

Debate: Religious Freedom (Friday, 10/4)

The Question

In July of 2012, Charlie Craig and David Mullins ordered a wedding cake at Masterpiece Cakeshop in Colorado for their same-sex wedding. (The marriage took place in Massachusetts, as same-sex marriages were still illegal in Colorado at that time.) The owner of the shop refused to fill the order, citing his religious belief that such a union was immoral. The issue was taken up in Colorado courts, where it was ruled that the shop owner had unlawfully discriminated against his customers on the basis of their sexual orientation, and was subsequently ordered to fill any future requests for same-sex wedding cakes. In appeals, the case eventually reached the U.S. Supreme Court, which [reversed the Colorado decision](#) in June of 2018 in favor of the shop owner.¹ The Supreme Court was careful to clarify that its ruling did not apply to the issue of freedom of speech and religion vs. discrimination more broadly, however. (Rather, their decision was based in large part on the fact that the case had been handled inappropriately in Colorado.)

So, the broader question remains: We are left to ask, Should business owners and employees be permitted to refuse service to customers on religious or moral grounds? More specifically: Should they be permitted to refuse services which facilitate, enhance, or implicitly endorse actions, events, ceremonies, etc., which their religion or moral beliefs deem immoral?

Religious Freedom: A Good Idea? Surely protecting freedom of religion, freedom of speech, and the right to act according our religious and/or moral conscience is generally a good idea. Those having trouble finding sympathy for the Colorado baker may find it helpful to consider these two real-life cases instead:

- (a) During the infamous 2017 white nationalist rally in Charlottesville, [Airbnb denied service](#) to rally participants. And they, along with Uber and Lyft, did this [again](#) at a subsequent rally.
- (b) In a different Colorado baker case, [this Colorado baker](#) refused to bake an *anti-gay* cake, on moral grounds. (This happened in [Florida](#) too.)

If it is your strong moral or religious conviction that some particular action is morally wrong, wouldn't it be unjust to force you to act in ways which facilitate or imply an endorsement of it?

¹ Throughout this same period of time, there were a series of other relevant events at the intersection of religious freedom, freedom of speech, and anti-discrimination as well. For instance, in 2014, the U.S. Supreme Court [ruled](#) that some corporations could claim special exceptions to certain federal laws on religious grounds. In that particular case, Hobby Lobby objected to paying for medical coverage for their employees that covered certain contraceptives (such as IUD's and Plan-B, aka the 'morning after pill'), claiming that the use of these resulted in something morally on a par with abortion—which the corporation opposed on religious and moral grounds. The court's ruling, which cited their religious freedom, was to permit Hobby Lobby to refrain from offering contraceptive medical coverage to their female employees. And in March of 2015, our current vice president (then governor), Mike Pence, signed into Indiana law the [Religious Freedom Restoration Act](#), which further legitimized appeals to religious freedom as a legal defense by individuals and corporations in a court of law. Controversy was exacerbated in June 2015, when the Supreme Court [ruled](#) that all 50 states are now required to issue marriage licenses to same-sex couples. As we have already seen, bakers refused to bake cakes for same-sex weddings (e.g., in [California](#) and [Colorado](#), among others); also, county clerks refused to issue marriage licenses to same-sex couples (the most famous case being that of [Kim Davis in Kentucky](#), but this has also happened in [Texas](#), [Alabama](#), among others); and [florists](#) and [photographers](#) refused to serve same-sex customers at their weddings. Finally, in May of 2019, the Trump administration expanded the right of health workers to [refuse to treat patients](#) on religious grounds; and in August 2019 proposed to allow employers to [make hiring and firing decisions](#) based on whether or not employees shared their religious views.

Consider a more extreme, imaginary example: Imagine that you are a small-business owner and a member of a religion which states that human sacrifice is morally wrong. However, now imagine that you live in a society where acceptance of human sacrifice is on the rise, and has even been recently legalized. Surely, you would (and should?) refuse to serve customers at their human sacrifice ceremonies (e.g., via catering, photography, etc.). But, then, if that is correct, then shouldn't a small business owner whose religion condemns homosexuality *also* be permitted to refuse to serve customers at their same-sex weddings? If there is a difference, what is it?

The point of this example is not, of course, to advance the offensive claim that same-sex marriage is morally on a par with human sacrifice, but rather to clarify the more general question at stake here, which is simply: If I believe—or if my religion states—that action X is morally repugnant or prohibited, then should I be required (by law and against my will) to serve customers in ways which facilitate X or imply my endorsement of X?

Bad Idea? On the other hand, perhaps granting religious freedom in such a broad manner is actually a bad idea. For instance, imagine that I oppose blood transfusions on religious grounds (a belief [held by Jehovah's Witnesses](#), for instance). If I am a paramedic and I arrive on the scene of an accident, should I be permitted to refuse to administer a life-saving blood transfusion? (Note: Some worry that this is a possible outcome of the protections recently added by the Trump administration, which enable health workers to [refuse to treat patients](#) on religious grounds.)

Or, imagine that it is 1968, and that you are a member of a religion which states that interracial marriage is morally wrong (a belief so common in U.S. history that 16 states still had laws against it when it was deemed unconstitutional by the Supreme Court [in 1967](#)). In your society, acceptance of interracial marriage is on the rise, and has even been recently legalized. Yet, it is your strong conviction that this is a mistake. Should you, as a business owner, be entitled to an exception from non-discrimination laws on religious and/or moral grounds (say, by refusing to bake a wedding cake, or issue a marriage license² to an interracial couple)? My point is this: Is it possible that present protections of conscience-based exceptions may inadvertently re-enable Jim-Crow-era-style segregation? (For discussion of the parallels between the issue surrounding same-sex marriage today, and the issue of interracial marriage in the 1960's, see [here](#) and [here](#).)

To many, granting exceptions in the two cases above will seem repugnant. But, is our present debate topic any different? To return to our present topic, critics worry that granting such exceptions could (a) result in real, morally significant harm (as in the health care case), and/or (b) constitute impermissible discrimination against individuals based on their intrinsic traits (such as sexual orientation or race). (Further discussion [here](#) and [here](#); some further concerns over more recent developments [here](#).)

Your Task

Question: Should business-owners and/or employees be permitted to refuse service to potential customers based on their 'conscience' (i.e., religious and/or moral grounds)?

You have been divided you into two groups. One group will argue that the answer to the above questions is "yes" (this group will argue *in favor of* protecting the right to refuse service based on conscience). The other group will argue that the answer is "no" (this group will argue *against* the refusal of service).

² Note: This has actually happened in the U.S. as recently as [2009](#).

Getting Started

Now that you have met your teammates, I encourage you to continue to email one another, exchange phone numbers, arrange to meet, etc.

You may want to do a bit of research before you begin, in order to familiarize yourself with some of the common reasons that each side gives in defense of their position.

What To Do

Opening statement: Please elect one or more spokespersons from your group to give an opening statement of 3-5 minutes. During this opening statement, you will present some argument or reasons for believing that your group has the correct answer to the questions above.

Response statement: After both teams give their opening statements, each group will be given a couple of minutes to brainstorm quietly, to agree on what your group will say in response to your opponents. Please elect one or more spokespersons from your group to give a 3 minute response statement. During this response statement, you will provide some reason or justification for believing that what the opposing group has just said is mistaken.

Open discussion: At the end, the two teams will be allowed some time to discuss the issue with one another informally, before I open discussion to the entire class for Q&A.

Format

Event	Time Allotment
Team “NO” opening statement	3-5 minutes
Team “YES” opening statement	3-5 minutes
Team “NO” brainstorm session	2 minutes
Team “NO” response statement	2-3 minutes
Team “YES” brainstorm session	2 minutes
Team “YES” response statement	2-3 minutes
Informal open discussion between teams	5 minutes
Informal Q&A between teams and class	25 minutes

Grading

This assignment is worth 10% of your grade. Half of this grade will be assigned by myself based on the performance of your team during the class debate. The other half of this grade will be based on peer assessment. You will be graded by the other members of your team in an anonymous survey following the debate. Here are some things I’ll be looking for:

- Are the arguments that you present clear, carefully stated, and persuasive?
- Do you handle questions, criticisms, etc., clearly, carefully, and persuasively?
- Is it apparent that your team has put some careful thought and consideration into this issue?
- Do you function well as a *team*? (e.g., avoid contradicting, bickering with, or talking over your own teammates)