

Bologna Institute for Policy Research

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Speaker: Christopher McCrudden, Professor of Human Rights and Equality Law at Queen's University Belfast and William W. Cook Global Law Professor at the University of Michigan Law School.

Chair: Susana Mancini, Professor of Law at University of Bologna

Conscience

Religion in International Law and International Relations Series

The ambivalence and debate surrounding complex cases with claims of conscience are a provocation for scholars and human rights lawyers to further analyze dynamics of identity, religion, and equality in the legal system. Professor Christopher McCrudden's presentation entitled *Conscience*, emphasizes the nuanced and problematic framing of conscience claims and presents the implications of case outcomes in defining how conscience will be used to justify action in future legal battles. As McCrudden illustrates, there is a recurring ambivalence reflected not only in these legal cases but also in the moral theology of conscience claims.

Claims of conscience have traditionally been used in law at the individual level and these claims can be as classified as outward or inward looking. McCrudden shares four particularly noteworthy cases involving claims of conscience and uses these examples to analyze the role of conscience in shaping legal strategies. The *Bayatan*, *Ladele*, *Doogan*, and *Ashers* cases highlight the intricacies of conscience claim cases and McCrudden's analysis delves into the challenges that surface in response to the distinct legal and moral elements present in each case.

McCrudden sees as the roots of ambivalence and the common struggle to identify what is the just outcome arising from at least six sources, reflected in these and other cases: 1) where conscience claims involve a clash of rights, 2) where conscience claims have systemic effects on third parties, 3) where conscience claims become organized on a group basis, 4) where claims of conscience are sub-contracted to others, 5) where conscience claims by state officials, and 6) where claims of conscience involve a substantial expansion of the notion of complicity in wrong-doing.

What then is the solution how to deal with conscience claims? There are differing approaches to resolving this issue: the legal system could conclude that it should forget conscience (i.e. throwing out the baby with the bathwater), or it could attempt to devise an appropriate methodology that incorporates conscience in a more efficient way, attempting to address the problematic aspects of such claims. According to McCrudden, the latter approach is preferable. How, if at all, might moral theology contribute to finding such solutions?

The second half of McCrudden's presentation grapples with the Catholic theology of conscience claims, and sets it in the wider context of debates within moral theology, in particular the debate between absolutism and proportionalism. Depending on which broad approach is favoured, different approaches to conscience claims emerge. Absolutism, based on an understanding of intrinsic evil and absolute rights, favours a strongly permissive approach to claims of conscience. Adopting an approach based on proportionality would treat conscience claims more circumspectly. McCrudden notes that the rational persuasiveness of the rule, the

importance of hierarchal authority and the effect on others are all factors to consider when analyzing contending positions on conscience upheld by Catholic moral theology. McCrudden argues that ultimately there are several implications of these divergent branches and the framing of appropriate conscience claims, such as limitations to achieve an acceptable compromise.

His own favoured approach would emphasize proportionality in both law and moral theology, enabling a useful dialogue between legal and moral approaches. Prompted by questions from the audience, McCrudden concluded by arguing that the intersection of conscience claims and religion in specific cases highlights the utility of enhanced religious literacy in law.