



Protection of Conscience Project

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The Silence of Good People and Non-cooperation with Evil: A Response to Prof. R. Alta Charo

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It is especially noteworthy that, in an essay about the exercise of freedom of conscience by health care workers, Professor R. Alta Charo has virtually nothing to say about freedom or conscience (*The Celestial Fire of Conscience- Refusing to Deliver Medical Care*. N Eng J Med 352:24, June 16, 2005). “Conscience clauses,” yes: conscientious objection, to be sure: and she mentions acts of conscience and the right of conscience. But nothing about freedom, and, on the subject of conscience itself, the most she can muster is, “Conscience is a tricky business.”

Given her silence on freedom and suspicious distrust of conscience, it is not surprising that her quotes from Mahatma Gandhi, Martin Luther King Jr. and C.S. Lewis are no more than crumbs from their tables, for these men had robust views of freedom and conscience that Professor Charo does not share.

For example, Prof. Charo and Ellen Goodman (whom she quotes with approval) hold that conscientious objectors should be willing “to pay some price” to exercise the freedom promised as their birthright; the price Ms. Goodman has in mind is loss of employment.¹ What tax Professor Charo would impose she does not say. Instead, she offers a quote from Martin Luther King about going to jail for disobeying an unjust law.

Now, King was talking about civil disobedience, not conscientious objection, but leave that aside. His statement makes clear that he believed that it was wrong to jail people for disobeying an unjust law, not that imprisonment was somehow a fitting *quid pro quo* for the legitimate exercise of freedom. Going to jail was, in King’s view, a necessary but temporary strategy to be employed on the road to a better state of affairs. He did not see imprisonment as the price blacks should continue to pay to live in freedom, but as an appeal to “the conscience of the community” that would demonstrate the injustice of the law:

A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law.²

These are principles of the tradition that King, a Protestant, shared with Catholic Aquinas, the Anglican Lewis, Gandhi, a Hindu, and with countless others of all faiths who have resisted and protested tyrannous laws down through the ages. They understood that freedom and conscience are essential

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to human nature and inextricably linked to the primordial obligation to choose good and avoid evil.

King spoke a language widely understood and accepted by friends and foes alike - but not by Professor Charo. For what differentiates the latest round of battles about conscience from those fought by Gandhi and King is not, as Professor Charo and Ms. Goodman would have it, that objectors are seeking “conscience without consequence.” It is that Gandhi and King shared the same moral universe with their opponents, but Charo and Goodman do not.

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An indication of this is found in Professor Charo’s mistaken suggestion that “an expanded notion of complicity” underlies the refusal by objectors to facilitate morally controversial acts by referral or counselling. Contrary to her assertion, there is nothing new or “expanded” in the idea that one can incur moral responsibility in ways other than by ‘just doing it.’³ As a law professor, she must be familiar with the concept that a person can incur criminal responsibility or civil liability by aiding, abetting or counselling. She must also know that the scope of moral or ethical culpability is much broader than that of legal responsibility; witness statements from both King and Gandhi.

“We will have to repent in this generation not merely for the hateful words and actions of the bad people,” wrote King, “but for the appalling silence of the good people.”⁴

“Non-cooperation with evil,” said Gandhi, “is as much a duty as is cooperation with good.”⁵

Professor Charo’s language and thinking simply cannot bear the weight of the tradition behind these words. Instead, her analysis draws mainly upon the notion that human fulfilment is achieved, not by seeking the good and living a blameless life, but by the maximization of personal autonomy. This is why she defines the issue as a power struggle: a conflict of autonomy between patients and health care workers.

But when what is essential to the human person is seen as the exercise of power, the human person comes to be defined primarily by what he *does*, not by what he *is* or might *become*. This is a vision of a human *doing*, not a human *being*; the human person is subsumed by his role or function. In consequence, relationships between human persons are eclipsed by functional roles. Health care workers become, in Professor Charo’s words, “mere purveyors of medical technology.”

To thus reduce human persons to the status of tools or things to be used for ends chosen by others is reprehensible: “very wicked,” wrote C.S. Lewis.⁶ Likewise, Martin Luther King condemned segregation as “morally wrong and sinful” precisely because it relegated persons “to the status of things.”⁷

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Similarly, Madame Justice Bertha Wilson of the Supreme Court of Canada, in striking down all restrictions on abortion in Canada, held that the state should not endorse and enforce “one conscientiously-held view at the expense of another,” for that is “to deny freedom of conscience to some, to treat them as means to an end, to deprive them . . . of their ‘essential humanity’.”⁸ This is especially true when people are compelled to serve ends

that they find morally abhorrent.

Professor Charo, however, denies that there is significant moral or ethical content in controversies about euthanasia, assisted suicide, reproductive technology, and research on embryos. Once more applying the paradigm of power struggle, she argues that such disputes are not about morality or ethics at all, but about strategy - anti-abortion strategy. The exercise of freedom of conscience by objecting health care workers is, she suggests, a “proxy war” - “an attempt at cultural conquest.”

C.S. Lewis invented a name for this “modern method” of argument: ‘Bulverism.’ Rather than *demonstrating* that an opponent is wrong, the Bulverist *assumes*, without discussion, that he is wrong, “and then distract(s) attention from this (the only real issue) by busily explaining how he became so silly.” In the words of Ezekiel Bulver, imaginary founder of this school of thought, “Assume that your opponent is wrong, and then explain his error, and the world will be at your feet.”⁹

Assume, with Professor Charo, that there aren’t any significant moral or ethical controversies about abortion, cloning, euthanasia, etc. because ‘everyone knows’ these procedures are *not* wrong. Assume with her that anti-abortionist sentiment is the ‘real’ or primary motive for opposition to them. Granted such assumptions, justification for conscientious objection disappears, the fear of moral complicity through referral becomes ridiculous, and accusations that conscientious objection is actually “an attempt at cultural conquest” seem plausible. This is Professor Charo’s approach, and it would win accolades from Ezekiel Bulver.

But Bulverism, Lewis pointed out, works both ways. Assume, against Professor Charo, that ‘everyone knows’ that euthanasia, assisted suicide, etc. *are* wrong. Assume, against Professor Charo, that *pro*-abortion sentiment is the ‘real’ or primary motive for supporting them. Granted such assumptions, the reason for conscientious objection is clear, concerns about moral complicity are logical, and it is plausible to see in Professor Charo’s article “an attempt at cultural conquest.”

Lewis saw Bulverism in play on both sides of all political arguments and could not, when he coined term, see how it could lead to anything other than a stalemate, or to “sheer self-contradicting idiocy.”¹⁰ Bilateral Bulverism, with its mutual accusations of “cultural conquest,” does not provide a basis for resolving conflicts about freedom of conscience in health care.

Equally problematic is Professor Charo’s concern about “a diminution of the difference between our personal lives and our professional duties.” This statement reflects, in the words of Professor Frederic Hafferty and Dr. Ronald Franks, “a view of ethics that frames ethical principles as *tools* to be employed . . . something that can be picked up or put down, used or discarded, depending upon the situation or circumstances involved . . . an instrument for manipulation much like any of the more technological tools medicine has at its disposal.”¹¹

One keeps several ethical toolboxes on the shelf by the back door: one for the home, one for the office, another, perhaps, for the political arena. Use the right tool for the right job, and don’t embarrass yourself and your colleagues by bringing the wrong toolbox onto the ward. Hafferty and Franks observed that this “rather limited and task-oriented view of ethics” is the “prevailing sentiment, at least within the basic science faculty of medical schools.”¹²

In contrast, conscientious objectors do not instrumentalize moral and ethical norms, but *internalize* them. They are not tools for solving problems, but form part of their identities. And a human person has only *one* identity, served by a single conscience that governs his conduct in private and professional life. This moral unity of the human person — integrity — was highly prized by Martin Luther King, who described it as essential for “a complete life.”¹³

To abandon one’s moral or ethical convictions in order to serve others is prostitution, not professionalism.

[W]e must remember that it's possible to affirm the existence of God with your lips and deny his existence with your life. . . . We say with our mouths that we believe in him, but we live with our lives like he never existed . . . That's a dangerous type of atheism.¹⁴

Against this, Professor Charo invokes the venerable concept of self-sacrifice. “Professionalism,” she suggests rhetorically, ought to include “the rather old-fashioned notion of putting others before oneself.”

But self-sacrifice, in the tradition of King, Gandhi and Lewis, while it might mean going to jail or even the loss of one’s life, has never been understood to include the sacrifice of one’s integrity. To abandon one’s moral or ethical convictions in order to serve others is prostitution, not professionalism.

“He who surrenders himself without reservation,” warned C.S. Lewis, “to the temporal claims of a nation, or a party, or a class” - one could here add ‘profession’ - “is rendering to Caesar that which, of all things, emphatically belongs to God: himself.”¹⁵

The passage also illustrates that Lewis, like Martin Luther King, quite naturally expressed himself in religious terms because he was motivated by religious conviction. Neither he nor King believed that publicly expressing or acting upon their religious convictions was a threat to democratic freedom. But Lewis feared the development of a state that rejected the natural moral law¹⁶ and Scripture in favour of some ‘humanitarian’ theory of social control. It was within this context that he sounded his warning about “omnipotent moral busybodies:” experts determined to cleanse the land of certain “states of mind” - like religious belief.¹⁷

Professor Charo does not mean to eliminate religious belief, but she wonders how much of it to tolerate in the public square: whether to allow it “*unfettered* expression” even if this “creates an oppressive atmosphere for minority groups,” or to permit religious expression only if it “does not *in any way* impinge on minority beliefs and practices” (emphasis added).

What deserves attention is Professor Chao’s insinuation that *religious* beliefs have the potential to create “an oppressive atmosphere,” but *non-religious* beliefs do not. One must be very selective in one’s reading to maintain anti-religious sentiment of this sort for very long.

Leave aside the false dichotomy: that the only choice lies between expression that is completely unfettered or barely (if ever) permitted. Ignore her peculiar solicitude for favoured minorities, which clearly excludes the minority comprised of conscientious objectors. What deserves

attention is Professor Chao's insinuation that *religious* beliefs have the potential to create "an oppressive atmosphere," but *non-religious* beliefs do not.

One must be very selective in one's reading to maintain anti-religious sentiment of this sort for very long. The atmosphere in Nazi Europe resulted from *non-religious* beliefs about racial superiority and social organization. Atheism contributed to a stifling atmosphere in the Stalinist and post-Stalinist USSR and eastern bloc countries. Belief - but not *religious* belief - produced the atmosphere in Abu Ghraib prison, and continues to do so in the interrogation rooms in Guantanamo Bay.

It is simply false to assert that only religious believers are motivated by faith. That human dignity exists -or that it does not - or that human life is worthy of unconditional reverence - or merely conditional respect - and notions of beneficence, justice and equality are not the product of scientific enquiry, but rest upon faith: upon beliefs about human nature, the meaning and purpose of life, the existence of good and evil. Disputes about morality - about the morality of contraception, assisted suicide, stem cell research - are always, at the core, disputes between people of different faiths, whether or not those faiths are religious. "Everyone 'believes'," writes social critic Iain Benson. "The question is what do we believe in and for what reasons?"

Once we realize that everyone necessarily operates out of some kind of faith assumptions we stop excluding analysis of faith from public life. We cannot simply banish "religious" faiths from our common conversations about how we ought to order our lives together while leaving unexamined all those "implicit faiths" in such areas as public education, medicine, law or politics.¹⁸

Does an implicit faith in the morality of contraception or other controversial treatment underlie Professor Charo's failure to grasp the moral implications of referral and counselling, which she proposes as part of the solution to conflicts of conscience? Perhaps not: but, as Benson argues, the possibility should not be left unexamined.

The good news to be drawn from Professor Charo's article is that she seems sincerely interested in developing a strategy to accommodate freedom of conscience among health care workers, while providing patients with access to the drugs and services they want, even if, as she admits, it is a difficult goal. It is also a particularly worthy goal, and her interest in it is most promising.

Notes

1. Ellen Goodman, “Dispensing Morality”, *Washington Post* (9 April, 2005) (“[T]here are other ways to exercise a private conscience clause. Indeed, in a conflict between your job and your ethics, you can quit. It happens every day.”) online: <<http://www.washingtonpost.com/wp-dyn/articles/A38702-2005Apr8.html>>.
2. Martin Luther King Jr, “Letter from Birmingham Jail” (16 April, 1963), *The University of Alabama Libraries Special Collections* (website), [King] online: <<https://digitalcollections.libraries.ua.edu/digital/collection/p17336coll22/id/2660>> at 7.
3. Sean Murphy, “Referral: A False Compromise” (27 May, 2010), *Protection of Conscience Project* (website), online: <<https://www.consciencelaws.org/ethics/ethics012.aspx>>.
4. King, *supra* note 2 at 11.
5. Mahatma Gandhi: In “Great Trial of 1922” (18 March, 1922) *Comprehensive Website by Gandhian Institutions-Bombay Sarvodaya Mandal & Gandhi Research Foundation* (website), online: <<https://www.mkgandhi.org/speeches/gto1922.htm>>.
6. CS Lewis, “The Humanitarian Theory of Punishment” in Walter Hooper, ed, *C.S. Lewis: First and Second Things* (Glasgow: William Collins & Sons, 1985) 96 [Lewis: *Humanitarian*] at 101.
7. King, *supra* note 2 at 7-8.
8. *R. v. Morgentaler* (1988)1 SCR 30 at 178-179, Wilson J, online: <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/288/index.do>>.
9. CS Lewis, “Bulverism: The Foundation of Twentieth Century Thought” in Walter Hooper, ed, *C.S. Lewis: First and Second Things* (Glasgow: William Collins & Sons, 1985) 13 [Lewis: *Bulverism*] at 16.
10. *Ibid* at 17.
11. Frederick Hafferty & Ronald Franks, “The Hidden Curriculum, Ethics Teaching, and the Structure of Medical Education” (1994) 69:11 *J Academic Medicine* 861 at 862, online: <https://journals.lww.com/academicmedicine/Abstract/1994/11000/The_hidden_curriculum,_ethics_teaching,_and_the.1.aspx> (The identity considered by the authors is a *professional* identity, and, to the extent that they separate personal and professional identities in the same person, they actually adopt the “ethics-as-tools” approach that they critique. Nonetheless, the author is indebted to them for their insight, which is applied here in a manner that is probably different from what they intended).
12. *Ibid* at 864.

13. Martin Luther King Jr, “The Three Dimensions of a Complete Life” (Sermon delivered at New Covenant Baptist Church, Chicago, Illinois, 9 April 1967), *The Seattle Times*, *Martin Luther King Jr: An Extraordinary Life* (website) online: <<https://projects.seattletimes.com/mlk/words-life.html>>.
14. Martin Luther King Jr, “Rediscovering Lost Values” (Sermon delivered at 2nd Baptist Church, Detroit, Michigan, 28 February, 1954), *Stanford University, The Martin Luther King, Jr. Research and Education Institute* (website), online: <<https://kinginstitute.stanford.edu/king-papers/documents/rediscovering-lost-values-0>>.
15. CS Lewis, “Learning in War Time” in CS Lewis, *The Weight of Glory and Other Addresses*. (Grand Rapids, Mich.: William B. Eerdmans, 1975) 43 at 47.
16. What King called “the moral law or the law of God”. *King*, *supra* note 2 at 7.
17. *Lewis: Humanitarian*, *supra* note 6 at 104-105.
18. Iain T Benson, “There are No Secular ‘Unbelievers’”, *Centrepieces* 7, 4:1 (Spring 2000) at 3, online: <<https://www.consciencelaws.org/religion/religion010.aspx>>.