


Conflicting Fundamental Rights: Same Sex Marriage and Freedom of Religion

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Case Opening

Mr. and Mrs. Bull are devoted Christians. They strongly believe that monogamous heterosexual marriage is the (only acceptable form of romantic/sexual partnership. According to devoted Christians like them, their form of partnership is “uniquely intended for full sexual relations” and sex outside of marriage – whether heterosexual or homosexual – is sinful. Further, Mr. and Mrs. Bull are the owners of a small family hotel in Sennen Cove, Cornwall, the United Kingdom. Because of their religious beliefs, they restricted the use of double-bedded rooms to married couples in their hotel. Single-bedded and twin bedded rooms were available to all. These policies were all clearly communicated on their website.

Mr. Hall and Mr. Preddy are a homosexual couple who have entered into a legal civil partnership/ whose relationship has been legally recognized as a civil partnership , living together for more than twelve years in the city of London. For a weekend breakaway, Mr. Hall and Mr. Preddy planned to do some walking along Cornwall’s beautiful coasts and pay a visit to Land’s End Landmark Monument. On the 4th of September 2008, Mr. Hall booked, by telephone, a double-bedded room at Mr. and Mrs. Bulls’ hotel for the following two nights (5th and 6th of September 2008).

The next day, on arrival at the hotel, Mr. Hall and Mr. Preddy were informed that they could not stay in a double-bedded room because of their relationship status. As a form of compensation, the gay couple was offered two single bedrooms for the two nights. Mr. Hall and Mr. Preddy were highly surprised by the stance taken by Mr. and Mrs. Bull and found this “rejection” “very hurtful”. The men did not accept the offer proposed by the hotel owners and actively protested against the decision of not letting them sleep in a double-bedded room as they felt that they should be treated like any other married couple. When their protest turned out to be ineffective, Mr. Hall and Mr. Preddy left the hotel in search for an alternative accommodation in the Cornwall area for their weekend. This is what the gay emancipation movement was about: Equal treatment of same-sex and mixed sex couples (or marriages) .¹

Fundamental constitutional rights

Most constitutions in liberal western countries provide the following basic rights for all their citizens: (i) freedom of thought/conscience, (ii) the protection of property rights, and (iii) the right to equal treatment. At the heart of the case outlined above are the human rights to freedom of thought, conscience and religion, as article 9 of the European Court of Human Rights reads:

- (a) Everyone has the right to *freedom of thought, conscience and religion*: this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- (b) *Freedom to manifest one’s beliefs* shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the

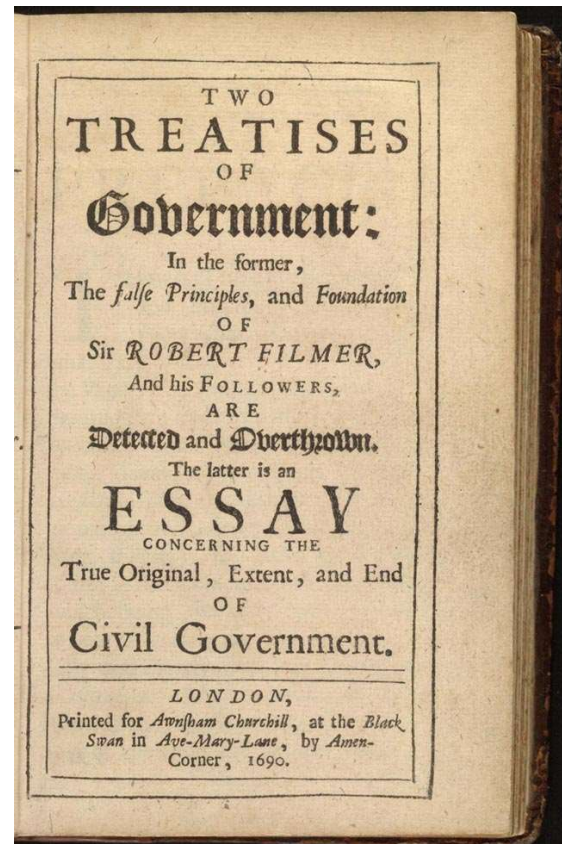
¹ See for more on this case: <https://ukhumanrightsblog.com/2012/02/19/analysis-court-of-appeal-upholds-hotel-gay-discrimination-ruling-marina-wheeler/> as seen 27 October 2020.

protection of public order, health or morals, or for the protection of the rights and freedoms of others.²

There are, however, other considerations to take into account as well. Another question in this case is what the protection of property rights means, especially in relation to private ownership. As Mr. and Mrs. Bull are the owners of the hotel, then to what extent can they truly decide the regulations and conditions for the customers who stay their hotel? In other words, where are the boundaries of the right to own private property?

Before dealing with the conflicting rights in the outlined case, it might be useful to know where our fundamental rights come from and what we should do when some of them come into conflict with each other. To deal with this issue, we turn to two major philosophers who shared deep thoughts on the origins and importance of fundamental (human) rights: The British philosopher John Locke (1632-1704) and the American philosopher John Rawls (1921-2002). The fact that these two men lived in very distinct times and geographical regions may explain the differences in their approach to fundamental rights. Nevertheless, perhaps surprisingly, both philosophers come to quite similar ideas regarding the origins and importance of so-called fundamental, basic, inalienable or human rights.

Let's start discovering the origins and importance of fundamental rights by focusing on the works of John Locke. Locke states that, in order to understand what it is to have a natural right, we have to imagine the way things are before any form of government, before the introduction of law. This state is, according to John Locke, the *state of nature*. In 1689, Locke published his famous essay *Two Treatises of Government*. In the *First Treatise* he attacks patriarchalism, while in the *Second Treatise* Locke outlines his ideas for a more civilized society based on natural rights and his social contract theory. Locke begins by describing what he means by the *state of nature*, which is a much more stable picture than Thomas Hobbes' state of "war of every man against every man".³ Locke starts by arguing that all men are created equal in the state of nature by God. From this starting point, he goes on to explain the hypothetical rise of property and civilization, and that the only legitimate governments are those that have the consent of the people. Therefore, any government that rules without the consent of the people can and should be, in theory, overthrown by the people.



² https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf as seen 27 October 2020.

³ Thomas Hobbes, *Leviathan, or The Matter, Forme & Power of a Common-Wealth Ecclesiasticall and Civil*, 1651. Copyright© Erasmus School of History Culture and Communication; Gijsbert Oonk | Gijs van Campenhout

In the *Second Treatise*, Locke argues that the *state of nature* is a state of liberty. In the *state of nature*, human beings are free and equal to each other; there is no hierarchy. People are not born to be kings, just as people are not born to be servants. However, even in this free and equal *state of nature*, we are not free to do whatever we want. There are certain constraints; these are because we cannot give up the rights that we *naturally* have. As we in the *state of nature* fall under the *law of nature*, we are not free to take someone else's life, liberty or property. Nor are we free to take our own life, liberty or property. As, even though I am free, I am not free to violate the *law of nature*. So we are not free to take our own lives, or to sell ourselves into slavery, or to give to somebody else arbitrary absolute power over us.

But where do these constraints come from? Well, Locke provides us with two answers. First, he argues that "for men, being all the workmanship of one omnipotent (almighty), and infinitely wise maker [namely God], they are his property, whose workmanship they are, made to last during his not one another's pleasure."⁴ Therefore, one of the answers to the question why I cannot give up my natural rights to life, liberty and property is because, strictly speaking, these rights are not yours as, after all, you are a creature of God. According to Locke, God has an overarching property right over all of us, in other words God has a *prior* property right.

Now you might say that 'God' is an unsatisfying and/or an unconvincing answer, especially for those who do not believe in God. What does Locke have to say to them? Well, second, here is where Locke appeals to the *law of reason*. The idea behind focusing on *reason* is that if we properly reflect on what it means to be free, we will come to the same conclusion. This is what Locke means when he says: "The state of nature has a law of nature to govern it which obliges everyone: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions."⁵

This leads to a puzzling and paradoxical feature of Locke's account of natural rights; familiar in one sense and strange in another. This is the idea that our natural rights are unalienable. But what does unalienable mean? Locke means we as individuals are not able to separate ourselves from our individual natural rights. We can't give these rights up, give them away, trade them with another or sell them. For example, consider buying an airline ticket. As airline tickets are registered to an individual, they are nontransferable to someone else and, therefore, unalienable. I own these natural rights, but in a limited sense that I cannot get rid of them. So, in one sense, an unalienable right is a non-transferable right which makes it, as something I own, less fully mine as I cannot fully decide on what I want to do with it. Another example is your citizenship rights. You are, for example, born American or Dutch – an aspects of your identity that you cannot get rid of – which (seemingly automatically) gives you certain rights to the citizenship of the respective countries; you possess these citizenship rights but you are not free to do with them whatever you like.

⁴ John Locke, *Two Treatises of Government*. In the Former, *The False Principles and Foundation of Sir Robert Filmer, and His Followers, Are Detected and Overthrown: The Latter, Is an Essay Concerning the Original, Extent, and End, of Civil Government*, Two Treatise, 2, 6. <https://www.yorku.ca/comninel/courses/3025pdf/Locke.pdf> This part of the description of John Lock is taken from the well known Harvard Philosopher Michael Sandel and his fanous course Justice: <http://justiceharvard.org/lecture-7-this-land-is-your-land/>

⁵ John Locke, *Two Treatises of Government*, ed. Thomas Hollis (London: A. Millar et al., 1764). 12/16/2019. Copyright© Erasmus School of History Culture and Communication; Gijsbert Oonk | Gijs van Campenhout

Another aspect of unalienable rights is, especially in the case of the right to life, liberty and property, for a right to be unalienable makes it deeper and more profound right. And that is Locke's sense of unalienable. We can find these unalienable rights in the American Declaration of Independence as Thomas Jefferson drew on Locke's idea of unalienable rights to life, liberty - and here Jefferson amended Locke's idea - the pursuit of happiness.

4th July 1776:

The American Declaration of Independence reads (in line with Lock)

"The unanimous Declaration of the thirteen united States of America, When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain *unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.*—(*cursive ours*)."

<https://www.archives.gov/founding-docs/declaration-transcript>

(as seen 26/11 2020)

To summarize, for Locke, unalienable rights are (individual) rights that no one can take away from us, not even a king or the majority in a parliament (though Locke himself could not have imagined democracy as we now know it). Although these rights are individual and unalienable, they do not belong to us as individuals as they belong to God or – in another sense – they emerge from (the law of) 'reason'. Therefore, we cannot take away those rights, not even from ourselves.

John Rawls was an American moral and political philosopher in the liberal tradition in the twentieth century. His theory of "justice as fairness" recommends equal basic rights for all, equality of opportunity and promotes the interests of the least advantaged members of society. Rawls's arguments for these principles of social justice are based on a thought experiment which he called the 'veil of ignorance' behind which people are positioned in the 'original position.'

Rawls argues that most people in modern democracies tend to vote mainly in their own interests. In short, if you are rich and entrepreneurial you may vote for more liberal rights and less taxation by the state. Conversely, if you are poor, poorly educated and (relatively) unhealthy you may vote for higher taxation, a redistribution of wealth and subsidization of both the healthcare and educational systems. The current political system will, in the end, reproduce – perhaps even enlarge - the existing inequalities in societies. Rawls asked himself what would happen if we were to create a society based on *fair* principles and regulations for all: what would be the main principles and how should such a fair society look?

By placing people behind the 'veil of ignorance', they cannot know who they will be or anything else about themselves in this new society. So, any choices they make in structuring that society could either

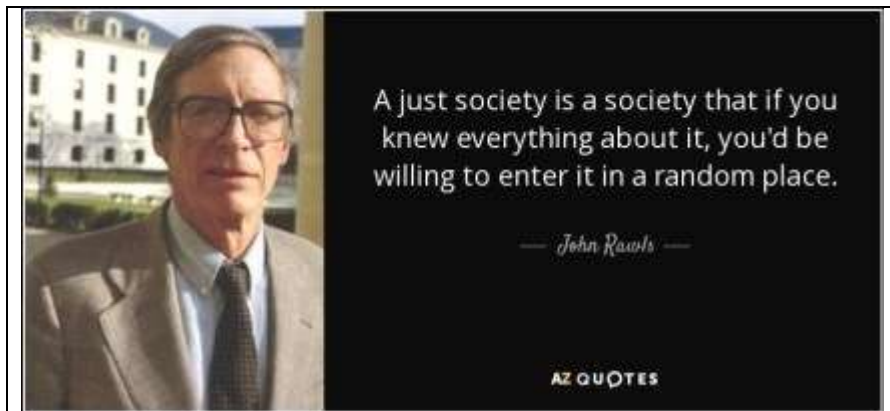
benefit or harm them. Rawls then assumes that behind the veil of ignorance, people will act solely as rational human beings. Thus, for example, if they decide that men will be superior, they face the risk that they will be entering the new society as a woman (or as gender neutral). Or, for example, if they decided that 10% of the population will be slaves to the other 90% of the population, they would need to consider the 10% chance that they could find themselves as a slave. As no one wants to be part of a disadvantaged group, the logical belief is that the 'veil of ignorance' would produce a fair, egalitarian society, this, Rawls calls *justice as fairness*.

In a fair society, according to Rawls, all individuals must possess the following rights:

- Rights and liberties. This includes: the right to vote, the right to hold public office, freedom of speech, freedom of thought, and fair and legal treatment;
- Power and opportunities for all;
- For income and wealth to be distributed sufficiently for good quality of life, not everyone needs to be rich, but everyone must have enough money to live a comfortable life (but what is enough?);
- The conditions necessary for self-respect.

For these conditions to occur, the people behind the 'veil of ignorance' must figure out how to achieve what Rawls regards as the two key components of justice:

- Everyone must have the best possible life which does not cause harm to others.
- Everyone must be able to improve their position, and any inequalities must be present solely if they benefit everyone.



What John Locke and John Rawls would both agree on is:

- The right to life, no slavery nor exploitation of human beings;
- The right to liberty, to chose your own way of life based on your own principles and values (as long as you do not harm others);
- The protection of minority rights and the worst-off in society (as you might be one of them);

- The protection of property rights.

Freedom of religion and same-sex marriage

Let us go back to our 'modern day case' of the religious hotel owners and the gay-couple. Most modern societies have either a constitution or laws that deal with:

- Freedom of religion, thought and conscience;
- The right not to be discriminated against on specific grounds such as sexual orientation, race or age (which varies according to country);
- Protection of property rights;
- And other fundamental human freedoms as long as 'we do not harm others'.

Now, what do we do if some of these principles, freedoms or rights compete or even clash with each other? Obviously, in the described case, there is a tension between the freedom of religion and property rights of the Christian, hotel owners and the right not to be discriminated against on grounds of marital status or sexual orientation of two men whose relationship has been legally recognized as a civil partnership.

Ultimately, this case went to court. The main question was whether Mr. and Mrs. Bull were allowed to refuse a double-bedded room to Mr. Hall and Mr. Preddy. To answer this, the following question needed to be answered: can freedom of religion and the right to same-sex marriage be upheld and defended at the same time? Or should one of those rights override the other?

Arguments for Mr. and Mrs. Bull's case	Arguments for Mr. Hall and Mr. Preddy's case
<p>Final judgement:</p> <ul style="list-style-type: none">• Whose position would you defend, and why? 300-400 words <p>Explain how you can overcome the differences in the two positions or, if not, why you would rule in favor of one over the other. What could be the major consequences for the immediate future of the position you have chosen? 200-400 words</p>	

Teaching Note Template

Synopsis

This case balances three fundamental/natural/basic or so-called unalienable rights: (1) Freedom of religion/conscience, (2) the right to be treated equally, and (3) property rights. These are rights that are described in most constitutions of modern western countries. Nevertheless, how we as societies and individual citizens cope with cases in which certain fundamental rights tend to be in conflict with each other is not obvious. Is freedom of religion more important than the freedom of a same-sex couple, or the other way around? And how about the role of (private) property rights? If you are the owner of a hotel, can you decide the rules and regulations within your hotel for example in which rooms your customers sleep? Is it fair for a gay couple to demand the same rights as a married couple, even if the demand is in conflict with the beliefs and rights of the Christian hotel owners?

Teaching objectives

- Students become aware that this case balances three fundamental/natural/basic or so-called unalienable rights: Freedom of religion/conscience, the right to be treated equally and (private) property rights;
- Students know what fundamental/unalienable rights are and can list ten of them;
- Students can describe two different perspectives (philosophical origins/traditions) from which the importance of unalienable rights emerge (John Locke and John Rawls);
- Students know what John Rawls means by the 'veil of ignorance' and can explain why this *original position* might lead to unalienable rights.

Target Audience

High School 12th grade – BA-2 / history / sociology / law.

Teaching Approach (optional)

This case can be played in a law-case / court scenario in which the teacher divides the group in three. One group represent the Christian couple that owns a hotel, one group represents the gay couple, and one group represents the jury/judge. Each of the groups need to prepare themselves for an interactive debate in which they need to convince the jury of the rights of their clients. To be successful, the two parties who defend either one of the couples does not only have to come up with arguments to plea for their clients but also think about possible counter-arguments to the arguments brought forward by the other party. The jury needs to be aware – in detail – of the case at stake. Their verdict, however, needs to be based on the arguments that are brought forward in the debate. The decision of the jury does not have to be unanimous; the party who gets the most votes wins the debate (American-style lawsuit).

Assignment Questions (optional)

In preparation for the class, students need to read the case, think about its complexities, and complete the attached assignment. In addition, the teacher may ask the students to find the precise formulation of the rights that are in conflict in this case in the actual constitution of the country that they wish to represent. Those are: : freedom of religion/conscience, the right to equal treatment and the right to (private) property.

Teaching Plan (with a Time Plan)

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- Students prepare the case at home (could also be done in class in pairs).
- Reading the materials, thinking about the issues at stake and completing the case: 1 hour (1 to 2 hours if done at home).
- Students compare their answers with each other by discussing them in small groups in class: 30 to 40 minutes.
- After gathering the for and against arguments teachers may organize a role play of US-Lawsuit: see **Teaching Approach**. Preparation of arguments: 15 to 20 minutes. Live debate in which the parties bring forward their arguments, discuss with each other under the supervision of the Jury: 30 minutes. The Jury can ask some questions to both parties before it comes to a verdict: 10 minutes.

Questions to advance the discussion

See teacher manual

Questions to close the discussion

How would John Rawls deal with this issue? Can we resolve this issue 'behind the veil of ignorance'? What would arguably be the result?

Epilogue

The most common outcome in the above case (in liberal democracies) is as follows:

The Christian couple may not discriminate against the homosexual couple. Not even when it comes to down to their ownership over private property, which is in this case a hotel. The fact that it is a hotel is important as it makes the property – and, therefore, its owners – part of the *service industry*. In the service industry each individual customer must always receive the same service for the same money, so no discrimination is allowed. Otherwise, owners of hotels or owners of any businesses could refuse, thereby discriminating against, minority groups or individual people, be it on religious grounds, racial aspects, or another characteristic which is protected. If so, we would end up in a society where, for example – based on the argument of freedom of religion and/or the right of property/ownership – minorities could be excluded from certain services. In this case it would be a hotel visit, but it could also include theater visits, restaurants, building materials or living in a specific residential area. The trade-off in this case is, therefore, the resignation of a small part of the right to freedom of religion (and property/ownership), in exchange for a society where discrimination is excluded; especially when it concerns a vulnerable minority. The Christian hotel-owners must, therefore, resign a small portion of their Christian identity (values and norms) as they are part of the *service industry*. However, nobody has forced them to work in the service industry. In almost all other areas of life they can continue to propagate their Christian values and norms; either in the private and public spheres. For example, they may read their religious books, they can keep their religious gatherings in their hotel, print religious leaflets and enjoy their religious freedoms. Arguably, as such their freedom of religion remains protected.

References and recommended readings / sources

List of articles, books, or other sources (e.g. websites) you will discuss in connection with this case or recommend students to read.

Literature

- Fabre, C. (2013). *Justice in a Changing World*.
- Locke, J. (1794). *Two treatises of government: In the former the false principles and foundation of Sir Robert Filmer and his followers are detected and overthrown. The latter is an essay concerning the true original extent and end of civil government. By John Locke*. Dublin: Printed by William M'Kenzie, No. 33, College-Green.
- Rawls, J. (2020). *A Theory of Justice: Original Edition*. (Original from 1971).
- Wheeler, M. (19 February 2019). Analysis | Court of Appeal upholds hotel gay discrimination ruling, *UK Human Rights Blog*, <https://ukhumanrightsblog.com/2012/02/19/analysis-court-of-appeal-upholds-hotel-gay-discrimination-ruling-marina-wheeler/>, last visited: 23 November 2020.

Other Information

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Case Type

- Case based on published sources

Case Category

- Ethics & social responsibility (ETH)
- Legal and moral issues
- History
- Citizenship

Case Info

- Unalienable rights/ Fundamental rights

Keywords or phrases (no more than 15)

Conflicting fundamental rights
 Freedom of religion
 Veil of Ignorance
 Unalienable rights

Teacher note's: OPTION (2)

If teachers decide to organize this case in the classroom -without the reflections on John Lock and John Rawls, they need to prepare the interventions in advance.

- (1) Let students the answer the questions themselves (7 minutes).
- (2) Let them debate the with each other and come up with their major/ strongest arguments (12 minutes)

Most students debate two conflicting rights: Same-sex marriage and freedom of religion. In essence it is about the right to equal treatment for same-sex married couples and man/women married couples. In addition, the right to (private) property plays a role in this case. Can you decide on who the guests are in your own hotel? Can you, therefore, refuse guests to stay overnight? Some students miss the right of property initially. Moreover, the fact that it is a hotel that we are dealing with is important as it is therefore part of the *service industry* with its own regulations, in particular regarding hospitality. But usually these rights and regulations come up during the classroom debate.

Possible answers/solutions and interventions for teachers:

- (1) The students who believe that the rights of the devout Christian couple should be honored. After all, it is their hotel ((private) property). They may therefore determine to whom they rent the rooms. Moreover, they are not unfriendly towards the gay couple as they offer them an alternative within their hotel. Further, the gay couple could have known that the hotel owners are devout Christians and that they did not rent a double-bedded room to gay couples as it was stated on their website. **The gay couple could also have booked another hotel in the area....**

Intervention 1: Would the situation be different if this was the only hotel in the area? Suppose that there is no alternative for them, can the gay couple then also be denied a double-bedded room? Why do you think that the availability of alternatives might be an important / unimportant difference in this case?

Intervention 2: Some students argue that two fundamental rights (the freedom of religion and the right to property) clash with another fundamental right (the right to equal treatment). In football terms, it is 2-1 in advance of the Christian couple. So therefore, they choose to defend Mr. and Mrs. Bull in this case. In other words, the religious couple may refuse the gay couple if they do not accept the offered alternative.

However, consider the following **consequences**: Does such a reasoning also applies to restaurants? Would you allow restaurants to place signs on their doors saying: Black people are not allowed to eat in here or Jews are not allowed to eat in here? Would you in this context also place freedom of religion above the principle of discrimination? Why would or wouldn't you? Is that a society you would like to live in?

Intervention 3: When owners can discriminate, can the state do so as well? What if a devout Christian is employed by the state and is asked to perform a same-sex marriage, can the devout Christian employee of the state than refuse to perform the marriage with an appeal to freedom of religion? And what if no other official to perform the same-sex marriage is available? How should the state deal with this kind of refusal?

Students who argue that the rights of the gay couple should be defended

Does their stance point mean that freedom of religion needs to be restricted? Yes, and certainly in the experiences of religious freedom as predicated by Mr. and Mrs. Bull. According to these students, the hotel owners have to offer the gay couple a double-bedded room like they booked. However, offering them such a room is the only thing in which the devout Christian couple should 'give up' on their freedom of religion. They can still go to their own church on Sundays, their children are allowed to go to a Christian school, they are allowed to apply their own dress code at school and in church, they may be (openly) members of a Christian party, and they can put a Bible on the nightstand of each of their hotel rooms.

The consideration is whether a small adjustment is desirable / permissible for people of a religious group to maintain the right to equal treatment for others. When owners / entrepreneurs are allowed to refuse people based on religious reasons, it actually facilitates discrimination.

The most common outcome in the above case (in liberal democracies) is as follows:

The Christian couple may not discriminate against the homosexual couple. Not even when it comes to down to their ownership over private property, which is in this case a hotel. The fact that it is a hotel is important as it makes the property – and, therefore, its owners – part of the *service industry*. In the service industry each individual customer must always receive the same service for the same money, so no discrimination is allowed. Otherwise, owners of hotels or owners of any businesses could refuse, thereby discriminating against, any type of minority group or individual person, be it on religious grounds, racial aspects, or anything else. If so, we would end up in a society where, for example – based on the argument of freedom of religion and/or the right of property/ownership – minorities could be excluded from certain services. In this case it would be a hotel visit, but it could also include theater visits, restaurants, building materials or living in a specific residential area. The trade-off in this case is, therefore, the resignation of a small part of the right to freedom of religion (and property/ownership), in exchange for a society where discrimination is excluded; especially when it concerns a vulnerable minority. The Christian hotel-owners must, therefore, resign a small portion of their Christian identity (values and norms) as they are part of the *service industry*. However, nobody has forced them to work in the service industry. In almost all other areas of life they can continue to propagate their Christian values and norms; either in the private and public spheres. For example, they may read their religious books, they can keep their religious gatherings in their hotel, print religious leaflets and enjoy their religious freedoms. Arguably, as such their freedom of religion remains protected.

Complications?

Mr. and Mrs. Bull argued that they did **not discriminate because of sexual orientation of Mr. Hall and Mr. Preddy but because the two were not married; not in the eyes of God**. Mr. Hall and Mr. Preddy pointed out that they had applied exactly the same criteria to unmarried opposite sex couples. (In addition, if they had a registered partnership then they were legally married before the law of the state). Mr. and Mrs. Bull accepted that this policy amounted to indirect sexual orientation discrimination but contended that it was justified by their right to freedom of religion. They argued that the requirement not to discriminate on grounds of sexual orientation in the Equality Act (Sexual Orientation) Regulations

of 2007 imposed a disproportionate burden on their right to freedom of religion and that the regulations were, therefore, incompatible with Article 9 of the European Convention on Human Rights.

Teacher note: OPTION 3

If teacher wish to use this case in the context of Fabre, C. (2013). *Justice in a Changing World*. And relate to the three perspectives on Justice: Egalitarian/Liberal perspective, Communitarian and Libertarian perspective. However, we feel it is 'easier' to divide between Communitarian Perspectives and Libertarian Perspectives.

Freedom of religion, the right to equal treatment and the right to (private) property

Most students debate two conflicting rights: Same-sex marriage and freedom of religion. In essence, it is about the right to equal treatment for same-sex married couples and man/women married couples.

In addition, the right to (private) property plays an important role. Some students miss this in the initial debate. But usually it comes up during the classroom debate.

- (1) There are three principles/values at stake: Freedom of Religion, Equality (Same Sex Marriage and traditional marriages), and the right on your own property.
- (2) Cecile Fabre, and others, made a distinction in three different perspectives on the question 'what is a just/fair society?' Those perspectives are Libertarianism, Egalitarian Liberalism and Communitarianism. Egalitarian Liberalism (as promoted by John Rawls) mainly refers to redistribution of wealth and economic principles. That is, however, not at stake here. So the debate is mainly between Libertarians and Communitarians, as well as within Libertarianism and within Communitarianism.
- (3) And then we have Bikhu Parekh with some remarks on the equal treatment of minorities:
 - Respect for a person involves locating him/her in his/her own cultural background.
 - Equal respect should lead to equal opportunities. This should also include equality before the law;
 - Equal protection of the law should be defined in a cultural sensitive manner. In example, a ban on drugs threats every single person equal but it may discriminate against a religion that uses these drugs for religious and cultural requirements (like the Rastafari). Therefore, one might create exemptions for certain minorities.
- (1) **Equality of difference** through negotiating (Sikh Helmet Case);
- (2) **Contextualizing equality**: If we do not allow Muslim women/girls to wear a head scarf/hijab in schools because it is a part of the religious dress of the Muslims, we cannot allow other signs of religion in schools (Christian cross, Jewish religious symbols, etc.). In addition, we also should not create separate religious schools in which religious symbols are allowed;
- (3) **Limits of equality**. Can we really claim 'we are a Christian society' and that, therefore, Christian values should prevail?

Let's review the case

<p>Libertarians</p> <p>Minimal State Self-ownership</p>	<p>The state should not interfere. The solution is the market. The gay couple may find another hotel. If there are enough gays in society the market will solve the issue.</p>	<p>Owners of the hotel have the right accept or reject customers. They are the owners, so they can decide.</p>	<p>But then we allow for legalized discrimination against married gay couples, but indeed any ethnic groups. We do not serve Jews/ Blacks, etc.</p>
<p>Communitarians</p> <p>Group rights vs individual rights. Which group rights should prevail?</p>	<p>We should respect religious rights.</p>	<p>We should respect the rights of communities. Thus, which community should prevail? The religious community or the Gay/LHGTB community?</p>	<p>Bikhu Parekh: we should especially respect the rights of vulnerable minorities. Especially if this is important to fulfill the emotional needs of this group (limits of equality argument).</p>