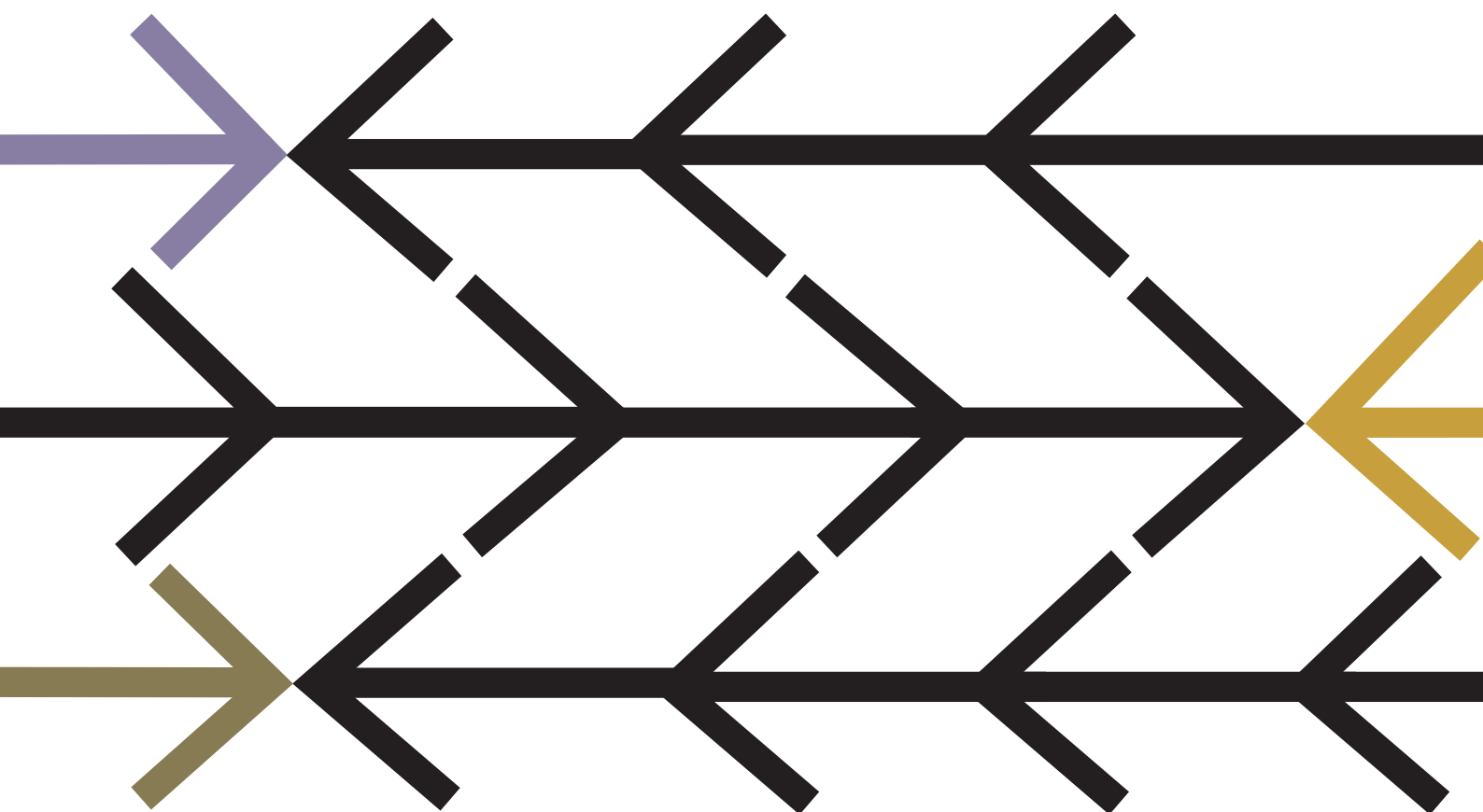


How should a liberal democracy react to conscientious objection claims?

Online conference / Royal Irish Academy / 11 February 2021

Report by rapporteur Orla Ní Cheallacháin



Acadamh Ríoga na hÉireann
Royal Irish Academy

Introduction

In many areas of modern Irish life, public policies are increasingly perceived by some citizens to require action that conflicts with their fundamental beliefs (whether religious, political or ethical), giving rise to a claim that they should be exempted from legal obligations that would otherwise apply to them. Whereas certain kinds of conscientious objection claims—for example, to compulsory military service—have declined in importance, claims have arisen in new areas. Examples include medical practice, where healthcare workers have objected to making arrangements for the transfer of patients who request abortion or patients have refused life-sustaining treatments; medical research, where scientists and technicians have refused to participate in work involving the treatment and development of human embryos; pharmacy, where pharmacists have objected to dispensing abortifacient medications; law, where jurors have requested exemption from jury service for reasons of conscience; public service and administration, where workers have objected to dealing with same-sex marriages; and the provision of services, where service providers have objected to baking cakes with political messages that they cannot in good conscience condone. In several of these more recent manifestations of conscientious objection, the claimed right to exemption on grounds of conscience conflicts with different rights claimed by others, giving rise to the problem of how to resolve such clashes of rights.

This online event aimed to elicit an informed discussion of how people in Ireland actually handle such disputes, how they should handle them and whether the experiences of other liberal democracies can inform their debates. It drew on distinguished academic and

professional contributors to public life who have engaged deeply with various aspects of the question of conscientious objection, both in Ireland and abroad. It took the form of four panels addressing (i) philosophical conceptions of conscience, (ii) legal practice, (iii) theological perspectives and (iv) application of the results of theoretical reflection and practical experience in actual public life.

The event was organised by the Ethical, Political, Legal and Philosophical Studies Committee of the Royal Irish Academy, with the support of Queen's University Belfast, Dublin City University, the Royal College of Surgeons in Ireland and the British Academy. A subcommittee comprising Professor Christopher McCrudden, MRIA, Dr Iseult Honohan, MRIA, Professor Ethna Regan and Dr Noreen O'Carroll was responsible for the detailed planning and organisation of the conference. Ms Pauline McNamara, Programme Manager for the RIA's Humanities and Social Sciences Committees, assisted by Ms Gráinne Lynch, Senior Executive Assistant, provided important administrative and technical support. The success of the conference, which attracted an audience of around 350, was thanks both to them and to the panellists and chairs who generously shared their expertise and experience in the interests of public debate.

The recordings of the conference panel sessions are available on the RIA website, and there was Irish Sign Language interpreting for the fourth and final panel session.

**Professor Maeve Cooke, MRIA
Chair, Ethical, Political, Legal and
Philosophical Studies Committee
March 2021**

How should a liberal democracy react to conscientious objection claims?

An online conference held on Thursday, 11 February 2021, from 14:00 to 18:15 GMT

Programme

Welcome and Opening: Professor Maeve Cooke, MRIA, Chair, Ethical, Political, Legal and Philosophical Studies Committee

Panel One—Concepts of Conscience

Chair: Professor Bert Gordijn, Dublin City University

Panellists: Professor Kimberley Brownlee, The University of British Columbia
Dr Katherine Furman, University of Liverpool

Panel Two—Conscience in Legal Perspective: Challenges and Controversies

Chair: Professor David Smith, RCSI University of Medicine and Health Sciences

Panellists: Advocate General Gerard Hogan, Court of Justice of the European Union
Professor Ronan McCrea, University College London
Dr Regina McQuillan, St Francis Hospice

Panel Three—Theological and Religious Perspectives on Conscience

Chair: Dr Mary McAleese, MRIA, Professor of Children, Law and Religion,
University of Glasgow

Panellists: Professor Linda Hogan, Trinity College Dublin
Professor David Albert Jones, The Anscombe Bioethics Centre
Professor David Novak, University of Toronto

Panel Four—Reacting to Conscience Claims in the Public Square

Chair: Mr Bryan Dobson, RTÉ

Panellists: Dr John Adenitire, Queen Mary University of London
Professor Fiona de Londras, University of Birmingham
Senator Michael McDowell, Houses of the Oireachtas

Closing: Professor Maeve Cooke, MRIA, Chair, Ethical, Political, Legal and Philosophical Studies Committee

How should liberal democracies react to conscientious objection claims?

How a liberal democracy should react to conscientious objection claims is a challenging and complex question as it requires the state to reconcile its commitments to the principle of freedom of conscience with its duty to protect citizens from various forms of harm. As the panels in this conference demonstrated, balancing these competing claims is challenging due to diverse concepts of conscience and harm, asymmetric power relations within society and increasing levels of value pluralism in liberal democracies. Therefore, answering the question of how liberal democracies should react to conscientious objection claims is neither straightforward nor likely to be conclusive. The discussions at this conference drew our attention to general principles and concepts of conscience, conscientious objection and exemptions found in philosophy, law, medicine, religion and politics. Diverse perspectives point to the importance of these general principles in informing accommodations of conscientious objection claims and the necessity to ground action in concrete, empirical cases that bring into sharp focus the challenge of balancing an individual's freedom of conscience with the concomitant rights of others.

Panel I presented a conceptual analysis of conscience and conscientious objection and explored the boundaries between conscientious objection and other forms of non-participation such as civil disobedience. The discussion invited us to consider objective and subjective concepts of conscience and to reflect on whether collectives, as well as individuals, can make conscientious objection claims. The panel also emphasised the importance of understanding the context from which conscientious objection claims emerge. The discussion highlighted how both the causes and the consequences of conscientious objection, understood as non-participation, are different according to whether it is by citizens acting primarily in a personal

capacity or activists who are 'street-level professionals'. Consequently, attention to context entails reacting differently to different sources of conscientious objection claims.

Panel II built on these insights and focused on empirical examples of accommodating conscientious objection claims in legal and healthcare settings. The panel offered examples of the ways in which courts in Ireland and elsewhere have responded to conscientious objection claims, demonstrating how concepts of harm determine the extent to which conscientious objection claims are accommodated. The issue of harm was also examined in relation to complicity claims, related to a withdrawal of an individual's participation from an activity on the basis that it would facilitate morally objectionable acts by others. The panel concluded with a discussion on conscientious objection claims in healthcare settings. The discussion also highlighted the issue of institutional conscientious objection and the particular sensitivities surrounding this issue in Ireland, given the historical relationship between healthcare provision and religious orders in Ireland.

Panel III considered conscientious objection from the perspective of freedom of religion and respect for freedom of conscience *within* theological frameworks. Here, the primacy of an individual's conscience in the Roman Catholic tradition was considered in light of the duty of Catholic citizens to meet the legal obligations placed on them by the state. The panel considered whether it is ethically justifiable to make exemption claims from legal duties on religious grounds if, according to an individual's or institution's own judgement, participation would involve perceived wrongdoing. The panel also considered freedom of conscience in the Jewish tradition. Here, the question of autonomous moral

judgements was considered in the context of a heteronomous moral system through an explanation of the concept of inwardness and its place in the Jewish tradition.

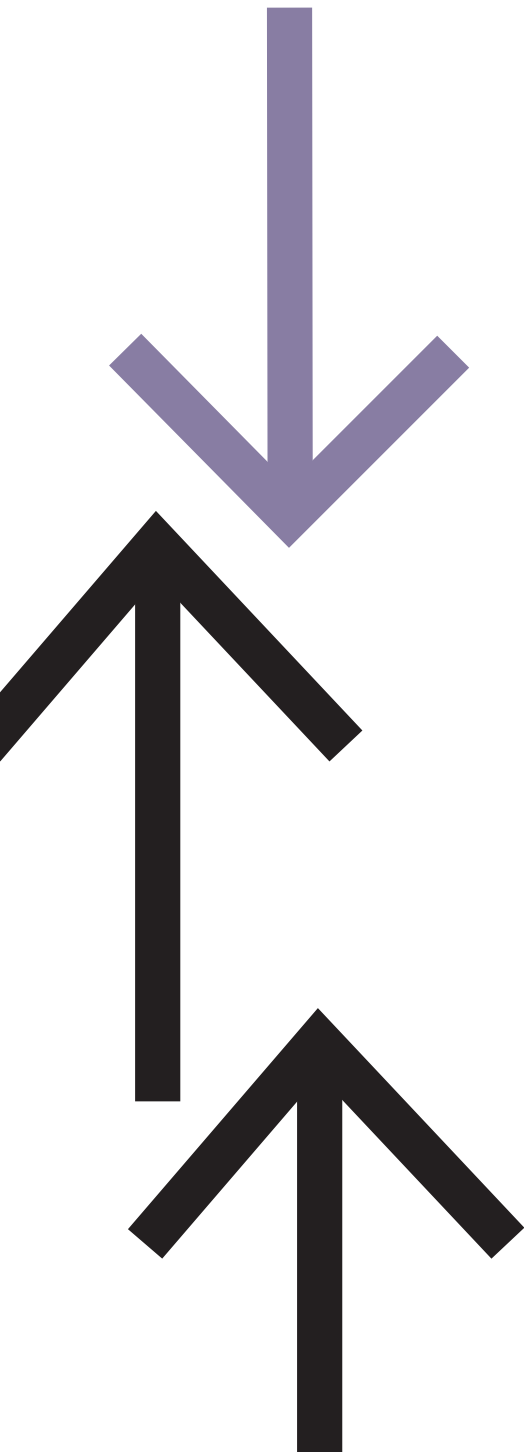
Panel IV concluded the conference by considering how conscientious objection claims can be resolved in the public sphere. The panel began by arguing the case for a general right to conscientious exemptions from legal obligations in the event of conflict between a sincere conscientious belief and any legal obligation whatsoever in order to protect minority moral positions in liberal democracies. The panel concretised the challenge in accommodating conscientious claims by considering the provision of abortion. To create meaningful regulatory frameworks to accommodate conscientious objection claims, precision regarding what conscientious objection is as a matter of law and context-sensitive concepts of harm are required. The panel concluded by reiterating the importance of context and specificity in terms of practically determining how the state should react to conscientious claims. The discussion highlighted that whereas reactions should be guided by the application of general liberal principles, such as the complexity of conscientious claims that determining how a liberal democracy should react to them needs to be judged case by case.

Thus, the panels drew our attention to three primary issues in relation to a state's reaction to conscientious objection claims: to what degree an individual's own moral judgement should be accommodated in relation to his or her legal obligations and moral duties to others; how harm should be conceptualised in making such accommodations; and, finally, how these issues can and should be resolved in societies that are increasingly characterised by moral pluralism.

Panel I

Concepts of conscience

Panel I provided the conceptual and philosophical groundwork for the day's discussion. Professor Kimberley Brownlee, The University of British Columbia, began with a conceptual analysis of conscience. Concepts of conscience entail an understanding of moral self-judgement and a genuine or sincere source of moral knowledge. Brownlee gave an account of two forms of conscience: objective and subjective. Objective conscience refers to moral wisdom (*conscientia*). Philosophical perspectives offer different accounts of conscience as moral wisdom but agree that it is a kind of inner voice that either guides or adjudicates on our actions: it is the 'angel on our shoulder'. Subjective accounts of conscience, meanwhile, refer to our capacity to hold sincere, moral convictions while recognising that we may be mistaken. Examples include a doctor refusing to perform an abortion, a citizen refusing the draft and a civil servant refusing to perform same-sex marriage ceremonies. For Brownlee, sincere moral belief must pass four tests. There must be consistency between our judgements and efforts, and we should judge ourselves and others according to the same universal moral standard. Most significantly for Brownlee, sincere moral belief entails non-evasion and dialogic effort. To hold a sincere moral conviction is to say 'here I stand, and I can do no other'. Those who can best claim to be conscientious, Brownlee argued, are those who are willing to be seen and who do not evade the risks of non-participation. Relatedly, sincere moral belief demands engagement in dialogue with others. Ultimately, Brownlee concluded, we need to situate conscience within moral pluralism. Concepts of conscience result in tragic choices, thus conscience demands deep moral understanding regarding the values in play in any given moment and how we should prioritise them. How we ought to act is a question of understanding the demands of conscience in relation to conflicting values.



Dr Katherine Furman, University of Liverpool, defined conscientious objection as non-participation on value-based grounds and focused her comments on non-participation by citizens and what she called 'street-level professionals', those responsible for the implementation of policy. Non-participation on value-based grounds by citizens and by street-level professionals is driven by different dynamics and creates different challenges for liberal democracies. For Furman, particularly in light of increasing levels of value pluralism in liberal democracies, understanding the context from which non-participation emerges is essential in answering the question of how liberal democracies should react. Using the examples of the Shack Dwellers Movement in South Africa and anti-COVID-19 restrictions protests in Liverpool, Furman outlined how exclusion from decision-making democratic institutions can drive non-participation by citizens. The picture is more complex in relation to street-level professionals. On the one hand, conscientious objections by street-level professionals can cultivate trust in state institutions by rendering more transparent the often opaque value systems of such institutions and of public policy. On the other hand, problems arise when conflict emerges between an individual's moral identity and the values of the public policy that they are tasked with implementing. This is particularly acute in vocational roles such as policing and healthcare. When faced with such conflicts, individuals can either exit their role or voice their opposition; however, both options carry professional and personal risks. For Furman, this is a central dilemma to consider in relation to conscience claims. Public policy requires implementers; therefore, too much

withdrawal presents a pragmatic problem, whereas expecting policy implementers to lead morally divided lives presents a moral problem. Accommodating conscientious objections offers a way to keep policy implementers in their roles while maintaining their moral integrity. From a public policy perspective, Furman concluded, to understand non-participation and to ensure successful policy interventions it is essential to have a good understanding of the context from which conscience claims emerge.

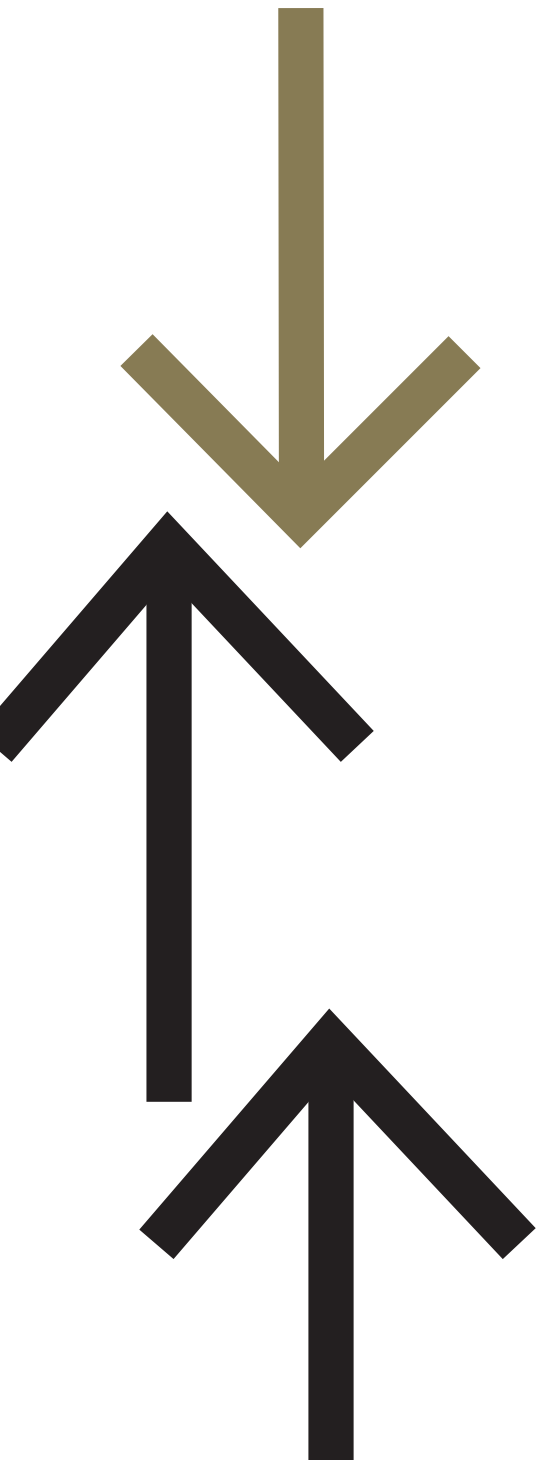
The discussion, chaired by Professor Bert Gordijn, Dublin City University, raised a number of questions regarding who can make conscience claims (i.e. individuals or collectives), what moral justification might exist for accommodating such claims, what are the key differences between conscience objection and civil disobedience, and whether the practice of conscientious objection claims and civil disobedience has shifted from the protection of the rights of specific groups to protest movements protecting non-human entities such as the climate. One change noted by the speakers was the increasingly globalised nature of civil disobedience. It is not clear to whom you are accountable or who should be listening to protests that cross jurisdictional or territorial boundaries. Here, it was argued that theoretical frameworks need to catch up with empirical developments. Moreover, it was noted that the continued influence of John Rawls's writings on civil disobedience, which are rooted squarely in the rights of the individual, limit theoretical explanations of protests that focus on non-human issues.

Panel II

Conscience in legal perspective: Challenges and controversies

Panel II considered conscientious objections from legal perspectives and outlined approaches taken by the courts, the issue of complicity claims and the dynamics of conscientious objections in healthcare settings. Advocate General Gerard Hogan of the Court of Justice of the European Union gave an account of three cases involving conscientious claims: the dismissal of a nurse of an evangelical faith who refused to bring candles and rosary beads to a patient on the basis of her faith; a court order sought by a hospital to override the refusal of parents, who were Jehovah's Witnesses, to allow the provision of life-saving blood transfusions to their children; and a hearing on the outright ban of halal slaughter practices in Belgium. In all three cases freedom of religion interacted with the rights and duties of third parties. For Hogan, the test to be applied by the courts when considering conscientious claims rests on a concept of harm. Upholding freedom of conscience is an essential principle of liberal democratic life that is reaffirmed in the courts to the greatest extent possible. However, such accommodation needs to be balanced against the rights of others and the duties of the state. In the case of the Jehovah's Witnesses, the clear duty of the state was to protect the lives of the two children over its duty to accommodate the principle of freedom of thought. In the case of halal slaughter practices, Hogan argued, the practice is so central an article of faith of the Muslim community that it warranted protection by law while protecting and promoting animal welfare to the greatest extent possible.

Professor Ronan McCrea, University College London, took a critical stance in relation to a specific kind of conscientious objection claim: complicity claims. Complicity claims arise when an individual withdraws their participation from an action that they would otherwise perform on the basis that such participation would make them complicit in actions they consider to be



morally wrong. The traditional approach of the courts to such claims is to rely on the individual's own assessment of their religious duty, irrespective of whether it is in line with the orthodox views of their co-religious. Although this approach respects the principle of freedom of conscience, absolute deference to an individual's own assessment of what makes them complicit in a sinful act, McCrea pointed out, risks generating illiberal outcomes that disproportionately limit the freedoms of others. McCrea argued that lesser weight should be given to the individual's assessment of complicity, particularly if the relevant act is objectively remote from the perceived sin. Facilitating an expansive view on what level of involvement renders an individual morally complicit in a sinful act is itself illiberal. Absolute deference to an objector's own moral assessment, McCrea argued, risks proliferating uncontrolled complicity claims, shunning of the 'sinner' and indulging desires to control the actions of those with whom we disagree.

Dr Regina McQuillan, St Francis Hospice, outlined the dynamics of conscientious objection in the medical profession, an area in which the principle of conscientious objection is well established, particularly in relation to morally contested issues at the beginning and end of life. McQuillan argued that it is reasonable to expect conscientious objection claims to be facilitated by the medical profession, given that medical professionals are held to higher professional and private moral standards than other professions. Indeed, conduct in their private lives can be cause for professional censure. There is

a general perception that conscientious objection claims tend to be religious in nature. However, conscientious objection claims within the medical profession in relation to abortion and assisted suicide, for example, are motivated by non-religious as well as religious values. Fears that abortion or assisted suicide could promote ableism are often given as grounds for non-participation. McQuillan also emphasised that conscientious claims are highly regulated by legislation, the Medical Council's own guidelines and one's own moral position. Thus, the scope for objection is limited. Moreover, although it is possible in some instances to withdraw one's participation, there is usually a legal duty to refer patients to someone who will conduct the procedure. However, the question arises of whether it is possible for organisations to claim conscientious exemptions from a duty to provide certain medical services. This issue is particularly pertinent in Ireland, given the religious origins of many healthcare institutions, and has been publicly debated in relation to the role of the Sisters of Charity in the running of the new National Maternity Hospital. McQuillan argued that a public discussion about what constitutes an essential healthcare service that would be provided by the Health Service Executive may resolve such issues and provide private institutions with latitude in relation to morally contested procedures. Relatedly, McQuillan concluded, there needs to be a public discussion on when a doctor is required for such procedures. A surgical abortion requires a doctor, but emergency contraception can be dispensed by a chemist. Finally, conscientious objection claims in medical settings must be considered in relation

to potential harms caused to third parties, and such conceptualisations of harm must take into account the historical institutional abuse in healthcare settings in Ireland.

The panel discussion, chaired by Professor David Smith, RCSI, considered a range of empirical examples of conscientious objection claims and returned to the issue of complicity claims. Questions were raised regarding the merits or demerits of conscientious objection claims in relation to COVID-19 vaccination and whether they would be upheld in the courts. Recognising the principle of volunteerism in the Irish health system, the panel discussed the complexity of this issue. It was also suggested that even if the courts were to stand over a decision to make Covid-19 vaccinations mandatory,

practically it would be very difficult to find healthcare professionals who would be willing to administer the vaccine against the will of their patient. On the point of complicity claims, the view that honest but unreasonable views of proximity to the sin should be given less weight by the courts was reiterated. It was also pointed out that the nature of the activity needs to be considered as well. Although it is not possible for a baker to refuse service to someone on the basis of gender or sexual orientation, for example, it could be possible to make a conscientious objection claim on the basis that the baker was compelled to write something that went against his or her sincerely held moral belief. This could be a form of compelled speech, and thus participation could be withdrawn on value-based grounds.

Panel III

Theological and religious perspectives on conscience

Panel III considered the question of conscience and conscientious objections in the context of freedom of religion and freedom *within* religion in the Roman Catholic and Jewish traditions. Professor Linda Hogan, Trinity College Dublin, outlined a central paradox in relation to conscience in the Roman Catholic tradition. Historically and contemporaneously an individual's autonomy and conscience are given primacy by the Catholic moral tradition. However, at the same time, Catholic theology has historically affirmed that the Catholic citizen cannot invoke conscience to avoid the duties placed on him or her by law. This raises the ethical question of whether an individual can, in good conscience, participate in the perceived wrongdoing of another. Is it morally justifiable for religiously motivated individuals or institutions to claim exemptions from the requirements of the law on the basis that they believe to do otherwise implicates them in moral wrongdoing? Accommodating moral or religious beliefs is complex in the Catholic moral tradition. There are diverse views on the limits of accommodation and on the ethical questions at play in relation to morally contested areas such as reproductive rights, bio-medical issues and gender identity issues. However, the Catholic moral tradition does provide a matrix to determine and evaluate the salient issues to be considered in relation to participation in the perceived wrongdoing of others. Key to this matrix are the perceived gravity of the act, the proximity to the act and the intention behind cooperation. Cooperation that intends evil doing is always wrong. However, material cooperation can be morally permissible. A doctor who refuses to perform an abortion but makes a referral with the intention that abortion takes place is engaged in formal cooperation that intends wrongdoing. A doctor who makes a referral to ensure continuity of care does not intend wrongdoing and therefore may be acting morally.

Professor David Albert Jones, The Anscombe Bioethics Centre, took up this discussion and reiterated the longstanding principle of conscience in the Catholic tradition. Acknowledging that there is little theological discussion of conscientious objection in the Catholic tradition, Jones distinguished conscientious objection from freedom of conscience or religion, which he presented as an allied, more recent, political right. Freedom of conscience seeks to determine what the state should do and emerged in Protestant states grappling with how to accommodate minority views in the nineteenth century. Conscientious objection, by Jones's account, is a narrower concept than freedom of religion and is best understood as a mechanism through which to protect dissenting moral minorities from coercion in contentious legislative policy. Acknowledging that there is little Catholic theological reflection on conscientious objection *per se*, Jones contended that it is right that protection be given to those who dissent from legal provisions that are morally controversial, particularly in relation to life or death. Specifically, he argued that a right not to participate that entails a duty to refer, such as that contained in the Health (Termination of Pregnancy) Act 2018, is problematic. According to Jones, a duty to refer a patient to someone who would conduct a termination is formal cooperation and misses the point of the objection in the first place. A duty to refer, in this instance, fails to respect the conscientious objection of a dissenting minority and is, instead, coercive.

Finally, conscience was considered from the perspective of the Jewish tradition by Professor David Novak, University of

Toronto. Although there is no word for conscience in the classic Jewish tradition, modern Hebrew refers to the concept of inwardness. To illustrate inwardness, Novak related a case in which a patient in a Jewish hospital refused a life-saving pacemaker. The patient refused the pacemaker because she was a Holocaust survivor who had been subjected to medical experiments and was adamant that no one would strap her to a table again. In Jewish law, no one has the right to choose death as such an action would amount to suicide. Therefore, it was argued that this patient could not refuse the pacemaker, because to do so would be to choose death. However, as Novak argued, her intention was not to choose death but, rather, to avoid further trauma. Jewish law, Novak continued, says that you know your own heart. Thus, in this sense there is freedom of conscience, understood as a kind of internal judgement, within the heteronomous Jewish tradition. However, the role of autonomy in the Jewish faith is a point of difference between liberal and traditional Jewish perspectives. From the liberal point of view, accepting the authority of God is an autonomous act, and therefore autonomy is the rule, not the exception. From the traditional Jewish perspective, inwardness or private judgement is the exception, not the rule.

The panel discussion, chaired by Dr Mary McAleese, MRIA, University of Glasgow, unpacked aspects of the complexities of freedom of conscience *within* the Catholic tradition, how one should inform one's conscience irrespective of one's tradition, what role parents have in forming the conscience of their children, and whether there is a particular female conscience.

On the issue of freedom of conscience in the Catholic tradition, it was noted that individual conscience should not (ideally) conflict with Canon law. However, when it does, an individual's conscience is the supreme source of moral judgement, notwithstanding the risk that such judgement may be wrong. This also raises the question of how to exercise dissent within the Catholic Church. Jones noted that whereas appeal to conscientious exemption is well established in relation to duties placed on an individual by the state, the same cannot be said for duties placed on individuals by the Church. Hogan also pointed to the importance of

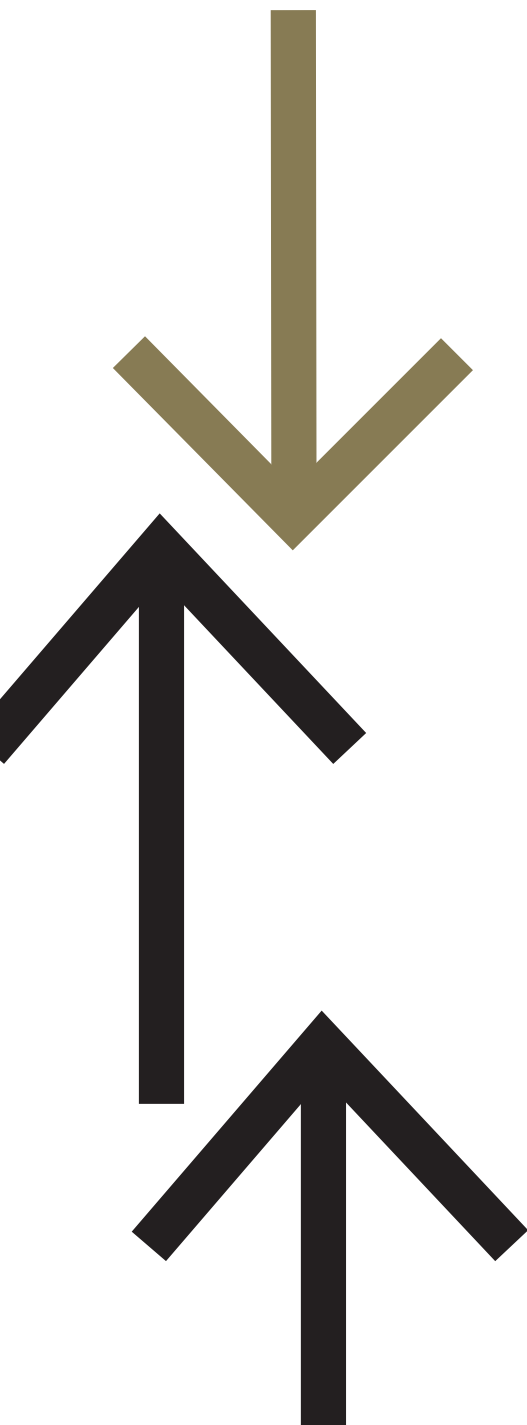
context in discerning what is good and right. Therefore, as noted by all panellists, informing one's conscience is a question of engaging with the sources of all traditions as much as possible. This demonstrates what is essential and common across all traditions and fosters deep moral understanding. Finally, the panellists acknowledged that although there may not be a specific female conscience, female voices have certainly been sidelined in the Roman Catholic tradition. Historically, this was also true of the Jewish tradition, but increasingly Jewish feminists are claiming a greater role in the normative life of the community.

Panel IV

Reacting to conscience claims in the public square

The final panel considered how a liberal democracy should react to conscientious claims in the public sphere. Dr John Adenitire, Queen Mary University of London, presented the case for a general right to conscientious exemption in liberal democracies. He argued that in an environment in which there is both moral pluralism and asymmetric access to power, there is a *quasi* republican case to be made for a general right to conscientious exemptions. As not everybody has equal access to power, and indeed some have no access to power at all, alternative, judicial venues for participation should be made available for minority moral views. However, Adenitire qualified this general right to conscientious exemption from legal duties with an appeal to dignitary harm. When a conscientious exemption claim entails violating the dignity of others by treating them in an unjustly discriminatory way, such exceptions should not be accommodated.

Professor Fiona de Londras, University of Birmingham, concretised the issue of conscientious exemption claims by considering the provision of abortion. She pointed to what conscientious objection is as a matter of law and highlighted an important distinction between the freedom to hold a belief, which is protected by international human rights law, and the right to manifest that belief through one's actions, which is a qualified right. Healthcare provision is one setting in which the state may intervene in the manifestation of an individual's sincerely held moral beliefs. However, in order to identify the extent to which the manifestation of moral beliefs should be limited, we need to understand the harms that they entail. De Londras argued for the rights of the objector and third parties to be given meaningful consideration and for a broad conceptualisation of harm. Concepts of harm must take account of the context and historical institutional dynamics in which objection occurs. For example, if you live in a rural setting served by a single doctor, the refusal to perform an abortion



causes a different set of harms than refusal in a context in which alternative providers are available. Similarly, the role of history needs to be acknowledged in the conceptualisation of harm. There is no historical understanding of pregnancy as a harm in Irish healthcare institutions; consequently it is difficult for such institutions to conceptualise pregnancy itself as a harm when considering conscientious exemption claims. State intervention, de Londras concluded, needs to be sensitive to the reality of the system in which conscientious objection claims are made and to accommodate them in a way that protects patients and healthcare settings. This requires us to pluralise concepts of harm as well as the category of who is a rights bearer in conscientious exemption claims.

Senator Michael McDowell, Houses of the Oireachtas, concluded the panel by illustrating the tension that exists between a general theory of rights and the question of how precisely the state should react to conscientious objection claims. Given that conscientious objection claims are made in a very wide range of cases—from the refusal to bake a cake for a same-sex wedding to the provision of abortion—McDowell is sceptical of a general right to conscientious exemption and instead argued that the application of liberal values should be done case by case. Nonetheless, even the application of liberal values is not straightforward. For example, individual autonomy is a characteristic of liberal democracy but so, too, are both the right to family life and the right of the state to substitute itself in place of parents to prevent harm. Complex cases involving gender choices are likely to arise in the near future that challenge how to apply these principles. In view of such complexity, McDowell concluded, elaborating a general theory of

conscientious objection may be a fruitless exercise. Instead, such complex issues need to be rooted in the specificity of real-life examples and examined case by case.

The panel discussion, chaired by Mr Bryan Dobson, RTÉ, centred on how to move between a general right to conscientious exemption and the detail of specific examples. While acknowledging that conscientious exemption claims should be considered case by case, Adenitire reiterated that a general right to conscientious exemption should be in place to guarantee that there is a venue for all such objections to be heard. The question of whether we have a moral duty to support conscientious objectors in illiberal regimes was also considered. Here, the tension between general principles and how to act came once more to the fore. On the one hand, illiberal actions by other states should not be tolerated but, on the other hand, how the state should act to vindicate the rights of others in such cases is not straightforward from a pragmatic point of view. The panel also considered questions regarding the role of sincerity in conscientious exemption claims, the difficulty of judging sincerity in such cases and, importantly, how doing so would divert resources away from understanding why insincere claims might be made in the first place. The role of harm, how to conceptualise it and how to mitigate it were also discussed in relation to the 'Baker Case' and to more complex issues of whether children have the moral capacity to make conscientious objection claims in healthcare settings or in relation to gender identity procedures. It was pointed out that all parties in a conscientious exemption claim—the objector as well as third parties—have a right to be protected from harm. Accommodating such claims is a complex task.

Conclusions

As noted by Brownlee in Panel I, moral choices are tragic choices and we are likely to get something wrong no matter what we do. For Brownlee, a clear conscience is simply the state of being justifiably at peace with our recent, present or planned conduct. To achieve this, there must be congruity between what our conscience demands in relation to how we ought to act and how we actually behave or plan to act. Reconciling this within ourselves requires deep moral understanding; reconciling these issues at the level of the state is a challenging and complex task. Moreover, as Furman pointed out, the question of how to deal with deep value disagreement is an old one but is becoming more urgent owing to the increasing diversity and depth of value disagreement within liberal democracies and the continued commitment to accommodate that diversity.

The normative problem at the heart of how liberal democracies should react to conscientious objection claims is how to protect those with dissenting moral positions from being coerced by legal duties to engage in perceived wrongdoing while also protecting the rights of third parties. As a matter of law, freedom of conscience protects an individual's right to sincere moral conviction, but the

manifestation of such beliefs through action is a qualified right limited by a concept of harm to third parties. As highlighted by several speakers, in the context of asymmetric power relations among value holders, unequal access to decision-making institutions and a context in which liberal democracies are increasingly characterised by moral pluralism, an appeal to harm as a limiting principle is itself a difficult philosophical, regulatory and political question. Moreover, as demonstrated by theological perspectives, the intention behind cooperation or exemption is an important issue in the assessment of conscientious exemption claims. In theological traditions, the intention helps to qualify the morality of an act. However, from legal and political perspectives, understanding the intention behind exemption claims is complex, and attempting to evaluate the sincerity of conscientious claims may even divert resources from where they are needed. Therefore, the application of liberal principles such as protection from harm, dignity, respect and tolerance of the beliefs and actions of those with whom we disagree is important to inform pragmatic answers to the question of how a liberal democracy should react to conscientious claims by both individuals and institutions. However, as the conference demonstrated, such questions remain open and essentially contested.



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