

# The Moral Liberal

## Is Religious Liberty an “Exception” to Government Rule?

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In a free society, employers would be at liberty to offer their employees group health insurance, if they wished, and to offer whatever coverage they wished to offer. In the Supreme Court today, however, so basic a premise barely surfaced during oral argument in *Sebelius v. Hobby Lobby*, the Obamacare “contraceptive mandate” case. Rather, Justices Sotomayor, Kagan, and Ginsburg, clearly supporting the mandate, pressed Hobby Lobby’s attorney Paul Clement as to whether an “exception” should be provided for religious employers who are otherwise required by regulation to offer contraceptive coverage, and whether such an exception could be limited or instead would have no principled bounds. By contrast, Chief Justice Roberts, Justice Kennedy, and even Justice Breyer were at pains to show how such a religious “accommodation” could in fact be limited.

Thus have we come to a point at which religious liberty is recognized, if it is, as an *exception* to the general rule that government may require us to act as it dictates—and we have to be careful not to extend that *accommodation* too far lest it gobble up the rule.

That’s a remarkable inversion of First Principles: government first, liberty second, as a limited exception. True, we don’t allow the religious, in the name of religious liberty, to proselytize by the sword. And we don’t because that “exception” is perfectly consistent with a general rule in favor of liberty and against forced association—as in murder. Here, however, religious employers are asking simply to be free from a rule that would otherwise *restrict* their liberty or require *forced* association, a rule that would force them to choose between not offering their employees insurance, and paying the Obamacare penalty for so choosing, and offering their employees coverage that offends the employers’ religious beliefs. And it’s no answer to say that, absent the mandate, the *employees’* liberty is restricted. They’re at perfect liberty to obtain contraceptives, but not free to force their employer to provide them.

In other words, if you start with freedom of association, then it’s association that must be justified, by mutual consent, not individual liberty. But if “we’re all in this together”—as President Obama so often says and as Obamacare so clearly manifests—then liberty has to be treated as an “exception,” an “accommodation,” carved out from that general rule. For more on this see here and here.

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