

Religious freedom

[Philosophy](#), [Freedom](#)



Religious freedom occupies a special place in contemporary political discussions. It should not. This is not because religious freedom is not important but because it is no more and no less important than other forms of freedom of conscience, belief and practice. 2 Many believers point out that faith plays a unique role in their lives. That is often true. Those atheists who dismiss belief in God as no more credible than belief in Santa Claus or in fairies miss the point.

Religion is more than an intellectual exercise or a matter of logic; it often has, for believers, a vital social and spiritual function. But acknowledging the vital and unique role of faith in the lives of believers does not commit us to providing it with a privileged position in society. 3 The reason that religious freedom has a special place in contemporary political debate is historical. Ideas of tolerance and of freedom of expression developed in Europe from the seventeenth century onwards primarily within a religious framework.

Questions of toleration and expression were at heart questions of how, and how far, the state, and the established church, should accommodate religious dissent. We can see this in the arguments of John Locke, whose Letter Concerning Toleration is a key text in the development of modern liberal ideas about freedom of expression and worship. Locke's starting point was the insistence that the duty of every individual was to seek his own salvation. The means to do so were his religious beliefs and the ability openly to worship.

The power of the political authorities could not rightfully extend over either sphere. Written at a time when Europe was rent by tempestuous religious

strife, and when intolerance and persecution were the norm, Locke's was a powerful argument for religious freedom. It was also an exceedingly narrow conception of liberty. Locke's toleration was rooted primarily in the desire to extend freedom of worship and theological discussion to nonconformist congregations and placed little emphasis on wider issues of freedom of thought or conscience.

Indeed Locke was emphatic in refusing to extend toleration to many other groups. Neither Catholics nor atheists were, in Locke's view, deserving of tolerance, the former because they gave their allegiance to a 'foreign prince', the latter because their opinions were 'contrary to human society' and 'to the preservation of civil society'.⁴ Locke's near contemporary, the Dutch philosopher Baruch Spinoza, whose views influenced the Radical Enlightenment, proposed a different concept of tolerance.

Spinoza's starting point, was not, as it was for Locke, the salvation of one's soul, or the coexistence of churches, but the enhancement of freedom, and the quest for individual liberty and freedom of expression. All attempts to curb free expression, he insisted, not only curtailed legitimate freedom but was futile. 'No man... can give up his freedom to judge and think as he pleases, and everyone is by absolute natural right master of his own thoughts', Spinoza wrote, so 'it follows that utter failure will attend any attempt in a state to force men to speak only as prescribed by the sovereign despite their different and opposing opinion.

'The right of the sovereign, both in the religious and secular spheres', he concluded, 'should be restricted to men's actions, with everyone being allowed to think what he wishes and say what he thinks'. It is a more

inclusive vision of freedom than Locke's, and a more useful starting point – and conclusion – when thinking about contemporary freedom. 5 Modern ideas of freedom and tolerance are usually seen, particularly in the West, as having derived from Locke. In fact they draw upon both Locke and Spinoza. The US First Amendment owes much to Spinoza's conception of freedom.

Even in Europe, where freedom of expression is construed in narrower terms, Spinoza's influence remains important, if unacknowledged. However, despite the broadening of the conception of liberty and tolerance, the idea that freedom of religion is a special freedom, an idea that derives primarily from Locke, remains entrenched. 6 Today, we live in very different world from that in which concepts of religious freedom first developed. Religion is no longer the crucible within which political and intellectual debates take place.

Questions of freedom and tolerance are not about how the dominant religious establishment should respond to dissenting religious views, but about the degree to which society should tolerate, and the law permit, speech and activity that might be offensive, hateful, harmful to individuals or undermine national security. We can now see more clearly that religious freedom is not a special kind of liberty but one of a broader set of freedoms. If we were think about religious freedom from first principles today, it would not have a special place compared to other forms of freedom of conscience, belief, assembly or action.

7 Whatever one's beliefs, secular or religious, there should be complete freedom to express them, short of inciting violence or other forms of physical harm to others. Whatever one's beliefs, secular or religious, there should be freedom to assemble to promote them. And whatever one's beliefs, secular

or religious, there should be freedom to act upon those beliefs, so long as in so doing one neither physically harms another individual without their consent, nor transgresses that individual's rights in the public sphere.

These should be the fundamental principles by which we judge the permissibility of any belief or act, whether religious or secular. 8 Many on both sides of the debate about religious freedom continue to treat religion as special. Many atheists want to deny religion the rights accorded to others forms of belief. Many religious believers want to retain privileges for religion. Both are wrong. 9 Some atheists argue that secularism requires that religion be kept out of the public sphere.

It is an argument that cannot be right any more than the claim that the views of racists, conservatives, communists or gay activists must be kept out of the public sphere. A secular space cannot be one in which religion is not permitted to be present. It is, rather, a space in which one religion is granted no advantage over another, nor over any secular philosophy or ideology. It must also be one, however, in which no religion is disadvantaged with respect to another religion, or with respect to secular philosophies and ideologies. 10

Many atheists demand also that religious symbols be banned in the public sphere. Many states and corporations have imposed such bans, from the refusal to allow the wearing of the cross in the workplace to the outlawing of the burqa in public places. Such bans are infringements of the basic freedoms set out in #7. An employer has every right to ban kinds of clothing that might be, say, dangerous in a particular workplace. He or she also has the right, in certain circumstances, and within limits, to insist that employees

wear a particular uniform, or to desist from wearing something inappropriate.

But there should be no general ban on particular forms of clothing or adornment, and certainly no general ban on specifically religious clothing or symbols. ¹¹ The real dilemmas with religious freedom arise out of questions not of beliefs or symbols but of practices. Many beliefs, religious and secular, imply particular practices. The belief that homosexuality is a sin requires that one refrain from gay relationships or gay sex. The belief that life begins at conception requires that one does not have an abortion or help anyone else to do so.

And so on. As a society we should tolerate as far as is possible the desire of people to live according to their conscience. But that toleration ends when someone acting upon his or her conscience causes harm to another without consent, or infringes another's genuine rights. ¹² It is not just in the case of religion that there is a strong relationship between belief and practice. Racists, communists, Greens, New Age mystics – all could claim that their beliefs enforce upon them certain actions or practices.

We do not, however, allow racists, communists, Greens, or New Age mystics to act upon their beliefs if in so doing they harm others or deny them their legitimate rights. A racist pub owner cannot bar black people from his pub, however deep-set his beliefs. It would be a criminal offence for Greens to destroy a farmer's field of legally grown GM crops, however strongly they might feel about such agriculture. There is a line, in other words, that cannot be crossed even if conscience requires one to. That line should be in the same place for religious believers as for non-believers.

Society should accommodate as far as is possible any action genuinely required by conscience, but not where such acts harms another or infringes their rights. Of course, a religious believer might claim that he or she faces a different kind of compulsion to that felt by a racist, a communist or anyone else attached to secular beliefs. He or she may feel commanded by God to act in a particular way. It may well be true that a believer feels a different kind of compulsion. But the reason for which someone feels compelled to act in a particular way is not necessarily relevant to whether or not such acts should be legally permitted. 13

The fact that acts of conscience may sometimes have to be curbed does not mean that in these cases there is a ' conflict of rights'. Just as there is a right to free speech but no right not to be offended, so there is a right not to be harmed and to equal treatment, but no right to harm or to discriminate. This is essential to protect religious freedom. An atheist bar-owner should have no right, whatever his conscience may say, to bar people of faith, any more than a Christian bar-owner has the right to bar gays. Such curbs on acts of conscience simply mean that we live not alone on a desert island but together in a crowded society.

14 How would the argument so far throw light on recent conflicts over matters of religious freedom? Should religions have the right to prevent the publication of cartoons or books or plays that are deemed offensive? No. Religious freedom requires that people of faith be allowed to speak or act in ways that might offend others. It does not that require others do not cause offence or promote blasphemy. Is it legitimate for a state to ban the burqa? It is not. Wearing a burqa neither harms, nor discriminates against, others.

Of course, one might well believe that the burqa harms the woman who wears it and is an expression of discrimination against women. A liberal society accepts, however, that individuals should be free to make choices that may not be in their interest and that, to liberal eyes, demean them. This applies even to particularly distasteful expressions of degradation, such as the wearing of the burqa. If women are forced to wear the burqa against their will, the law should protect them against that coercion. It should not, however, impose a ban on those who have chosen to wear the burqa.

Some suggest that burqas cause harm because they may pose security problems, or be incompatible with the needs of particular jobs. Such practical problems can usually be solved on a case-by-case basis without the need for draconian legislation. Should an employee be allowed to wear a cross at work? In almost every case the answer should be 'Yes'. There may be a pragmatic case for, say, banning loose chains that in certain workplaces may be dangerous; but it is difficult to see what right an employer has simply to ban the wearing of a cross as a religious symbol.

Should gay marriage be legalized? Yes. This is a matter both of secular equality and of religious freedom. On the one hand, the state should not exclude gays from the civil institution of marriage simply because of religious hostility. On the other, some faith groups wish to bless gay marriage. For the state to deny them that right because other faith groups disagree would be to undermine religious freedom. What the state should not do is to force religious bodies to accept or consecrate gay marriage. Should a Catholic adoption agency be allowed to turn away gay prospective parents?

If the agency receives public funding, or performs a service on behalf of the state, then the answer is ‘ No’. It would then be legitimate for the state to insist that the agency does not discriminate, despite Catholic views on homosexuality. If, however, it is a private agency – if it is simply performing a service for Catholic parents who subscribe to its views on homosexuality – then the answer should be ‘ Yes’. Should Christian bed and breakfast owners be allowed to turn away gays? Such owners, even if they are turning their own home into a b’n’b, are providing a service from which a gay couple could reasonably expect equal treatment.

The answer, therefore, is ‘ No’. Should Catholic-run hospitals or schools be forced to give employees health insurance that includes free contraception? This is, of course, a source of major controversy in the USA. The answer is ‘ Yes’. This is not a matter of religious freedom, but of employee rights. Churches are not being forced to provide contraception. In their role as secular employers, they are being asked to provide employee benefits that all employers must provide. To exempt Church-run organizations would be to deny those benefits to a particular group of employees. 15

Having said all this, many of these conflicts would be better resolved through the pragmatic use of common sense than through the strict application of principle, particularly when those principles remain socially contested. A religious believer should not normally have the legal right to discriminate. But if it is possible to arrange matters so that a believer can act according to conscience without causing harm or discrimination to others, then it might be worthwhile doing so. In principle, a Christian marriage registrar should

expect to have to perform gay civil partnerships, whatever their religious beliefs.

However, it might make pragmatic sense to roster others to perform ceremonies for gay couples, not because we should accept prejudice – prejudice, whether religious or secular in form, should always be challenged – but in acknowledgement of the fact that genuine social conflict exists on this issue. We should not give an inch to bigotry. Someone whose ‘conscience’ would not allow them to work with gays, or to marry Jews, should clearly not be indulged. Nevertheless, many oppose gay partnerships or marriages as a matter of conscience and not simply through homophobia (albeit that ‘conscience’ can, of course, often be a cover for homophobia).

We can both challenge such attitudes and accept that on matters of genuine conscience, a little leeway or accommodation that allows someone to live by their principles may be desirable. The law should not make any such accommodation. But as individuals, or as organizations, it may be wise to, though not at the cost of causing harm, allowing discrimination or endorsing bigotry. 16 There are exceptional cases in which we should set aside these basic principles. A marriage registrar should be expected in principle, if not necessarily in practice, to perform gay civil partnerships.

But we should not expect a doctor or a nurse, even in principle, to perform an abortion, if they feel to do so is against their beliefs. Whatever we may think of the belief that life begins at conception, it would be unreasonable in the extreme to expect those who do hold that belief to commit what they consider to be murder. 17 A pragmatic approach to matters of religious conscience is neither a sign of ‘weakness’ nor a matter of ‘accommodating’

the devil. Standing by political principle is vitally important, including the principle that people should have the right to act upon their conscience if possible.

Why is that principle important? Because we recognize with Spinoza that ‘ No man can give up his freedom to judge and think as he pleases, and everyone is by absolute natural right master of his own thoughts’. To recognize that is to recognize also that it is better if people are persuaded to act in a particular way, by exercising their freedom to judge and think, than being forced to do so by the power of the state. There are times when the state has to wield the big stick, particularly if ‘ acts of conscience’ lead to physical harm or discrimination.

But such occasions, as a matter of principle, should be minimized as far as possible. To be pragmatic in this matter is to keep to one’s principles. 18 The aim of rethinking religious freedom is to strengthen, not weaken, it. It is to establish it not as a special privilege arising out of the turmoil of seventeenth century Europe but as one of a set of indispensable freedoms rooted in the needs and possibilities of the twenty-first century world. To defend religious freedom in this manner is not to defend religion. It is to defend freedom.