

Religious Toleration and Public Funding for Abortions: a Problem with Christopher Eberle's Standard of "Conscientious Engagement"

Michael David Harbour
Harvard Law School

Abstract: "Justificatory liberalism" holds that citizens should refrain from advocating in favor of coercive policies for which they can only offer a religious justification. Christopher Eberle, a prominent critic of this view, calls this the "doctrine of restraint." Eberle argues that the restraint requirement unfairly burdens religious citizens by prohibiting them from acting on their religious commitments in the public sphere. As an alternative he offers what he calls the "ideal of conscientious engagement" which does not require restraint. In this paper I contend that Eberle's conscientious engagement standard fails to provide an adequate alternative to the "doctrine of restraint." Using the current controversy over public funding for abortion as an example, I argue that, under the "ideal of conscientious engagement," it is legitimate for the state to coerce religious citizens into violating their core moral commitments. Accordingly, this standard puts citizens' religious freedom at serious risk.

Key words: religious tolerance, liberalism, public reason, abortion, Rawls, Eberle.

Many liberals argue that the principle of toleration prohibits citizens from advocating in favor of coercive policies for which they can only offer a religious justification. This view is commonly referred to as "justificatory liberalism."¹ The idea is that such policies unjustly impose on citizens who do not share these same religious convictions. Tolerance, so the thought goes, dictates that the state should only coerce citizens on the basis of reasons that are, in some sense, accessible to all – in other words reasons that are sufficiently *public*.

Some critics argue, however, that this requirement itself violates the principle of toleration.² Part of what it means to hold certain religious beliefs, they maintain, is that these beliefs inform one's political advocacy. To demand that religious citizens refrain from endorsing policies on the basis of their religious commitments is to restrict their ability to practice their religion in a significant respect. If this concern is merited, then the justificatory liberal ideal of toleration appears untenable because it fails to respect the freedom of some religious citizens. In light of this apparent difficulty, one critic of justificatory liberalism, Christopher Eberle, has offered an alternative account of liberal tolerance and respect. According to Eberle (2002, 2009), the requirement that citizens should refrain from politically endorsing coercive policies for which they only have a

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1] This term was first introduced by Gerald Gaus (1996) to contrast his view with Rawls's (1993) "political liberalism." Here, though, I am using the term in the less narrow sense to include any view that requires that coercive policies achieve public justification, however this notion is understood. My use of the term thus coincides with Christopher Eberle's (2002) more inclusive usage.

2] In this paper I focus particularly on the work of Christopher Eberle (2009), but cf. Wolterstorff 1997.

religious justification – what he calls the “doctrine of restraint” – is too strong and lacks sufficient warrant. Instead, he offers the “ideal of conscientious engagement” which requires that citizens sincerely attempt to engage with and learn from their opponent’s point of view and that they genuinely pursue reasons their fellow citizens can accept for their preferred coercive policies. Should they ultimately fail to do so, however, the ideal of conscientious engagement does not further require that they withdraw their support for these policies.³

The virtue of the conscientious engagement standard is supposed to be that it better embodies the liberal principles of respect and religious toleration because it does not unjustly burden citizens who cannot abstain from appealing to their religious convictions when determining their political advocacy without thereby abandoning these very convictions. I intend to argue, however, that the doctrine of conscientious engagement fails in this regard. The problem is that this standard deprives religious citizens of any *in principle* objection to coercive policies that essentially *force* them to violate their fundamental religious convictions. I will illustrate this problem using the current political controversy over public funding for abortion. Under the conscientious engagement standard, religious opponents of abortion cannot, on the basis of religious toleration, object to a policy that effectively forces them to help finance an activity which they regard as morally abhorrent.

In this paper, I take no stand on the permissibility or impressibility of using tax dollars to fund abortions or on whether justificatory liberalism is the right view all-things-considered. My argument is that, irrespective of the merits of justificatory liberalism, the ideal of conscientious engagement fails to provide an adequate alternative *specifically* from the point of view of religious citizens.

I. RESTRAINT VS. CONSCIENTIOUS ENGAGEMENT

The crux of the justificatory liberal view is that state coercion must be equally justifiable to all in order to be legitimate. John Rawls articulates this commitment as follows:

Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions – were we to state them as government officials – are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons. (1997, 771)

As Rawls famously argues (1993, 1997), reasons drawn exclusively from one’s particular “comprehensive doctrine” cannot serve as legitimate bases for coercive policies under this standard. Policy making, he contends, requires that we appeal only to those reasons that are shared across comprehensive doctrines or that set of reasons which forms what Rawls calls an “overlapping consensus” (1997, 776). Because not all citizens

3] For a detailed account of the principle of conscientious engagement, see Eberle 2009, 165ff.

in a pluralistic liberal democracy share the same religious beliefs, reasons anchored to a specific religious outlook fall outside the bounds of the overlapping consensus. Accordingly, citizens should refrain from endorsing coercive policies based solely on such reasons.

As was noted above, the problem according to some is that this requirement places an overly onerous burden on religious citizens, as it effectively prohibits them from acting upon some of their most fundamental commitments. As Eberle, puts it, “the liberal commitment to conscience would be quite a desiccated thing were it not to marry conscientiously formed *belief* to *action* guided by conscientiously formed belief” (2009, 158). Religious citizens cannot simply ignore their deeply held religious beliefs when voting on, and advocating for, various policy proposals without in essence abandoning their fundamental religious convictions. Demanding that they do so fails to respect them as citizens, as Nicholas Wolterstorff stresses:

It belongs to the *religious convictions* of a good many religious people in our society that *they ought to base* their decisions concerning fundamental issues of justice *on* their religious convictions. They do not view it as an option whether or not to do so [...] Accordingly, to require of them that they not base their decisions and discussions concerning political issues on their religion is to infringe, inequitably, on the free exercise of their religion. (1997, 105)

If Rawls is correct in thinking that coercive policies based exclusively on religious reasons are illegitimate, and Wolterstorff and Eberle are right in thinking that such reasons cannot be excluded if the freedom of religious citizens is to be properly respected, then we appear to be stuck in a serious bind. Eberle, however, argues that there is no reason to think that respect requires restraint, contra Rawls and others.⁴ He maintains that, out of respect, “a citizen or official should sincerely and responsibly *attempt* to articulate reasons for his or her favored coercive laws that his or her compatriots regard as sound” (Eberle 2009, 167; emphasis mine), but there is no basis for thinking that “a citizen or official [...] who discerns no such reasons, ought to restrain herself or himself from supporting those laws” (Eberle 2009, 168). As long as the religious citizen takes seriously, and sincerely engages with, the perspective of her opponents – by listening to them, trying to learn from them, and addressing their concerns – she respects their “basic worth” as citizens (Eberle 2009, 163). This is what Eberle calls the “ideal of conscientious engagement” (2009, 165-66). While her fellow citizens might reject the reasoning behind her preferred coercive policy, they will not feel dismissed or left out of the democratic process altogether as long as the conditions of conscientious engagement are met.

Take the controversy over gay marriage: if the only justification religious opponents of gay marriage can offer is that restricting the benefits of marriage to heterosexuals accords with the basic teachings of the Bible, then, as long as these citizens do their best to consider and engage with the arguments of gay marriage proponents and sincerely

4] For other proponents of justificatory liberalism see Gaus (1996), Audi (1997), and Macedo (2000).

try to formulate non-parochial justifications for prohibiting it, they have met their civic burden. If they genuinely believe that marriage between two members of the same sex is a grave sin, and that a country that permits it is doing great harm to its citizens, then they should be free to advocate for the passage of this policy. On Eberle's view, this is all that we can demand of religious citizens in the name of respect. It is unreasonable, he insists, to further contend that it is somehow disrespectful for religious citizens to act on the basis of their most fundamental beliefs and moral convictions. After all, this is how we would expect anyone to act (Eberle 2009, 158).

In a sense, Eberle's alternative of "conscientious engagement" tries to stake out a middle ground between the view that religious reasons are strictly impermissible as justifications and the view that religious citizens are permitted to simply ignore or backhandedly dismiss the concerns and objections of those who do not share their religious views. Under the ideal of conscientious engagement, citizens are free to practice their religion as they see fit – even when this includes voting for coercive policies on the basis of their religious convictions – provided that they do so respectfully, taking care to address and listen to the views of others.

II. PUBLIC FUNDING FOR ABORTION

I will not try to evaluate Eberle's arguments against the doctrine of restraint here. My goal is instead to assess the viability of the conscientious engagement alternative by drawing out some of its implications. With regards to gay marriage at least, it does seem like religious citizens would find the conscientious engagement standard more palatable than the restraint standard. Now consider, however, the controversy over public funding for abortion – a controversy which has recently reemerged in American politics with the current debate over healthcare reform. The sticking point for many reform opponents is that the use of government funds to expand health care coverage would mean that some of these funds will be used to perform abortions. The now infamous *Stupak Amendment*, introduced by Michigan Representative Bart Stupak, was designed to alleviate this concern by prohibiting any insurance policy paid for even in part by government funds from covering abortion procedures.⁵ While this amendment was not part of the final health care bill, President Obama signed an executive order shortly after the passage of healthcare reform prohibiting the use of federal funds for abortion procedures under the *Affordable Healthcare for America Act*.⁶ This is only the most recent manifestation of this controversy. Three years after *Roe v. Wade*, the Supreme Court decision that recognized the constitutional status of elective abortion rights, Congress passed the *Hyde Amendment* which prohibited the use of public funds to cover abortions under Medicaid.⁷

5] Affordable Healthcare for America Act, H.R. 3962, 111th Cong. (2009).

6] Executive Order 13535 (2010).

7] The current text of the *Hyde Amendment* can be found in Consolidated Appropriations Act of

I do not intend to address all the various controversial issues these types of restrictions raise. Even if one is a staunch proponent of abortion rights, however, it is not difficult to appreciate why such restrictions might be required in the name of religious toleration. Some religious citizens strongly believe that human life is sacred no matter what its stage of development, and, as such, abortion constitutes the murder of the most innocent and vulnerable of persons. Given their basic convictions, such citizens will not be able to regard the requirement that they financially contribute to a practice which they view as morally abhorrent as in any way reasonable. George Sher summarizes this point as follows, “any policy of government funding for abortions must draw upon tax monies collected from conservatives as well as liberals; and this must place conservatives in a position of actively supporting abortions rather than reluctantly tolerating their performance by others [...] A compromise which includes government funding of elective abortions may not be one which conservatives can reasonably be asked to accept” (1981, 371). Likewise, David Wong suggests that, in order to accommodate these citizens, “liberals could refrain from pressing for public funding for abortions, since this would require conservatives to actively contribute to the violation of a deeply held moral belief” (1984, 197). Should they refuse to do so, abortion rights advocates would fail to respect the liberty of their fellow religious citizens, as tolerance seems to require that we not force people to act against their own conscience.

In the face of this kind of coercive policy, it seems reasonable for the religious opponent of abortion to object, “it is not right for the state to coerce me on the basis of reasons that I could not possibly recognize as genuine moral reasons because they conflict so fundamentally with my core commitments.” Notice though that this is just the standard of restraint. The conviction that everyone has a positive right to an elective abortion will be completely inaccessible to religious citizens who believe that abortion is equivalent to murder. Such a reason is only accessible from within a particular comprehensive doctrine. As such, coercive policies based on this line of justification will be prohibited under the doctrine of restraint. The doctrine of restraint accordingly gives religious citizens recourse against coercive policies that would effectively force them to violate their own religious commitments.

Under the conscientious engagement standard, however, religious citizens forfeit this recourse. Suppose a group of abortion rights advocates, who believe that everyone should have access to elective abortions and that it is everyone’s duty to help finance this access, make a sincere effort to listen to, attempt to learn from, and engage with the arguments of their anti-abortion counterparts. Suppose further that they do all they can to offer reasons in support of public funding for abortions that their opponents could accept. Not surprisingly, however, they ultimately come up short. According to the ideal of conscientious engagement, these citizens have met their civic burden, and it is perfectly permissible for them to coerce their fellow citizens on these grounds *in spite of the fact that*

this will put some of their fellow citizens in the position of having to violate one of their deeply held moral and religious convictions. If conscientious engagement is the ruling principle, religious opponents of abortion cannot object to this imposition in the name of tolerance and respect.

Couldn't the opponents of abortion still argue, however, that this policy is illegitimate on the basis that it violates their *religious* liberty? Not if the ideal of conscientious engagement applies to all reasons equally and not just those reasons that some religious citizens happen to favor. If it is permissible, under the terms of conscientious engagement, for religious citizens to impose coercive policies even when the justifications for such policies fundamentally conflict with the moral beliefs of other citizens, then there is no reason why these religious citizens should be immune from similar impositions. It would clearly be unjust for a group of religious citizens to claim that they should be able coerce others on the basis of reasons that fall outside of the overlapping consensus but should not themselves be coerced on the basis of such reasons. Freedom of religion under this interpretation would amount to special coercive privileges for citizens of religious faith.

Another problem is that the religious convictions of citizens will sometimes conflict. Just imagine a religious sect of radical feminist who believe that elective abortions are a God given right. Under the conscientious engagement standard, they should be free to impose policies in favor of publicly funded abortions even if this policy violates the religious commitments of others. After all, according to Eberle, we would fail to respect the religious freedom of this sect if we were to tell them that they are not permitted to act on their core religious beliefs.

Notice that the conscientious engagement standard not only rules out the justification behind the *Hyde* and *Stupak* amendments but weaker accommodations as well. One could staunchly oppose strict across-the-board prohibitions like those required by *Hyde* and *Stupak* and still recognize the need to exempt religious citizens who have grave moral concerns about the practice of abortion in general. For example, those who believe that access to abortion is a fundamental right can still, out of respect, allow their fellow religious citizens to adopt a kind of *conscientious objector* status by granting them the ability to opt-out of taxes which are used to cover abortion procedures (Tribe 1985, 339). On the conscientious engagement standard, however, this plea for exemption lacks any warrant. If abortion rights advocates sincerely believe it is everyone's duty to equally share the burden for providing equal access to abortions, then they are under no obligation to make this accommodation, and their own moral convictions on the matter demand that they not do so in the absence of some overriding norm (such as the principle of restraint).

Recall that the virtue of the conscientious engagement standard is supposed to be that it does not produce a conflict between religious freedom and the burdens of citizenship. The above example shows that the doctrine of conscientious engagement fails in this regard. Under this principle, there could be cases in which religious citizens would be obligated to comply with a coercive mandate that conflicts quite explicitly with their fundamental religious convictions. It is hard to imagine that religious citizens would

find this consequence acceptable and consequently hard to imagine that they would regard the principle of conscientious engagement as consistent with their religious beliefs. Accordingly, I do not think that the doctrine of conscientious engagement represents a viable alternative to the doctrine of restraint.

III. CONCLUSION

Some critics are wary of justificatory liberalism because they believe it favors secularism and is unfairly hostile towards religion. For example, in a rather controversial footnote in the first edition of *Political Liberalism*, Rawls argues that any moral doctrine that does not recognize a woman's right to an elective abortion in the first trimester is "to that extent unreasonable" and therefore falls outside the overlapping consensus (Rawls 1993, 243 n. 3). This has led critics like Eberle to object that justificatory liberalism only excludes *religious* reasons while permitting similarly controversial secular justifications (like the belief that women have the right to an elective abortion in the first trimester).⁸

Perhaps this concern is merited; I have not commented on this issue in this paper. What I think Eberle fails to appreciate, however, is that alternative conceptions of tolerance and respect that do not require restraint, such as his own, also threaten the religious freedom of citizens in significant respects. Even if the restraint standard prevents religious citizens from seeking to impose coercive policies solely on the basis of their religious beliefs, it at least protects them from similar efforts by others. While the doctrine of restraint might be unacceptable to religious citizens, the ideal of conscientious engagement is hardly much better.

mharbour@jd13.law.harvard.edu

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8] In fact, one defender of the justificatory liberal view, Robert Audi (1997), equates "public" reasons and "secular" reasons.

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