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Taxation, Conscientious Objection and Religious Freedom

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"There is no Church teaching that mandates the best political course for making our belief everyone's rule…"

Mario Cuomo 1984. [1]

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"There is no Church teaching that mandates the best political course for making our belief everyone's rule…" **Mario Cuomo 1984.** [2]

Is forcing Catholic opponents of abortion to pay taxes for abortion coverage in health plans the same as forcing pacifists to fight? The answer, we'll see is, is 'no', because of the nature of abortion, taxation, and democratic government. We will then examine the implications of these claims for the role of religious bodies in the provision of public services.

War, Abortion and Conscience

Pacifism, as generally understood, is the moral belief that no war is morally justifiable.[3] **Hence, the rationale for allowing pacifists to serve their country some way other than fighting reflects the fact that pacifists will often be willing and able to help their country in wartime, as long as they need not fight. Instead of throwing pacifists into prison and treating them as cowards or traitors, it is fairer and more sensible to allow**

them to serve in work which is morally urgent, such as care of the sick and wounded, but which does not directly contribute to war. While pacifists often defend their beliefs publicly, they generally accept that their opposition to war and violence gives them no special dispensation to broadcast anti-war beliefs, or to avoid taxation.[4]

Opponents of abortion are a mixed bag, in that the status is largely a *political* one, and many people who personally believe that all or most abortions are morally wrong may not identify themselves as antiabortion. They may think *other* moral wrongs are more urgent, for example, or they may simply not support – and may even oppose – much of the politics and morality of the 'antiabortion movement'.

Not all those who object morally to abortion believe that it is murder – some moral objections to abortion concern the *attitudes* of society, or of individuals, to sex, reproduction, the status of women – or, indeed, to the way abortion might lead us to consider the old, the weak, the disabled, the young. Moreover, people who believe that abortion is murder sometimes accept that theirs is not the last word on morality, and that it would be as wrong to turn their views of abortion into law, *given the nature of the abortion decision*, as it would be to mandate their particular style of worship or belief, *given the nature of religious belief and worship*. [5] While Catholic bishops claim to speak on behalf of all those who object morally to abortion, they may represent at best a small fraction of those who believe abortion to be morally wrong, or even, murder.

Moral opposition to abortion, therefore, implies no duty to deny the legitimacy of laws allowing abortion, or to seek to overturn, or to exempt oneself from, taxes which help to secure safe abortions for all women who want them. This is a point that Mario Cuomo made repeatedly and powerfully. [6] We should therefore be wary of confusing the political claims of *some* people opposed to abortion with what is *entailed* by the belief that abortion is morally wrong, even murder.

So much for the preliminaries about pacifism and opposition to abortion. What does this imply about the ethics of tax exemptions and other religiously based political objections to Obama's healthcare reforms?

Ethics and Tax Exemptions

First, the belief that abortion is murder does not itself entail that legalised abortion is unjust. People who oppose abortion can accept that, as with religious differences, informed, upstanding and conscientious people can reach different conclusions about the morality of abortion, and that the consequences of these differences for people's lives preclude the use of state power to forbid or mandate abortion.[7]

Second, there is nothing inherently unjust in general taxation to secure medically safe abortions, given its importance to fair access to an important legal right, and its implications for the freedom, equality, life and health of women.[8] Not all conscientious objections to abortion are consistent with democratic principles, or with the moral claims of women and the conscientious dimensions of the decision to terminate, rather than continue, a pregnancy. Those that are recognise that democratic principles mean that people can be legitimately required to accept policies that they believe immoral because one party rather than another won an election, and because democratic freedoms and equality require respect for reasonable differences of conscience. Hence, those who believe that the Catholic Church's position on contraception and abortion is responsible for much unnecessary suffering and millions of wrongful deaths throughout the world must nonetheless pay taxes to protect its representatives, and must accept that their ideas can legitimately shape government aid in some circumstances. [9]

Morally and politically, then, opposition to taxes that fund abortions are not the same as pacifist objections to military service. Though both are concerned with the ethics of life and death, the rationale for tolerating conscientious objection in war reflects the idea that pacifism is incompatible with military service. Likewise, the belief that abortion is murder is incompatible with carrying out, or seeking out, an abortion. But there is no necessary incompatibility between the belief that abortion is murder and the willingness to pay general taxes which fund it, or to obey laws that allow it. This is not simply because the appropriate grounds of coercive legislation and the appropriate grounds of personal morality are not identical, but because acting as a killer, oneself, is very different from paying taxes which may, but need not, result in unjust killings. [10] Those who believe

that *all* abortions and *all* funding for abortion are unjust and unworthy of obedience, then, need to explain how their demands for special treatment are consistent with what John Rawls refers to as 'the democratic conception of society as a system of cooperation among equal persons'. (Rawls 1971, section 58)

Still, the fact that the state has no *duty* to exempt people from taxes for abortion on conscientious grounds does not mean that it would be wrong to *allow* such exemptions, were these consistent with the rights of others. The point applies also to those pacifists who have conscientious objections to paying taxes and to others with grave conscientious objections to particular government policies, and the taxes that sustain them.[11] But that, of course, is the problem: for there is almost certainly no practicable way to craft such exemptions that is consistent with democratic rights and the demands of constitutional government, given that the existence of some, even many, conscientious objections to government policies are a predictable consequence of reasonable pluralism (Cohen 1993, 281-5), and consistent with legitimate government and just policies. The point, however, is that if it *were* possible to craft exemptions which treated citizens as equal, there would be no *democratic* objection to doing so, because democrats can wish to avoid forcing the conscience even of those whose beliefs are undemocratic, and who they believe to be unreasonable and unjust.

Commented [A1]: You suggested that there is a typo and the final clause should read 'where thèse are consistent..'. But there is no typo. What is at issue is a subjunctive. But if you prefer to have 'where these are' that is fine by me.

Religious Organisations and the Provision of Public Services

This argument has implications for the subsidy of religious institutions, not just for the taxation of individuals. If the parallel to pacifism provides no justification for exemptions from taxation, it illustrates the difficulty of state policies that require religious bodies to abide by religiously unacceptable norms simply because they are providing a public service. All else equal, it seems to me, the state should not require Catholic adoption agencies to place children with homosexual couples simply because they are willing to serve non-Catholic couples looking to adopt. All else equal, I believe, the state should not require Catholic hospitals to provide abortions or contraception, even if it serves a population that is not exclusively Catholic.

Why? Here, unlike the tax case, we have a direct parallel to the situation of the pacifist faced with the challenge of military service: namely, that what is being asked of such religious bodies is their direct, personal and active participation in a practice that they believe to be morally forbidden. All else equal, we should not ask people to behave in such ways, whether their moral views are religiously based or not. So all else equal, we should not require religious individuals or groups to behave in ways that they believe to be gravely wrong, simply because they are willing to offer important services to those who do not share their faith.

But as we all know, all things are rarely equal. In particular, I would argue, appropriate sensitivity to religious feelings depends very much on the *importance* of the service which is at issue, and on the *alternative*s which are available. It is one thing to have many adoption services working in an area, one of which one happens to be Catholic and morally opposed to homosexuality, single parenting, divorce and the rest. It is quite another to have the main adoption service in an area operating with what, for non-believers, can only be described as set of morally unjustified beliefs that, in other contexts, would constitute illegal discrimination. [12]

Likewise, it is one thing to have such discrimination in the charitable distribution of sweets and other non-essential goods, and another to have it operate in the provision of goods which unquestionably constitute something of enormous importance to most people: the chance to raise children as one's own, with the opportunities that this involves for serving, and sharing one's life, with others. Even if the interests of children provide the main considerations of justice in adoption, the interests of potential parents also have a role to play in determining what justice requires. So unlike the sweet case, or the multiple adoption agency case, the state does have a *reason* – indeed, a *duty* – to ensure that parents who wish to adopt are not subject to discrimination that would otherwise be illegal.

This means one of two things: either the state is entitled to remove any religious exemptions from antidiscrimination laws in cases where religious bodies are the dominant providers of an important public service, or the state must create and support

competition to that religious provider – perhaps using public money that had gone to that religious provider in order to do so. No state has a duty to support the charitable activities of religious groups in preference to other groups, and no state has a duty to support the charitable activities of groups – whether religious or not – which engage in what would otherwise count as illegal discrimination.

Indeed, there are good reasons to wonder how far states are *entitled* to use public money to facilitate discriminatory, though charitable, activities – at least on democratic principles. After all, there is no reason to suppose that the groups which are currently best placed to provide charitable services are in that position solely on merit. That would be to ignore the importance of past activities which may well have included the suppression of competition and the intimidation of critics, as well as a willingness to benefit from the unjust exclusion of women and racial minorities.

For example, Garrow's study of the battles over the legalisation of contraception and abortion in New England paints a chilling picture of the willingness and ability of the Catholic Church to threaten and intimidate its members, in order to maintain its hold on public life (Garrow, 1998, ch.2 2) [13] So there is no particular reason why a state must continue to support the use of charitable groups in order to provide important public services. As no religion has a claim to provide public services to others, despite the claims of the Catholic Archbishop of New York (Dolan, 2012),[14] there is no threat to freedom of religion in requiring major providers of public services to abide by generally applicable laws, or to risk losing state funding for *public service provision*.

What is true in the case of adoption agencies is true also in the case of hospitals. Where Catholic hospitals are merely one source of medical care amongst others, there would be no particular justification for requiring them to provide abortion services and counselling, since those in need of such services could readily seek them elsewhere. However, as providers of medical care, it would still be incumbent on them to tell those for whom contraception or abortion would be medically indicated that this is the case, and to inform patients of their legal rights to contraception and abortion, and of where they might find such services.[15] Conscience, in other words, is no justification for failing to

provide adequate medical care, or to mislead people about legal rights and opportunities which are relevant to their ability to make informed decisions about their health. But just as there is no reason why every hospital should provide the full panoply of medical services to the public, simply because it provides some or many of them, so there seems no reason why a religious hospital should be required to provide abortion and contraceptive services if other medical facilities are willing and able to do so.

However, as with the adoption case so here: where religious hospitals are the main source of medical care in their area, or the main source of care for those lacking expensive insurance, then the state *has* a compelling reason to ensure that the services cover contraception and adoption. If a religious hospital is unwilling to fulfil those needs, there is no reason why the state should provide subsidies to it, or why it should not actively promote alternative providers of medical care in order to diminish the importance of the discriminatory provisions provided by the religious hospital. Indeed, the state would have a *duty* to diminish the importance of the religious hospital, relative to the medical needs of the local population, in order to meet its *own* obligations of non-discriminatory care to its citizens.

No one has a religious duty to be the main provider of important public services. So there can be no religious-based objections to the state requiring religious bodies who are in a privileged position, relative to other public service providers, to provide non-discriminatory service, or to accept the demotion of their importance in favour of those willing and able to do so. As the relative capacity of different religious groups, different charitable groups, or different providers of public services has been shaped by undemocratic forms of power and privilege, democratic principles do not require us to treat existing levels of power and capacity as given, or to maintain existing levels of state support and funding. To believe otherwise is to eviscerate democratic politics, and to require us to ratify, rather than overturn, injustices inherited from the past.

Conclusion

In this article I have argued that opponents of abortion are not like pacifists because they seek to claim protections for their conscience while organising politically to deny those protections to others. Nor can moral objections to taxation be compared to moral objections to fighting. Finally, I have argued, while democratic principles tell against forcing small religious organisations to abide by antidiscrimination laws that violate their beliefs, the state has a *duty* to ensure that the powerful serve the public fairly.

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[1] The quotation comes from 'Religious Belief and Public Morality: A Catholic Governor's Perspective', Cuomo's John A O'Brian Lecture at the University of Notre Dame's Department of Theology'. Available online at http://archives.nd.edu/research/texts/cuomo.htm

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[3] 'Generally pacifism is thought to be a principled rejection of war and killing', (Fiala 2010) at http://plato.stanford.edu/entries/pacifism .

[4] But see http://en.wikipedia.org/wiki/Tax_resistance and, in particular, http://www.warresisters.org/node/328 and Pennock 1998, available online at https://www.msu.edu/~pennock5/research/papers/Pennock*Death_and_Taxes.pdf

[5] What is at issue is not just the protection of reasonable moral disagreement, but *the protection of important life decisions* on which reasonable people can profoundly disagree.

[6] As Cuomo put it, in his lecture at Notre Dame, 'Must I, having heard the Pope renew the Church's ban on birth control devices, veto the funding of contraceptive programs for non-Catholics or dissenting Catholics in my State? I accept the Church's teaching on abortion. Must I insist you do? By law? By denying you Medicaid funding? By a constitutional amendment? If so, which one?' Cuomo, 1984.

[7] See Lever 1997, ch. 4 for the importance of looking at arguments against abortion in the context of women's interests in childbearing, and vice-versa. available at www.alever.net

[8] Cuomo, again, is enlightening on these questions: cutting off Medicaid funding for legal abortion 'would be nothing more than an attempt to do indirectly what the law says cannot be done directly; worse, it would do it in a way that would burden only the already disadvantaged….Apart from the unevenness, there is a more basic question. Medicaid is designed to deal with health and medical needs. But the arguments for the cut-off of Medicaid abortion funds are not related to those needs. They are moral arguments. If we assume health and medical needs exist, our personal view of morality ought not to be considered a relevant basis for discrimination'. Cuomo 1984

[9] http://www.nytimes.com/2009/01/24/us/politics/24obama.html?_r=0 but on the reasons why this policy effectively excludes rape victims from abortion treatment see http://www.theatlantic.com/international/archive/2012/08/foreign-policy-akin-style-how-the-us-denies-abortions-to-women-raped-in-war/261382/ and on its consequences for access to information on abortion see http://www.ipas.org/~/media/Files/Not%20Yet%20Rain%20Factsheets/NYR%20Helms.pdf.ashx

[10] http://www.huffingtonpost.com/2012/02/13/contraception-coverage-catholic-bishops-birth-control-pacifists_n_1274392.html Karl Meyer compares the very large amount of federal tax revenue which goes on war-related causes with the tiny amount which goes to abortion and says, 'When it gets down to some kind of miniscule level, like one-thousandth of a percentage of federal income tax revenue going to something you disagree with, you might as well stop doing anything," Meyer said. "You can't go to a store and buy something without indirectly contributing to something bad."

[11] While Pennock 1998 believes that general pacifism, and the refusal to pay all war-related taxes could form part of a Rawlsian overlapping consensus, he notes that Rawls himself appears to have thought – rightly, in my view – that general pacifism is a sectarian moral position: an 'unworldly view bound to remain a sectarian doctrine', Rawls 1971, section 58.

[12]http://www.guardian.co.uk/society/2011/apr/26/catholic-adoption-agency-gay-lesbian and http://www.pinknews.co.uk/2012/09/13/uk-catholic-adoption-charity-resumes-anti-gay-legal-fight/ .

[13] We should also remember, as Cuomo said, that 'Catholics…support the right to abortion in equal proportion to the rest of the population…collectively we Catholics apparently believe…and perhaps act…little differently from those who don't share our commitment'. Cuomo, 1984)

[14] Dolan, 2012 available online at http://online.wsj.com/article/SB10001424052970203718504577178833194483196.html Dolan is both the Catholic Archbishop of New York and the President of the US Conference of Catholic Bishops. He appears unwilling or unable to accept that there is no violation of religious freedom when the state asks voluntary agencies, including religious bodies, to abide by generally applicable laws in their treatment of non-members of their association, *even when offered religious exemptions from those laws in the treatment of members of those associations themselves.*

[15] Contrast the Supreme Court decision in *Rust v. Sullivan,* 500 U.S. 173 (1991) in which, over the bitter dissent of four of the Justices, the Majority held that the state could prohibit all medical facilities using State land or resources, from telling women that they have a right to abortion, or counselling them to seek an abortion.

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