own integrity, even though he does not achieve the kind of personal growth that might be possible by doing some positive good. Thus, refusing to do what seems to be wrong can be described as an exercise of *preservative* freedom of conscience.

It is generally agreed that the state may limit the exercise of freedom of conscience if the limitation serves the common good. But if the state can legitimately limit *perfective* freedom of conscience by preventing people from doing what they believe to be good, it does not follow that it is equally free to suppress *preservative* freedom of conscience by forcing them to do what they believe to be wrong.

8. A duty to do what is wrong?

Among other things, which I won’t go into tonight, such a policy would establish a duty to do what one believes to be wrong. Let me dwell on this for a moment.

The exercise of freedom of conscience is repeatedly characterized in some quarters as “the problem of conscientious objection,”¹⁴ which means, bluntly, the problem caused by people who refuse to do what they believe to be wrong. The underlying premise is that people really ought to do what they believe to be wrong, at least when they are told to do so by the state or by the leaders of their profession.

But how many of you would have become Rotarians if you were told that you must be willing to do what you believe to be wrong when ordered to do so by Rotary executive? Quite the contrary: your policies suggest to me that Rotarians believe that you should *not* do what you believe to be wrong, and that *refusing* to do what you believe to be wrong is the norm. It is *wrongdoing* that needs special justification or excuse, not *refusing* to do wrong.

That the state can legitimately compel people to do what they believe to be wrong and punish them if they refuse is a dangerous idea that turns foundational ethical principles upside down. The inversion is worrisome, since “a duty to do what is wrong” is being advanced by some of those who support the “war on terror.” They argue that there is, indeed, a duty to do what is wrong, and that this includes a duty to kill non-combatants and to torture terrorist suspects.¹⁵

What about killing patients?

In 2011 an “expert panel” convened by the Royal Society of Canada recommended legalization of assisted suicide and euthanasia.¹⁶ The experts stated that if “religious or moral conscience” prevents

health care professionals from providing euthanasia or assisted suicide, “they are duty bound to refer their patients to a health care professional who will.”¹⁷

Notice; the expert panel was not content simply to *encourage and allow* willing health care professionals to kill patients. They insisted that health care professionals *must* kill patients, or *must* help patients find someone willing to kill them - even if they believe it to be wrong, even if they believe it to be murder.

Now, killing is not surprising; even murder is not surprising. People kill other people every day, and people murder other people every day. There have been murders in Powell River. And I am not arguing here against euthanasia or assisted suicide.

But to hold that the state or a profession can, in justice, compel an unwilling soul to commit what he sees as murder, or even to facilitate what he sees as murder, and justly punish him for refusing to do so - that is extraordinary, and extraordinarily dangerous.

For if the state or a profession can require me to kill someone else - even if I am convinced that doing so is murder - what can it *not* require?

Conclusion

In closing, I suggest that the robust defence and promotion of freedom of conscience is eminently justified to protect all of us from what may ultimately prove to be a particularly far-reaching and even deadly form of authoritarianism. And if that means that prominent people or those in positions of power and influence will come to see freedom of conscience as a problem - so be it.

Thank you.

Notes

1. *The Universal Declaration of Human Rights*, Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
(<http://www.un.org/en/documents/udhr/>) Accessed 2009-12-11
2. Maritain, Jacques, *Man and the State*. Chicago: University of Chicago Press, 1951, p. 77
3. Rotary Code of Policies (May, 2014) 8.040.1. 1923 Statement on Community Service (1)
(<https://www.rotary.org/myrotary/en/document/622>) Accessed 2014-03-26
4. Rotary Code of Policies (May, 2014) 33.070 Reproduction of the 4-way Test.
(<https://www.rotary.org/myrotary/en/document/622>) Accessed 2014-03-26
5. Canning C. “Doctor's faith under scrutiny:Barrie physician won't offer the pill, could lose his licence.” *The Barrie Examiner*, February 21, 2002
(<http://www.consciencelaws.org/repression/repression017-001.aspx>)

6. Martin Luther King, I have a dream. 28 August, 1963
http://www.youtube.com/watch?v=HRIF4_WzU1w) Accessed 2014-03-27
 7. *Chamberlain v. Surrey School District No. 36* [2002] 4 S.C.R. 710 (SCC), para. 137
(<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2030/index.do?r=AAAAAQALIm1hbmRhdG9yeSIAAAAAAAB>) Accessed 2014-02-19. Dr. Benson adds: “Madam Justice McLachlin, who wrote the decision of the majority, accepted the reasoning of Mr. Justice Gonthier on this point thus making his the reasoning of all nine judges in relation to the interpretation of ‘secular.’) Benson I.T., *Seeing Through the Secular Illusion* (July 29, 2013). NGTT Deel 54 Supplementum 4, 2013. Available at SSRN: <http://ssrn.com/abstract=2304313> (Accessed 2014-02-18)
 8. Benson, I.T., *Seeing Through the Secular Illusion* (July 29, 2013). NGTT Deel 54 Supplementum 4, 2013. Available at SSRN: <http://ssrn.com/abstract=2304313> (Accessed 2014-02-18)
 9. Rotary Code of Policies (May, 2014) 26.050
(<https://www.rotary.org/myrotary/en/document/622>) Accessed 2014-03-26
 10. Benson IT. The attack on Western religions by Western law: Re-framing pluralism, liberalism and diversity. *IJRF* Vol. 6:1/2 2013 (111-125)
 11. *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31. *Approving P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141
(<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1867/index.do>) Accessed 2014-03-11.
 12. “As for the People [of Ireland], what thoughts they have in matters of Religion in their own breasts I cannot reach; but shall think it my duty, if they walk honestly and peaceably, Not to cause them in the least to suffer for the same. . . .”, but “. . . I shall not, where I have the power, and the Lord is pleased to bless me, suffer the exercise of the Mass . . . nor . . . suffer you that are Papists, where I can find you seducing the People, or by any overt act violating the Laws established; but if you come into my hands, I shall cause to be inflicted the punishments appointed by the Laws.” Cromwell, Oliver, “Declaration of the Lord Lieutenant of Ireland.” (January, 1649) Carlyle, Thomas, *Oliver Cromwell’s Letters and Speeches, with elucidations*. Boston: Estes and Lauriat, 1886, Vol. I, Part 5, p. 18.
 13. Murphy S, Genuis S.J. “Freedom of Conscience in Health Care: Distinctions and Limits.” *J Bioeth Inq.* 2013 Oct; 10(3): 347-54
 14. Cannold L. “The questionable ethics of unregulated conscientious refusal.” *ABC Religion and Ethics*, 25 March, 2011. (<http://www.abc.net.au/religion/articles/2011/03/25/3174200.htm>)” Accessed 2013-08-11
- Human Rights Council, Twentieth session, Agenda items 2 and 3: *Annual Report of the Office of the United Nations High Commissioner for Human Rights- Technical guidance on the*

application of a human rightsbased approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (2 July, 20012) para. 61, 30 (http://www2.ohchr.org/english/issues/women/docs/A.HRC.21.22_en.pdf) Accessed 2013-08-11

O'Rourke A, De Crespigny L, and Pyman A. "Abortion and Conscientious Objection: The New Battleground" (July 10, 2012). *Monash Law Review* (2012) Vol 38(3): 87-119. (<http://ssrn.com/abstract=2262139>) Accessed 2013-08-18

Finer L., Fine JB., "Abortion Law Around the World: Progress and Pushback." *American Journal of Public Health*, Apr 2013, Vol. 103 Issue 4, p. 585. (<http://connection.ebscohost.com/c/articles/85594202/abortion-law-around-world-progress-pushback>) Accessed 2013-08-18

Human Rights Council, 23rd Session - June 3, 2013. Agenda Item 3: Presentation of Reports by the Special Rapporteur on Violence against Women. *Oral Statement: Center for Reproductive Rights*. (http://issuu.com/acpdcanada/docs/statement_by_crr-sri_id_with_sr_on) Accessed 20-13-08-11

15. Gardner J. *Complicity and Causality*, 1 Crim. Law & Phil. 127, 129 (2007). Cited in Haque, A.A. "Torture, Terror, and the Inversion of Moral Principle." *New Criminal Law Review*, Vol. 10, No. 4, pp. 613-657, 2007; Workshop: Criminal Law, Terrorism, and the State of Emergency, May 2007. (<http://ssrn.com/abstract=958059>) Accessed 2014-02-19

16. Schuklenk U, van Delden J.J.M, Downie J, McLean S, Upshur R, Weinstock D. *Report of the Royal Society of Canada Expert Panel on End-of-Life Decision Making* (November, 2011) p. 62 (http://rsc-src.ca/sites/default/files/pdf/RSCEndofLifeReport2011_EN_Formatted_FINAL.pdf) Accessed 2014-02-23

17. Schuklenk U, van Delden J.J.M, Downie J, McLean S, Upshur R, Weinstock D. *Report of the Royal Society of Canada Expert Panel on End-of-Life Decision Making* (November, 2011) p. 69, 101 (http://rsc-src.ca/sites/default/files/pdf/RSCEndofLifeReport2011_EN_Formatted_FINAL.pdf) Accessed 2014-02-23