

Conscientious Exemptions and Judgments Contested Within Religious Traditions

Relations between law and religion pose difficulties for every democratic legal system. Issues regarding religious freedom, state neutrality, and symbolic establishment of religions are just some of many examples of problematic cases which are still far from being resolved. My paper is focused on one issue regarding the law and religion debate, particularly the case of the permissibility of conscientious exemptions. According to Jacob Levy, conscientious exemptions are ‘individually exercised negative liberties granted to members of a religious or cultural group whose practices are such that a generally and ostensibly neutral law would be a distinctive burden on them’ (Levy 2000). The most common examples of such exemptions are medical conscience clause, exemptions from the military draft, and religious slaughter laws.

Contemporary theorists attempt to provide standards for distinguishing between justified and unjustified claims for conscientious exemptions (e.g. Quong 2006, Vallier 2016, Billingham 2017). One of such standards is the content of a religious judgement that provides a basis for a claim. Two more detailed criteria are commonly invoked in order to specify this standard. The first criterion states that the more central the conscientious judgement is, the stronger the claim for the exemption becomes (*the centrality criterion*). The second criterion asserts that the conscientious judgement should be obligatory within the religious tradition in order to provide an adequate basis for a claim (*the necessity criterion*). Although there are problems with this approach (Golemboski 2016), it seems that it is widely accepted both on theoretical and practical level.

In the paper, I would like to consider one more criterion of adequacy of conscientious judgments in the context of the religious exemptions debate, particularly the issue whether the fact that a judgment of conscience is contentious within a religious doctrine should affect any claims for an exemption (*the incontestability criterion*). There are two reasons for accepting this criterion and stating that such claims might be justified only by judgments which are commonly recognized by the representatives of a relevant tradition. Firstly, political institutions (e.g. legislatures and courts) are not allowed to interfere in the internal disputes of moral or religious traditions, therefore they should not grant exemptions on the basis of a judgments which are contested within these traditions. The legal recognition of a judgment in such circumstances might be reasonably perceived as taking a side in an internal dispute, and consequently, as a violation of the principle of state neutrality. Secondly, because it is commonly accepted that only doctrines which are reasonable and coherent provide legitimate demands for legal exemptions, there is a doubt whether a doctrine might be recognized as coherent or reasonable, if it justifies mutually exclusive positions on the same normative issue. I argue for the position that at least in some circumstances the contentious character of the judgment within religious tradition should be treated as an obstacle in granting the exemption to the claimant.

References:

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