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THE LIMITS OF CONSCIENTIOUS OBJECTION

Conscientious objection to fulfilling a legal obligation was first recognised in law in relation to wartime conscription of pacifists into the armed forces. It was later admitted in some laws on abortion.

In recent years, however, claims that the law should cater for conscientious objection have extended to wider areas far beyond the narrow range of cases cited (for example) in the OSCE's Guidelines.

For example -

- \$ magistrates object to administering laws of which they disapprove
- \$ doctors, nurses and pharmacists refuse to assist with treatment to which they object
- \$ and some doctors even refuse to refer patients to colleagues
- \$ parents object to aspects of their children's education - the use of computers, figurative art classes, physical education, sex and relationships education -
- \$ or to some types of medical treatment of their children
- \$ hoteliers and other businesses want the right to reject guests or clients of whom they disapprove.
- \$ and so on.

These claims for conscientious objection undermine the rule of law by threatening

- the availability of services to which citizens have a legal right
- the equal application of the law
- the education of future citizens
- the non-discriminatory treatment of minorities
- and the social cohesion of the community.

Lines have to be drawn in our laws and procedures. But where?

In a talk to the European Humanist Federation's side-meeting yesterday (which is available in the conference documentation and will be on the EHF website shortly) I explored a number of possible criteria, including:

- **the genuineness of the claimed conscientious objection**
- **the strength of the objection**
- **its religious or other nature**
- **whether the person concerned was 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 refused 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.**

I concluded that there is a need for hard thinking about the problems.

Conscientious objection sounds virtuous but its effects are by no means wholly benign. Wholesale unregulated endorsement of conscientious objection cannot be allowed.

The ECHR talks of public safety, protection of public order, health or morals, and protection of the rights and freedoms of others - but this formulation is too broad to provide useful criteria.

Conscientious action is the basis of social functioning, and conscientious objections arise from the same principles and beliefs that produce altruistic and self-sacrificing behaviour. The obligation on society to look indulgently on people's consciences is strong, but it is not unconditional.

Among the conditions to be placed on it (I suggest) might be the following:

- the conscientious objection should be deeply felt and preferably the objector should be able to give a coherent account of it;
- the objection should be to a proximate action and not to some remoter or associated matter;
- in accommodating objectors society should not put at risk the rule of law or its social cohesion;
- holders of public office, representing the state, the law or the

community, should have less 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 - rights (for instance) not to suffer discrimination, and to have access to facilities and services (especially public services); and
- children must be protected from damage to their education or to their health: there must be limits to their parents' power over them.

In sum, the price of accommodating conscientious objection should be paid **or at least shared** by the conscientious objector himself. It may mean restricted career options or choosing between overcoming moral objections or accepting penalties.

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 that society can sometimes afford - but it is also a luxury that must carry a price to the objector which he may choose sometimes not to pay.

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