



Is It Ethical for For-profit Firms to Practice a Religion? A Rawlsian Thought Experiment

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Received: 2 August 2018 / Accepted: 22 February 2019 / Published online: 2 March 2019
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Abstract

Recent judicial rulings and changes in federal and state legislation have given for-profit corporations a growing list of rights and constitutional protections, including the right to practice religion free from many types of federal or state restriction. In this paper, we highlight the implications of these developments using Rawls' (A theory of justice, Harvard University Press, Cambridge, 1971) Theory of Justice to explore the consequences of for-profit corporate religious freedom for consumers and employees. We identify preliminary principles to spark a discussion as to how expanding religious freedom for businesses and fair access to goods and services can coexist in the for-profit marketplace.

Keywords Corporate religious practice · Public policy · Rawls' Theory of Justice

Introduction

In 1982, Donaldson mused, “Many rights seem logically impossible to attribute to corporations: Can corporations have the right to worship as they please?” (Donaldson 1982, pp. 22–23). So outlandish was the idea that a for-profit firm might have the right to practice religion, Donaldson's use of a *reductio ad absurdum* argument was taken at face value (Hasnas 2016). Today, Donaldson's once far-fetched scenario is now a reality: Supreme Court rulings and state legislation allow owners of for-profit firms to practice their religion throughout their corporate operations in the for-profit marketplace. We use the term “corporate religious practice”¹ as shorthand for these business owners' actions.

This paper examines the ethical implications of corporate owners and employees practicing their religion throughout the firms' operation (i.e., corporate religious practice). We begin with an overview of the current state of First Amendment religious freedoms granted to for-profit firms at the federal and state level in the US. We do not examine, nor do we discuss, religious freedoms for religious organizations; we focus solely on for-profit organizations formed to provide owner wealth by offering products/services in the United States' competitive marketplace. We discuss Rawls' (1971) Theory of Justice to shed light on whether owners of for-profit firms can ethically practice their religion in all aspects of their businesses. We conduct a thought experiment as a catalyst for this important conversation. We leave the reader with both realistic utopian principles and practical public policy suggestions for increased justice in a for-profit marketplace in which business owners have the right to practice their religion while conducting business.

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¹ We use the term “corporate religious practice,” as shorthand for owners of a for-profit firm practicing their religion in the internal (e.g., hiring, employee insurance, promotions) and market-facing (e.g., products and services offered, consumer groups the firm refuses to serve) workings of the firm. We do not take any stand regarding the moral agency of a firm by using the term “corporate religious practice.”

The Legal Environment for Corporate Religious Rights

Corporations have a long history that predates the founding of the US as an entity or even an idea. Early corporate America included the colleges Yale, Dartmouth, and Harvard as well as at least 12 for-profit firms, many of which could count Founding Fathers including George Washington and Benjamin Franklin among their shareholders (Winkler 2018a). In early America, corporations had substantial rights, including the right to own and use property, to sue and be sued, and to defend themselves from limitations on the flow of their commerce (Gans 2013). However, it was also recognized by early courts that corporations were merely legal creations, not actual living breathing individuals, and therefore lacked many rights otherwise accorded to human citizens (Gans and Kendall 2011).

Though it is common in the second decade of the twenty-first century to hear or read the opinions of those decrying corporate personhood as a recent phenomenon (see, e.g., Winkler 2018b), the first case to explicitly equate corporations with “persons” was decided well over 100 years ago (*Santa Clara County v. Southern Pacific Rail Road* 1886). Once corporate personhood was established, other rights for corporations followed.

In the mid-twentieth century, courts began to recognize the First Amendment free speech rights of corporations, beginning with a line of Supreme Court cases that extend from *Joseph Burstyn v. Wilson* (1952) all the way to *Citizens United v. Federal Election Commission* (2010). The *Burstyn* case established the free speech right (of a corporation) to exhibit a motion picture without prior approval by a state licensing board (Joseph Burstyn 1952). Later cases expanded corporate First Amendment rights in a variety of ways, largely by invalidating on constitutional grounds a series of federal and state restrictions on corporate speech (*New York Times v. United States* 1971; *Linmark Associates v. Willingboro* 1977; *First National Bank of Boston v. Bellotti* 1978; *Florida Star v. B. J. F.* 1989). Further growth of corporate speech rights continued with the *Citizens United* (2010) decision allowing unlimited corporate spending for elections under certain conditions, representing a radical shift in corporate First Amendment jurisprudence while nonetheless extending a trend that was at least several decades old.

First Amendment rights for individuals include both freedom of speech as well as the right to freely exercise religious beliefs.² Until recently, however, it was generally accepted

that for-profit corporations could not “practice” religion, and thus the issue of whether corporate rights include religious free exercise was not seriously debated (Donaldson 1982). That changed, however, with the groundbreaking Supreme Court decision in *Burwell v. Hobby Lobby* (2014). Though decided on Religious Freedom Restoration Act (RFRA, 103 P.L. 141, 1993) grounds (rather than the Free Exercise clause of the First Amendment), the Supreme Court ruled that a closely held corporation has the right to an exemption from a federal regulation because of its religious beliefs (*Burwell* 2014). The Court held that Hobby Lobby’s owners’ objection to the health insurance birth control mandate of the Affordable Care Act could be avoided by the for-profit corporation based on the owners’ belief that some of the required birth control methods constitute religiously proscribed abortifacients, a belief contrary to scientific consensus. Indeed, all the birth control methods objected to by Hobby Lobby work by inhibiting sperm movement rather than by preventing the implantation of a fertilized egg (Manson 2012). The Court has thus effectively ruled that a corporation can avoid a federal regulation on the grounds that it offends its owners’ religious beliefs, *even if the beliefs are factually wrong*.

The RFRA (103 P.L. 141, 1993) on which this case is based was a Congressional effort to overturn a Supreme Court ruling dealing with religious rights. From 1963 until 1990, any law that interfered with religious practice had to serve a compelling government interest and be narrowly tailored to achieve that interest, or risk being invalidated as incompatible with the Free Exercise clause of the First Amendment (*Sherbert v. Verner* 1963). But in 1990, the Court ruled that two private employees who were fired after testing positive for peyote use could be denied unemployment benefits, despite the fact that their drug use occurred during a Native American religious ritual. In abandoning the “strict scrutiny” test of *Sherbert*, the Court held that the First Amendment protects individuals from laws targeting religious beliefs, but not against neutral laws that only affect religious practice (*Employment Division, Department of Human Resources of Oregon v. Smith* 1990). Basically, the RFRA (1993) restored the *Sherbert* test that had been in place before the *Smith* (1990) ruling.

However, in 1997, the Supreme Court struck down the RFRA as applied to state law declaring that Congress had exceeded its authority (*City of Boerne v. Flores* 1997). Some

Footnote 2 (continued)

have the right to practice a religion both in operations and in interactions with the buying public. Thus, in discussing a “for-profit firm’s rights to practice its religion,” we do not intend to make a statement about moral agency; rather, our intent is to reflect the current state of these rights within the US.

² Business philosophers have for several decades hotly debated whether or not firms have the ability to make decisions leaving them responsible for their actions. Much is written on the question of whether or not firms have moral agency. However, given the current legal environment, it is clear that owners of for-profit firms currently

version of the federal RFRA was then passed in 21 states, protecting the free exercise rights of their citizens (Epps 2016). Another 12 states considered RFRA legislation that was either rejected by the state legislature or died without a vote (ACLU 2018). The result is a patchwork of RFRA that apply to all federal legislation and regulations, and some state legislation and regulations.

In recent activity affecting corporate religious rights, petitioner Masterpiece Cakeshop challenged the ruling of the Colorado Civil Rights Commission that Masterpiece's refusal to design and create a custom cake honoring a same-sex marriage in violation of its owners' religious beliefs (Jack Phillips and his wife) constitutes unlawful sexual orientation discrimination under the Colorado Anti-Discrimination Act. Masterpiece argued that the ruling violated its First Amendment right to freely exercise its religion (*Masterpiece Cakeshop v. Colorado Civil Rights Commission* 2018). In reversing the Civil Rights Commission ruling, the US Supreme Court held that the Commission failed to observe the "religious neutrality that the Constitution requires" by disparaging Phillips' beliefs and failing to treat him in a manner equal to other cake shop owners who had refused to craft cakes with anti-gay messages but who were not similarly sanctioned by the Commission (*Masterpiece* 2018). The case was decided on narrow grounds and Justice Kennedy's opinion makes clear that the ruling does not bless discrimination just because it is clothed in religious objection:

[D]isputes [regarding the tension between free exercise of religion rights and public non-discrimination laws] must be resolved with tolerance, without undue disrespect to sincere religious beliefs, and without subjecting gay persons to indignities when they seek goods and services in an open market (*Masterpiece*, p. 18).

Though the Colorado penalties against Masterpiece were overturned, the Court failed to directly address the issue of whether the baker's refusal to create a wedding cake for the gay couple's wedding is constitutionally protected. Thus, the tension between a for-profit firm's religious freedom rights and a gay consumer's ability to freely purchase products available in the marketplace is as yet unsettled, leaving states able to decide for themselves whether for-profit corporate refusal to provide products and/or services for gay weddings based on religious conviction has constitutional support.

Mississippi has specific statutory support for refusing service to gay individuals in the marketplace based on religious convictions, and protection extends to individuals as well as closely held corporate "persons" (Mississippi Code § 11-62-1, 9(3)(c), 2016). The "Protecting Freedom of Conscience from Government Discrimination Act" was passed by the Mississippi legislature "to provide certain protections regarding a sincerely-held religious belief or moral

conviction for persons, religious organizations and private associations." The religious beliefs protected by the act are the beliefs that:

- (a) Marriage is or should be recognized as the union of one man and one woman;
- (b) Sexual relations are properly reserved to such a marriage; and
- (c) Male (man) or female (woman) refer to an individual's immutable biological sex as objectively determined by anatomy and genetics at time of birth.

(Mississippi Code Annotated § 11-62-1, (2), 2016)

In practice, the Mississippi Act provides legal protection for individuals or closely held corporations to refuse service in the for-profit marketplace against gay or transgender people based on the religious beliefs of an individual or corporate owner, free of state consequences of any kind. As of this writing, enforcement of this statute has escaped successful constitutional challenge. Other state statutes, though less explicit than Mississippi's, also protect individuals and organizations exercising First Amendment religious rights in the for-profit marketplace.

Many US residents will be affected by expanded religious rights for corporate ownership, as "closely held" is not synonymous with "small." Hobby Lobby has revenues of \$4.3 billion and employs 28,000 people, making it the 94th largest private company in the US (Murphy 2017). Cargill, an agricultural firm, has over \$100 billion in revenues and employs approximately 150,000 people; Publix grocery stores earn \$34 billion in revenue with 191,000 employees (Murphy 2017). Moreover, of the more than 25 million firms in the US, approximately 99% are privately held (Biery 2013). Thus, millions will be affected if businesses implement corporate religious practice.

Given the abundant and growing list of corporate First Amendment rights, especially those based on the religious rights of corporations, either through application of the First Amendment, federal or state RFRA, or specific protective legislation, this paper explores how corporate religious freedoms might affect other stakeholders including employees and customers in an increasingly corporate-centered world.

A Theory of Justice Analysis of Corporate Religious Freedom

The business literature has examined many different viewpoints for approaching ethical concerns; each could be used to illuminate the ethicality of for-profit firms asserting their religious beliefs in the marketplace. Prominent approaches range from the classical thoughts of Kant's categorical

imperative (1785) to the more contemporary social contract theory (Donaldson 1982). Yet, John Rawls' 1971 Theory of Justice offers an approach that is uniquely able to address our complex question.

An Overview of Rawls' 1971 Theory of Justice

Rawls' Theory of Justice is grounded in Kantian principles and incorporates aspects of social contract theories of ethics. Rawls' overarching theme is that justice is fairness; justice is not upheld when "the loss of freedom for some is made right by a greater good shared by others" (Rawls 1971, pp. 3–4). This assertion addresses one of the primary flaws of utilitarianism which allows losses by some to be offset by gains for others (Valentinov 2017).

Two principles are core to Rawls' theory. First, "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all" (p. 302). This condition reflects the primacy of liberty. Second, "[s]ocial and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged...and (b) attached to offices and positions open to all under conditions of fair equality of opportunity" (p. 302). He further requires that, "a less than equal liberty must be acceptable to those with lesser liberty" (p. 302) and that "an inequality of opportunity must enhance the opportunities of those with the lesser opportunity" (p. 303). These are tall conditions for a society. They are unlikely to reflect "where we are" or even perhaps where we will ever be. Indeed, they reflect the hoped-for world; just as the economic ideal of "perfect competition" is proposed as the standard, even though it too may be unattainable (Edgren 1995).

According to Rawls, *justice* and *truth* are first virtues; these virtues should not be compromised and are required for societies to effectively and voluntarily cooperate to ensure that individuals are better off socially and economically within a society than they are alone. Rawls is highly committed to the premise that an ordered and just society improves everyone's lives.

Justice is served when each person determines his or her own "good life" and enjoys equal opportunity to achieve that life. Each person develops a rational life plan to achieve that good life, considering her/his circumstances and skills while assuming reasonably favorable conditions. "Good" then becomes the satisfaction of these rational desires. Principles and policies which interfere with these life plans are considered unjust. Rather than identifying a long list of potential desires, Rawls generalizes to primary goods such as self-respect, liberty (autonomy and freedom of conscience), opportunity (a general expectation of well-being and the expectation that those with similar talents have similar life

chances), income, wealth, and health. More of each of these primary goods is better, regardless of one's life plan.

Self-respect merits more discussion because Rawls identifies self-respect as the most important good. Self-respect includes a sense of one's own value, a conviction that his/her life plan is worth carrying out, and the confidence that the individual has the ability (i.e., it is within the person's own power) to fulfill this life plan. Self-respect depends on having a life plan that uses one's talents and skills to their fullest, thus providing a more complex and enjoyable life.³

Self-respect also has a social basis which is a function of interactions with others who confirm one's life plan as worthy, thereby confirming the individual as worthy. Philosophers often recognize two types of self-respect grounded in social relationships (Darwall 1977). *Appraisal* respect is an "appraisal of the particular merits, virtues, capabilities, accomplishments, etc., of individuals and which is deserved in different degrees" (Doppelt 2009, p. 133). *Recognition* respect differs in that it is equally owed to every person in a society because it "affirms the equal worth of persons" (Doppelt, p. 133). Doppelt (2009) questions society's ability to distribute self-respect, and in particular, appraisal respect. Thus, we will primarily deal with internal feelings of self-respect (often characterized as self-esteem), and external validation of one's equal worth as a human being derived from interactions with others which indicate mutual respect (i.e., *recognition* respect).

How do we identify appropriate principles to allow for liberty and justice, enabling citizens to fulfill their life plans? Rawls proposes an original position with rational individuals developing the organizing principles of social order from behind a "veil of ignorance" (i.e., without knowing their place in the new economic arrangement of society). The veil of ignorance ensures that individuals are motivated to develop principles that are fair to all. Rawls' focus is on protecting and prioritizing "equal basic liberties, which enable individuals to freely exercise their consciences, decide their values and live their chosen way of life" (Freeman 2007, p. 44).

³ Rawls conceptualization of self-respect is highly tied to the Aristotelian Principle (Moriarty 2009). Later works by Rawls focused more on the social basis of self-respect, rather than the feelings of self-respect (Moriarty 2009). However, Rawls posits the two are related. Additionally, philosophers have made clearer distinctions between self-respect and self-esteem, which are used somewhat interchangeably in Theory of Justice (e.g., Sachs 1981). We will not delve into these distinctions as such a discussion would stray too far from the purpose of our work—to examine the impact of for-profit firm's owners practicing religion in the open marketplace. Because Rawls hypothesized relationships between one's internalized self-respect and recognition respect, we have chosen to examine both in our discussion.

Rawls' original position requires free, rational, and equal individuals aware of how the world works (e.g., an understanding of economics, sociology, and other important aspects of society), yet unaware of any particular facts about themselves (e.g., their religion, moral convictions, intelligence, demographic profile), and to be focused on social goods previously discussed (self-respect, liberty, opportunity, income, wealth, and health). Resulting principles should lead to a society that one would voluntarily enter without knowledge of one's respective place in that society. This methodology rules out principles that result in enduring loss or lesser life prospects (i.e., lower probability of achieving the good life) for certain sectors of society.

Rawls' Theory of Justice is a Sound Lens to Examine Religious Freedom in the For-profit Marketplace

Rawls' Theory of Justice is well suited to explore the morality of for-profit firms' corporate religious practice. First, his theory is explicitly designed to examine institutions, including markets and legislative systems, and considers the general norms of society with respect to each of these institutions. Rawls refers to these major political and social institutions as the basic structure of society (BSS). The BSS was conceptualized as the institutions from which the citizens could not voluntarily exit without leaving the society. Admittedly, it is debated whether Rawls intended for-profit firms to be a part of the BSS. Rawls alludes to the fact that corporate entities are part of the BSS because corporate entities are a means of production. Rawls hints that corporate governance itself may be part of the BSS (Blanc and Al-Amoudi 2013). More recently, Fia and Sacconi (2018) argue that Rawls' Theory of Justice should apply to corporations. First, "firms distribute primary goods: they allocate power and authority, incomes and wealth and the bases of self-respect" (p. 9). Second, Fia and Sacconi (2018) argue that employees are not in free association with a firm; instead, a firm establishes authority and can be coercive. Aristotle might characterize individual relationships with corporations as "mixed actions," neither wholly voluntary nor wholly involuntary (Aristotle 350 B.C.E.).⁴ Consider, for instance, an employer who chooses a new health insurance system thereby eliminating coverage of an employees' healthcare provider or needed medications; the employee's actions are thus constrained and s/he loses self-determination. Consumers may also find themselves in mixed action relationships with firms. For example, the voluntary act of obtaining a credit card is associated with an involuntary relationship with a credit reporting agency, the act of obtaining a home loan is often associated with an involuntary association with

a mortgage servicer, and consumers are frequently in involuntary relationships with firms holding monopoly positions in a geographic area. Because employees and consumers are not in fully voluntary relationships with firms, Fia and Sacconi argue that, by definition, for-profit entities are part of the BSS.

Rawls' theory expressly deals with differences in cultures' and subcultures' ethical systems (Edgren 1995). Rawls argues these communities are socially and economically better off cooperating with each other rather than living in isolation. Thus, Rawls' theory tackles the multicultural make-up of a geographic area and helps rational, equal human beings establish fair principles when subcultures' ethos and ethical principles differ (Edgren 1995).

Additionally, Rawls provides a detailed discussion of religious freedoms within the context of equal liberties. Religious convictions are a paramount concern in *A Theory of Justice*. Religious obligations are self-imposed and are "binding absolutely"; a sincerely held religious belief cannot be broken "for the sake of greater means for promoting his other interests" (p. 207). Rawls' conceptualization is echoed by Anderson and Giris (2017), who contend that religious convictions are "fragile" and that violating a religious belief is akin to shattering the entire belief system. Rawls notes that there is no requirement that religious convictions be shared by the majority. He cautions that a dominant religion must not require acquiescence nor suppress nor persecute others, even when the religious tenets of the dominant religion hold that those failing to believe will suffer eternal damnation. Requiring a person to submit to another person's religious/moral beliefs breaches liberty. These ideas—the high importance of religious beliefs within a well-functioning society, the idea that all do not need to understand nor agree with each other's religious beliefs, and the premise that religion should not be forced upon those with alternative beliefs—are all at play when firms adopt corporate religious practice.⁵

Finally, while Rawls' Theory of Justice primarily deals with distributive justice focused on economic resource allocation, it seems appropriate to also consider it within a human rights context. Like economic assets, rights are also distributed unequally (Doom 2009). Moreover, rights are a

⁴ We thank an anonymous reviewer for this insight.

⁵ In our study of *A Theory of Justice* and scholarly writings of Rawls' theory, we did not find any discussion of moral agency concerning society's institutions (governments, firms, organizations) within the context of a Rawlsian perspective. Business philosophers however, debate whether corporations have the capacity to take responsibility for morally right and wrong decisions. Some readers may question whether for-profit firms are moral agents with the capacity and the moral basis to make religious decisions. Fortunately, there is a large literature focusing on corporate moral agency to help address this concern. We will not, herein, join that debate, given our focus is on evaluating the morality of corporate owners' religious practice rights, a right currently upheld and in practice in the US.

scarce resource, in that often more rights for some necessarily means fewer rights for others; e.g., “My right to swing my fist ends where your nose begins” (Finch 1887, p. 128).

In sum, it appears that Rawls’ Theory of Justice offers a path for assessing the morality of religion practiced in the for-profit marketplace because it helps address beliefs and actions which “one culture commends, [and] another condemns” (Edgren 1995, p. 336). Consider the root social issue in *Masterpiece Cakeshop*; what one culture commends (refusing to provide services for same-sex weddings due to religious convictions), another culture condemns (many view this practice as anti-gay discrimination; see Corvino et al. 2017 for a detailed philosophical discussion of these two views).

A Thought Experiment Using the Veil of Ignorance

Many of the legal cases overviewed above focused on Christian belief systems and issues concerning sexuality. Yet, we live in a pluralistic religious society; numerous religions are practiced and frequently citizens choose no religion at all. Thus, we propose a thought experiment to consider the effects of firms adopting corporate religious practice recognizing a variety of religions which could be chosen by corporate owners.

Imagine this: you live in a world of mega-mergers—firms expanding their reach within and between industries. Assume that LiveRight is a conglomerate that specializes in hospitality (hotels, resorts, and event venues) and health-care (hospitals, pharmacies, and health insurance). LiveRight owns and operates about 1 of every 15 hotels in the US, has a 21% share in retail pharmaceutical sales, and is a major manager of pharmaceuticals for insurance companies, hospitals, and physicians.⁶ LiveRight is a multi-billion dollar closely held corporation whose owners also serve as the senior management team; they work, play, and worship together. News has leaked that the LiveRight owners have had a religious conversion experience and will soon be practicing their sincerely held religious beliefs throughout the company—affecting corporate hiring and employment practices, insurance coverage offered to employees, and products and services offered to consumers. No one knows which religion they have chosen, but the rumors include evangelical Christianity (as protected by Mississippi Code § 11-62-1 et seq., 2016); Catholic doctrine as defined by Pope Paul VI in the *Humanae Vitae* (1968), a fundamentalist version of Mormonism as practiced by some members of the Church of Jesus Christ of Latter-Day Saints (especially prior to 1978),⁷

⁶ Patterned after Marriott and CVS, respectively.

⁷ Prior to June 1978, men of African descent were forbidden to be ordained as priests of Mormon Church based on Brigham Young’s belief that God cursed some with dark skin as punishment for Cain

or a variation of Hinduism following contemporary vegan guidelines.⁸

In this same world, a person’s 21st birthday is known as “Assignment Day.” When you turn 21, you wake up as one of five different people: (1) a young married woman unready to bear children, (2) a gay⁹ person married to her soulmate, (3) a deeply religious evangelical Christian who sincerely holds the beliefs expressed in the Mississippi RFRA and understands that violating God’s laws result in an eternity in hell,^{10,11} (4) an adult male with a serious heart condition, or (5) an African American who aspires to corporate management. In each case, the person in question is employed by LiveRight and, like many US citizens, also consumes LiveRight products and services.

These personas, depending on the religion LiveRight’s owners choose for corporate religious practice, represent the *least advantaged*. While Rawls’ (1971) definition of the least advantaged is sometimes considered ambiguous (Jackson 1979; Spinello 1992), he suggests unskilled workers, or those of low income and/or wealth as possibilities. Yet, Rawls also emphasizes that “starting places” which result in differences in assigned basic rights from birth (for instance, gender or race) are appropriate. Consistent with current literature, our least advantaged personas are those whose interests are at greatest risk (Mandle 2009), or are stigmatized based on race, gender, sexual orientation, or other characterizations (c.f., Waligore 2016), or faced differences in basic rights from birth (Rawls 1971).

We identify the least advantaged to clarify what is just and to shed light on which public policy decisions (made by legislators, regulatory agencies, or the courts) enhance the opportunity for all to achieve the good life. A rational

Footnote 7 (continued)

murdering his brother, Abel. Relatedly, others believed that the ancestors of individuals with dark skin supported Lucifer when he rebelled against God. In June 1978, the Mormon Church rescinded the ban on black males serving as priests (Turner 2012).

⁸ Note that these positions are not universally held by practitioners, and we are not claiming that they are even widely held. Yet, current legislation does not require that the religious beliefs be universal or formally part of a religion. Indeed, the RFRA, the basis for Hobby Lobby’s exemption from the ACA birth control mandate, only requires a “sincerely held religious belief,” but not necessarily a mainstream belief nor one based on prevailing scientific consensus.

⁹ The authors subscribe to the prevailing scientific view that homosexuality is not a choice. For additional information on the scientific basis of that claim, please see the American Psychological Association web site for a detailed discussion (2018).

¹⁰ A final reminder that not all members of evangelical Protestant churches believe in hell. This belief could be part of many Christian faith communities, but certainly not universally held.

¹¹ We emphasize that all Americans who identify as evangelical Protestant may not hold the same beliefs as expressed in Hobby Lobby or in the Mississippi RFRA.

person examining the outcome from behind the veil of ignorance should have confidence that s/he would be protected from unfair systems as a member of a least advantaged group (Mandle 2009). Rawls argues that a rational individual will be risk adverse, often focusing on a maximin rule requiring that the utility of the worst outcome resulting from the chosen alternative to be better than the utility of the worst outcome of the remaining alternatives. On the other hand, under situations of uncertainty, rational persons would consider the worst case scenario. The latter allows for rational individuals to eliminate the possibility of a very negative, yet low probability, outcome (Mandle 2009). Our scenario is one of uncertainty, reflecting the uncertainty of various religious practices firm owners could assert in the US for-profit marketplace; thus, we will examine a worst case scenario.

The consequences of your place in life, combined with LiveRight owners' newfound religion, could be significant. As a woman unready to bear children, if LiveRight adopts Catholic doctrine, you will lose access to all forms of birth control (implants, pills, condoms, etc.) at 22% of retail outlets, and your medical choice for birth control will not be covered by your LiveRight insurance plan. If your current doctor is a part of LiveRight's medical conglomerate, you will need to search for a new provider. You may become pregnant.

As a happily married homosexual, should LiveRight adopt beliefs consistent with the tenets of evangelical Christianity as identified in Mississippi's RFRA, you will lose access to a significant number of hotels across the US when traveling with your spouse, and lose access to venues for celebrating family events at LiveRight's properties. Accommodation costs (time and effort) could be higher if LiveRight (like most hospitality firms) uses a multiple brand strategy.¹² Your current job is at risk and you may face restricted opportunities for employment. Healthcare relevant to your sexual life will be uncovered, (e.g., couples counseling, fertility services).

As an evangelical Christian LiveRight hospitality employee with the firmly held belief that violating religious tenets leads to eternal damnation, you could be rotated into a position that requires you to provide hotel rooms to homosexual couples if the firm adopts a Hindu religious philosophy (a religion which generally has no position on homosexuality). This violates your deeply held religious convictions. You face losing your job, because you are unable to complete the work LiveRight requires. Alternatively, you could stay in your position while enduring sleepless nights of regret and shame due to your breach of sincerely held religious convictions. You will become deficient in

meeting your religious obligations (Anderson and Girgis 2017), and face an unjust situation because "employment contracts that infringe ... on liberty of conscience would be condemned as unjust" (Lindblom 2011, p. 579).

What if you are a man with heart disease and LiveRight owners convert to Hinduism with a sincerely held belief against using animal products for food or medicine? Almost 75% of commonly prescribed medications contain ingredients derived from pigs, cows, and other animals (Tatham and Patel 2014). Thus, your Zocor (manages cholesterol and retails for about \$110 for a 30-day supply; see <http://drugs.com>) and Coumadin (reduces blood clots at about \$50 for a 30-day supply, see <http://truemedcost.com>) will be unavailable through any LiveRight pharmacies and uncovered in any LiveRight health plan. Should you need a heart valve replacement, you will not have the option of using a heart valve made from animal tissue at LiveRight medical facilities.

Finally, as an African American LiveRight employee with corporate management aspirations, if LiveRight practices policies in accordance with pre-1978 beliefs espoused by some members of a fundamentalist Church of Jesus Christ of Latter-Day Saints, LiveRight will consider you to be an inferior person cursed by God, unable to elevate your status (Reeve 2015). At present, you are protected from workplace discrimination on the basis of race under federal law (Civil Rights Act of 1964, 88 P.L. 352). However, if LiveRight's owners adopt corporate religious practice, your dark skin may create a glass ceiling, prohibiting your advancement in the company or even disqualifying you from holding your current position if you supervise Caucasian people. Such implicit discrimination would violate the principle of equal opportunity since the African American employees will not have a fair chance to obtain a particular position within the firm (see Demuijnck 2009).

Would you make a rational and voluntarily choice to live in such a world? How well does this society meet the fundamental requirements of most extensive set of liberties and benefit to the least advantaged? What would be the impact on self-respect, your ability to achieve your life plan, income and wealth, as well as your mental and physical health?

Does This Society Allow for the Most Extensive Set of Total Liberties?

To Rawls, liberty includes the idea that individuals should not be placed in a position which obligates them to violate their religious convictions. Thus, our first question must be, "In this scenario, do any individuals lose religious and moral liberty?" While non-believers of a particular faith may not adhere to LiveRight's owners' newfound religion, there is nothing in these scenarios which requires a *consumer* to

¹² Note that Marriott, the largest market share holder in the US has more than 30 branded products (Marriott 2018).

violate firmly held religious beliefs nor to take actions which may not be in accord with them.

LiveRight *employees*, however, could face the option of leaving their employment or violating their religion. If LiveRight practices Hinduism, with a creed that includes treating all people equally regardless of gender-orientation, an evangelical Christian LiveRight employee could be forced to rent hotel rooms to gay couples, despite his/her religious beliefs. Employees are negatively affected when asked by management to perform duties that they believe are not ethical (Desai and Kouchaki 2017). An evangelical Christian forced to choose between violating a religious tenet or remaining in his/her current employment is likely to experience guilt and self-remorse, thereby reducing self-respect, when following the employer's religious beliefs. The person also feels s/he could have chosen to behave in a manner which did not break the moral rule (Faiver et al. 2000). "Real guilt" feelings can result from breaking God's commandments (Narramore and Counts 1974). A religious individual placed in a position in which s/he is consistently breaking religious laws will experience significant guilt, because as long as the individual remained in the job, behavior would not change. At high levels, guilt becomes maladaptive and results in reduced self-respect as well as fear of punishment and/or rejection (Faiver et al. 2000). Thus, the employee has lost religious liberty.

That loss is not easily rectified by changing employers. Fia and Sacconi (2018) argue that the employee/employer relationship is not necessarily a fully "voluntary association" because employees who feel that they must leave the firm (in our case due to required violations of sincerely held religious beliefs), lose the "fruits of their investment" (p. 8) in terms of income, wealth, and self-respect; this negatively impacts the good life. In other words, there are sanctions to the good life incurred upon exit, making the relationship something less than fully voluntary.

Opportunity and liberty also include freedom of thought, association, and movement, as well as freedom to pursue choice of occupation. These liberties could be imperiled should LiveRight practice a religion in the for-profit marketplace. For example, if LiveRight follows the religious teaching of evangelical Christianity, gay individuals traveling with their partner may have their freedom of movement restricted if they must stay at a hotel other than the one that is most convenient because LiveRight will not rent a room to them. In some instances, the inconvenience may be minor and the travelers will be able to find a comparably appointed and priced alternative nearby. In other instances, however, there could be significant effects for the individuals in question, including higher accommodation prices, additional travel time, or both.

If LiveRight's owners observe fundamentalist Mormonism, its employment practices could interfere with an

aspiring African American employee's freedom to pursue occupations. That employee is faced with the Hobson's choice of remaining in the current job with limited career advancement opportunity unrelated to performance, or changing jobs, perhaps disrupting family and social life, losing income and wealth, and forfeiting the fruits of his/her labor.

If LiveRight chooses evangelical Christianity, a homosexual employee who does not hide his/her sexual orientation may also experience employment discrimination. One can imagine that some level of glass ceiling on advancement for homosexual employees would be in place if the firm embraces the belief that same-sex marriage or coupling is a sin.

Indeed, for the evangelical employee working for a Hindu LiveRight, an African American working for a Fundamentalist Mormon LiveRight, or a gay person working for an evangelical Christian LiveRight, job-related stress is likely. The consequences can be severe. Job separation reduces self-reported physical and mental health for a significant percentage of job losers vis-à-vis individuals who maintain their employment (Schaller and Stevens 2015). In addition, a 2016 meta-analysis found that job stress from a variety of factors, including "low organizational justice" (as might be experienced by an individual who works for corporate owners enforcing some legally sanctioned, religiously based job practices), results in more than 120,000 deaths per year and approximately 5–8% of annual healthcare costs in the US (Goh et al. 2015).

LiveRight's religious practices negatively impact consumers' and employees' liberty because not all are adherents of LiveRight's chosen religion. Thus, we must conclude that our imagined society does not allow for the most extensive set of total liberties.

Does This Society Offer the Greatest Benefit to the Least Advantaged?

In addition to the negative effect on liberties (the paramount consideration), we must also address the impact on the least advantaged, including the impact on self-respect in light of potential discriminatory and non-discriminatory lack of access to goods and services, equal opportunity to achieve the good life, physical, and mental health, as well as income and wealth. Since self-respect is the most important good, we begin with it.

Self-Respect

Recall that self-respect, according to Rawls, includes a sense of one's own value, a conviction that one's life plan is worth carrying out, and confidence that one has the ability to fulfill this life plan. Additionally, recognition respect, as identified

by Rawls and other scholars, is a socially based dimension of self-respect which is a function of interactions with others. Principles should not negatively impact self-respect or recognition respect in a just society.

We first focus on how self-respect is affected by discrimination and begin by examining the definition of discrimination in the context of for-profit firms' adopting corporate religious practice in the open market. Corvino et al. (2017) offer a detailed examination of discrimination and religious freedom. Corvino (2017) argues that when businesses' religious freedom is privileged, discrimination occurs. Anderson and Girgis (2017), on the other hand, argue that because religious obligations are fragile, they must receive superior placement over other freedoms. They posit that discrimination is only a consequence of a for-profit firm exerting its religion when there are "onerous" burdens placed on the person affected by the organization's religious practices. There are material harms only when "discrimination impedes a group's ability to meet basic needs" (p. 166). When a person is "inconvenienced here or there" it does not constitute a situation for which discrimination is of great issue because the "burdens are reduced to the point of vanishing" (p. 162).

Corvino (2017) disagrees, emphasizing the idea that discrimination is more than treating some differently, it is *unjustly* treating them differently. The emphasis on *unjust*, is consistent with Justice Ruth Ginsberg's dissent from the *Masterpiece* (2018) decision: "The fact that Phillips might sell other cakes and cookies to gay and lesbian customers was irrelevant to the issue Craig and Mullins' case presented. What matters is that Phillips would not provide a good or service to a same-sex couple that he would provide to a heterosexual couple" (*Masterpiece* 2018, pp. 5–6 (Ginsberg, J., dissenting)).

Self-respect and recognition respect are highly tied to discrimination. A face-to-face refusal to a potential customer or current/future employee could negatively affect recognition respect. A customer requesting a room to sleep in, contraceptives, or an animal-based vaccination and told that the business does not offer such products and services due to religious convictions is, in essence, being told that his/her use of the product is morally repugnant to the organization. This, using Rawls' terminology, could represent a "shock" to the individual's self-respect. The social basis of self-respect is shattered. The fact that these products/services are used to enable the good life (e.g., income and wealth, physical, and mental health) not only potentially imperils the person's ability to obtain the good life but also calls into question the person's life choices. Corvino (2017) defines this latter effect as a harm to dignity—"harm involved in treating people as having less than equal moral standing" (p. 73). He further specifies that dignity is a social condition in which others acknowledge and respect you (similar to Rawls' 1971 and Darwall's 1977 definitions of self-respect) as well as *feeling*

that you are acknowledged and respected. Kennedy, in his *Masterpiece Cakeshop* opinion, states that refusals to serve should be done without "subjecting gay persons to indignities when they seek goods and services in an open market" (p. 18). Corvino would perhaps argue that the refusal itself is an indignity.

Anderson and Girgis (2017) name this general concept "moral stigma," stating that customers *and* employees experience moral stigma. Thus, the evangelical Christian employee (or owner) refusing to provide a room to a gay couple also experiences a shock to self-respect because his/her religious beliefs are also being questioned by the customer's request. Some consumers view businesses refusing to provide birth control to all consumers, baked goods for gay couple's weddings, or a hotel room to a gay couple in a negative manner, supporting the idea of moral stigma directed to the business owner or employee (Fitzgerald and Donovan 2018).

This brings us to a difficult question with respect to discrimination. Refusing a service to a gay couple that would be provided to a heterosexual couple and refusing an African American a promotion which would be offered an equally qualified Caucasian meet the definition of discrimination. However, choosing not to offer contraceptive goods and services to any consumer at all seems not to meet the definition of discrimination. It is more akin to a Jewish deli not selling pork products, Chick-fil-A closing on Sundays, or other religious-based practices we commonly experience in the US market. We address that issue in greater detail below, because consumers may also have real concerns about their ability to carry out their life plans if the product/service is needed to achieve the good life and they perceive few comparable available alternatives.

In sum, it appears that a firm practicing its religion by limiting goods and services or employment opportunities to particular individuals based on their social/demographic background fits the definition of discrimination. Our logic follows Darwall (1977, p. 36) who identifies discrimination in terms of sexism and racism "as inconsistent with the respect to which all persons are entitled." While empirical evidence is lacking, it is logical that such denial, particularly if it occurs face-to-face, results in lowered self-respect by signaling low levels of recognition respect for all (customer, owner, and employee) involved in the interaction.

There are likely other threats to self-respect that are tied to a lack of opportunity for obtaining the good life. The inability to access life-changing medicines could negatively impact self-respect. Consider the heart patient living within a vegan Hindu LiveRight culture. His desire to get necessary, albeit non-vegan, medication may well leave him feeling morally judged and falling short (i.e., moral stigma). He may delay or forgo treatment due to LiveRight's practices, this, in turn, could negatively affect his ability to fulfill life plans.

Heart disease often results in a person feeling tired, dizzy, or short of breath (Mayo Clinic 2018), conditions which negatively affect his ability to enjoy social relationships and may mitigate progress toward his goals. Life goals are clearly at risk should he have a heart attack due to lack of treatment. Interestingly, while about 91% of heart attack victims initially return to work, a quarter of those who return are out of the workforce within a year (Smedegaard et al. 2017).

A woman's risk of an unintentional pregnancy increases when access to birth control is reduced, as it would be the case if LiveRight practiced Catholicism throughout the firm. Unplanned pregnancies have significant effects for mothers, their families, and the developing embryos. About 40% of unplanned pregnancies are terminated via abortion in the US, ending thousands of fetal lives each decade (Finer and Zolna 2014). Sometimes, the abortion results in long-term and/or costly health complications or psychological stress (Institute of Medicine 1995). A woman choosing to give birth to the unplanned child is risking her health; the US is "the most dangerous place in the developed world to deliver a baby" (Ungar 2018). Unplanned motherhood decreases the likelihood that a woman will complete high school or college (Institute of Medicine 1995). Though some demographic trends have changed since these data were compiled, the essential truth that millions of lives are impacted by unplanned pregnancy remains unassailable, affecting physical and mental health, educational achievement, and career plans—in other words, reducing self-respect and the possibility of the good life.

Income and Wealth

Negative income and wealth effects are predictable for individuals experiencing job-related stresses or discrimination due to LiveRight employment policies and practices. The impact of job loss can be substantial, affecting displaced workers, their spouses, and their children; these household wealth impacts may span generations (Oreopoulos et al. 2008; Farber 2017). The children of parents who experience involuntary job separation show reduced academic achievement (Stevens and Schaller 2011), and job loss is even associated with increased mortality for displaced workers (Sullivan and Von Wachter 2009). Individuals unjustly denied a promotion will inevitably earn lower wages and wealth over time. There is abundant evidence that many income effects are self-perpetuating, reducing wages in future employment (Mullainathan and Shafir 2013). Particularly relevant to the firm's religious practices in the marketplace are studies regarding the LGBT community. One study, focused on LGBT discrimination in Texas, found that LGBT individuals experience self-reported reduced health status, wage deficits, increased poverty, and other wealth gaps as a result of

disparate treatment due to their LGBT status (Mallory et al. 2017).

We have previously alluded to the wealth and income effects when medical products are no longer covered by insurance. Recall that a Hindu LiveRight healthcare plan could exclude medicines made with animal products, resulting in annual out-of-pocket payments for common pharmaceuticals such as Coumadin or Zocor of \$600 and \$1300, respectively. Though alternative sources of these medications may exist, they may be cost-prohibitive or difficult to access for LiveRight employees when drugs are suddenly excluded from their health insurance coverage.

Income and wealth effects could also be considerable for women unready to bear children if LiveRight chooses Catholicism. First, contraception costs in the US range from \$240 to \$1000 annually, plus the cost of a doctor visit (Kosova 2017). At least some women may find the additional cost of out-of-pocket birth control prohibitively expensive, leading to a predictable increase in unplanned pregnancies and births, as well as abortions (Secura et al. 2014). Moreover, the evidence suggests that access to low or no-cost birth control reduces female poverty, connecting LiveRight's religious practice to lower female wealth accumulation by limiting access to birth control products and services (Browne and LaLumia 2014).

Is It Moral that For-profit Organizations Practice Their Religion in the Marketplace?

We have illustrated above, the worst case scenario is that least advantaged lose self-respect, encounter discrimination, and risk the ability to reach their good life when owners of for-profit businesses have unrestricted rights to practice their religion throughout the organization. Our Rawlsian-based answer must be, "No, this practice is not ethical or just." However, it may be possible to develop a set of principles in which firm's owners are offered the broadest array of rights, including religious rights, and the least advantaged are provided equal opportunity to the good life, essential services, and the fundamental dignity of coexisting as fellow human beings. We now turn to that task.

General Principles

We begin by directly applying Rawls' fundamental elements to the issue of corporate religious practice. At a general level, Rawls' principles reflect a realistic utopia; they are a goal toward which we might realistically strive, but may not achieve (Mandle 2009).

The fundamental elements of Rawls' approach that appear applicable are as follows:

- (A) “Justice is not served when the loss of freedom for some is made right by a greater good shared by others.” In other words, Rawls approach is non-compensatory in that harm for some is not sanctioned based on the benefit to others. Therefore, a utilitarian approach is inappropriate for developing guidelines for firms adopting corporate religious practice.
- (B) “The rules of society must benefit individuals in the least advantaged position.” In the context of this thought experiment, we personified the least advantaged positions. We can generalize, however, that employees are less advantaged than employers (though this is certainly not true in all cases) and that consumers are less advantaged than the corporations where they may do business (also typically, but not universally, true).
- (C) “Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.” This implies that religious rights should be expansive as long as they do not (1) diminish the exercise of other rights, such as freedom from discrimination, or (2) systematically interfere with other individuals’ ability to achieve the good life. Thus, corporate owners adopting corporate religious practice should be acceptable and protected conduct unless the practice unfairly interferes with employees’ or consumers’ rights.
- (D) “Social and economic inequalities are to be arranged so that they are...to the greatest benefit of the least advantaged.” This principle reinforces the primacy of consumers and employees over the rights of corporate owners in the event that rights conflict.
- (E) “Less than equal liberty must be acceptable to those with lesser liberty.” Business scholars often frame employee/employer relationships and buyer/seller relationships as voluntary contracts in free market economies. As discussed previously, there is reason to believe that the employer/employee relationship is not fully voluntary, and may be a mixed action from the employee’s viewpoint. The same may hold for consumers. Recall that in the extreme, consumers do not voluntarily contract with a mortgage servicer or credit reporting agency and may have significantly restricted choice in a particular geographic area (also see the product desert discussion below). Thus, as practical matter, religious practices must be limited to the extent that they conflict with the rights of employees and consumers who likely have lesser liberty.

The above principles are ideal, though perhaps not achievable given the structure and interpretation of the US Constitution, existing civil rights legislation, and state and federal RFRA currently on the books. How these principles

work in practice requires some explication, and we are aware that, like US Supreme Court efforts, we wade into a legal thicket fraught with nuance and the subject of strongly held beliefs and visceral emotional responses on every side. That said, an approach that honors Rawls’ framework and respects the religious and civil rights of all parties can, we believe, find common cause with all concerned while balancing the occasionally competing goals of religious liberty and protecting the rights of the least advantaged among us. Thus, we will endeavor below to make such principles concrete, albeit imperfect, in order to spark thoughtful conversation to guide policy in the for-profit commercial environment.

First, at a practical level, we propose that corporate owners, employees, and consumers shall have the right to adopt whatever religious beliefs they wish and to practice their religion within their religious communities. Nothing within Rawls’ framework implies any restriction on the unfettered ability of all to adopt whatever religious beliefs they wish.

Second, consistent with federal and state RFRA, laws affecting religious practice shall be narrowly crafted to balance the rights of religious practice with the rights of affected groups or individuals. That means governments must use the least restrictive means of achieving compelling governmental goals and restrict religious practices as little as possible. We attempt to illustrate that narrow crafting with respect to two critical ways that corporate religious practice can affect or limit the civil rights of others: discrimination and the provision of essential services.

Discrimination Versus Religious Liberty

In striking a balance between discrimination and religious liberty, it seems clear that any religious practice in the commercial sphere that results in intentional or incidental discrimination on the basis of race, gender, religion, national origin, age, sexual orientation, or other aspects of who the person is, cannot be tolerated. Discriminatory behavior, however aligned with religious conviction, is so damaging to the pursuit of the good life and the dignity of those persons who are discriminated against that it must be forbidden in every instance within the commercial arena (Corvino 2017; Darwall 1977; *Masterpiece* 2018; Ginsberg, J dissenting).

Thus, if a merchant chooses to offer a particular good or service, that good or service must be available to all consumers, irrespective of who they are. A baker who produces wedding cakes must make them for anyone who wants a wedding cake, whether the consumer is Black or Latino, Christian or Muslim, male or female, Pakistani or Swedish, old or middle aged, straight, gay, or transgender. A sincerely held religious belief that gay marriage is a sin fails to provide an exemption from the duty of the wedding cake baker to serve all customers, regardless of status. Rawls believed that religious obligations are self-imposed; similarly, commercial

pursuits to gain profit are self-determined by the business owner. The owner has now made two voluntary choices: the choice to adopt a particular religious belief and the choice to engage in a particular for-profit activity. Corporate owners who wish to practice a religion within the context of their for-profit bakery would, then, face a third choice to either serve everyone without discriminating or to refrain from participating in the wedding cake business at all. This may be a stark choice for a corporate owner adopting corporate religious practice, however, given the inherent conflict between the dignity and/or civil rights of a gay wedding cake customer and the baker's corporate religious practice, the consumer's rights must prevail. This does not restrict the baker's opportunity to bake cakes in total, nor does it force the baker to sell wedding cakes or Halloween cakes, or other causes that may violate sincerely held religious beliefs. However, each type of cake baked must be available to all.¹³

Essential Services Versus Religious Liberty

In contrast to discrimination, there are some conflicts between religious practice and civil rights in which Rawls compels us to side with religious practice. Service providers in many businesses practice their religious beliefs within their commercial enterprises without notice or comment. Jewish deli owners, whether owned by corporations or individuals, generally refrain from selling ham or bacon, in keeping with their beliefs regarding pork consumption. Chick-fil-A is closed on Sunday. These practices are neither harmful nor controversial. Consumers who wish to buy pork or chicken sandwiches can simply go elsewhere to have their hunger needs met.

Problems arise, however, when a firm offers an essential service that affects the pursuit of the good life for potential customers and employees. Healthcare is an example. A for-profit hospital with Hindu ownership refusing to supply animal-based medicines to its patients, or a for-profit craft store company refusing to provide certain types of birth control coverage for employees and their families could affect access to an essential service needed to achieve the good life. This raises a conflict between religious practice and civil liberties of a different nature.

Therefore, we propose a two-part test: the first entails answering the question, "Is the good/service essential to employees' and consumers' pursuit of the good life?" If the service is not essential, such as deli food or restaurant closing on holy days, the religious rights of the business owners are paramount. Rawls' philosophy would not support a mandated service provision requirement. Thus, a religious practice that restricts access to a legal but non-essential product/service must prevail, even if consumer *current desires or wants* are affected.

The second part of the test, which focuses solely on essential services (impacting health, income, or wealth accumulation) implies that corporate religious practice may be an imposition upon the rights of non-consenting consumers or employees. Thus the calculus shifts. Attention must focus in whether there are equivalent essential goods/services *available* from alternative, *comparably priced* providers in the same *geographic* area. We can lean on antitrust policy and tools, as well as research focusing on product/service deserts to help operationalize constructs such as "available," "comparably priced," and "geographic area." For example, healthcare deserts are geographic areas in which community members have difficulty accessing certain healthcare goods and services. Particularly relevant to this discussion are contraception deserts (e.g., areas of the country that "lack easy access to women's health services"; see McClurg and Lopez 2018), and pharmacy deserts (travel to a pharmacy greater than half a mile in urban areas or greater than 10 miles in rural areas; see Qato et al. 2014). One should also consider alternative methods of distribution when defining "available." For example, some healthcare availability issues can be ameliorated by tele-pharmacies and other remote servicing and online options (Nurx 2018; Terlep and Stevens 2018). However, the most effective forms of birth control (implants and IUDs) must be placed in person by a healthcare professional. Thus, for those products, physical spaces for care must be considered in making availability determinations.

When the essential product/service is *available* from alternative, *comparably priced* providers in the same *geographic* area, then the impact on consumers or employees is more a matter of inconvenience and religious interests should be protected. It seems reasonable for the business owners and employees to ask the consumer to seek the product elsewhere, since no consumer is treated differently because of who she is.

Yet, there is still the possibility of reduced self-esteem and recognition respect, i.e., moral stigma, during interactions if employees or consumers are denied essential goods due to the business owner's religious beliefs. Moral stigma inevitably occurs whenever people differ in their beliefs about right and wrong; it is ubiquitous. Religious liberty, by its very nature, commits religious persons to "forms of conduct (and speech) than can express the convictions that

¹³ This does not preclude a firm from refusing to serve customers because they are difficult, non-compliant, too time-consuming, or unprofitable. Discrimination is legally permissible for any reason except race, religion, gender, national origin, age, or sexual orientation (in some states). Relying on our analysis of Rawls' Theory of Justice, we conclude that discrimination based on who a person is, e.g., members of the LGBTQ community, is unjust under all circumstances, even if the class of individual is not expressly protected by law.

outsiders are wrong” (Anderson and Girgis, p. 170). Thus, it appears that religious liberty is irrevocably tied to people experiencing moral stigma. Rawls’ primacy of liberty (i.e., “each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all,” p. 302), leads us to conclude that religious liberty cannot be quelled in order to end *all* moral stigma; moral stigma is an inescapable outcome of allowing for “compatible” systems of “liberty for all.” The goal is to allow diverse religious beliefs to coexist, while mitigating negative self-esteem effects of moral stigma and maximizing recognition respect as much as possible.

Toward that end, we suggest that businesses be required to clearly and conspicuously¹⁴ provide notice to consumers and employees when not providing a good or service that likely breaks social norms (for example, a pharmacy which does not offer any animal-based prescription drugs would likely break a normative expectation). A private, for-profit medical practice following Catholic doctrine should clearly indicate to patients and employees that birth control services are not available within the practice or to employees via healthcare benefits. While imperfect, such notice likely reduces moral stigma relative to a face-to-face refusal to a patient or employee based on corporate religious practice. Koppleman (2016), when discussing the issue of gay consumers denied products/services, feels it is essential to avoid a person-to-person refusal of service based on corporate religious practices. He advocates using firm-originated public written information. According to Koppleman, a person-to-person refusal is a “direct, personal insult [that] can be more wounding to gay consumers” than the knowledge that certain firms do not want to deal with them. Clear and conspicuous print disclosure could keep consumers from actively participating in their own rejection (Koppleman 2016). However, to our knowledge, there is no empirical work suggesting the methods which best minimize moral stigma experienced by employees or consumers; thus, Koppleman’s logic needs confirmation. Clear and conspicuous notice does not need to call attention to the reason why the product/service is not offered; its sole purpose is to allow employees and consumers to be clearly informed. Of course, a firm is free to provide such as reason; however, evidence suggests that consumers may react negatively (threats, boycotts) when they learn that a firm is not offering a product/service due to corporate religious practice (Fitzgerald and Donovan 2018; Koppleman 2016). Thus, we suggest not requiring an attribution for the practice.

When possible, firms and intermediaries should provide information in the affirmative. For example, a Hindu vegan pharmacy could disclose, “Providing only vegan pharmaceuticals,” and an insurance firm could provide information to patients such as, “Practices providing full birth control services.” In both cases, some consumers will find such the firm’s offerings attractive; those who do not can identify alternative providers that better meet their needs.

Clear and conspicuous notice likely mitigates, but may not fully negate, moral stigma. As illustrated above, however, it does increase transparency and provide more complete information. Perfect information is a central tenet of perfect competition, the ultimate efficient marketplace. Clear and conspicuous notice solves an existing marketplace problem—consumers currently lack information. With such notice, reasonably motivated consumers will know what products and services are/are not being offered by a business. Consumers then can vote with their feet, reducing wasted time contacting providers who do not offer goods/services consistent with prevailing norms (a probable norm is that pharmacies provide the heart medications which contain animal products). Finally, significant, life-changing marketplace failures which negatively impact the good life could be reduced (for example, a consumer being denied emergency contraception after sexual assault because she is unknowingly using a healthcare provider that does not offer birth control).

Alternatively, if there are no other comparably priced options within the relevant geographic area, the balance of interests between firm owner’s religious rights and the consumer or employee tilts. Under those circumstances, the right to access an essential service for employees or consumers is more important than the merchant’s religious practice rights. What would this mean for corporate owners holding sincerely held religious beliefs that negatively affect customers’ and employees’ pursuit of the good life? Would they be compelled to violate their religious beliefs or avoid the business altogether as in the examples above dealing with discrimination? The answer is, “Not necessarily.” A Hindu-owned pharmacy could locate in areas with other providers who would supply the animal-based medications the populous needs. It could even develop agreements with other companies to provide essential services in particular geographic locations. This onus is placed on the business owners because they have freely chosen to offer goods and products in the open marketplace to obtain profits and have freely chosen to practice a particular religion. Secondarily, and alternatively, government regulations on essential service providers could include plans for alternative access to needed medications, as was done for Hobby Lobby under the Treasury program “Coverage of Certain Preventive Services Under the Affordable Care Act” (US Department of the Treasury

¹⁴ Clear and conspicuous notice is defined within the public policy literature and by governmental entities. Hoy and Andrews (2004) provide a detailed discussion of “clear and conspicuous.” See Stewart and Martin (2004) for an expanded, alternative definition of this concept as “understood and used.”

2015). This ensures that religious practice rights of a corporate owner do not conflict with essential service access rights of consumers or employees. Thus, business owners who find it religiously intolerable to provide mandated birth control coverage for employees avoid the mandate so long as alternative means of coverage for employees are available. If the business owners are unable to resolve conflicts, then governments should find ways to protect the civil rights of both religious corporate owners as well as consumer and employees, when both needs can be feasibly met. When both needs cannot be feasibly met, the rights of the consumer as the least advantaged must prevail.

Finally, we note that many individuals who have sincerely held religious convictions can choose to freely practice their trade within the context of religious-based organizations, where their religious rights and practices are fully protected. A social worker holding the religious beliefs laid out in Mississippi's RFRA, can provide services within the church-based mental health services or adoption clinic. A Catholic healthcare provider has many options to practice medicine within the domain of the Catholic Church. Over 600 hospitals in the US follow Catholic doctrine, and one in six patients are treated within a Catholic healthcare facility (Catholic Health Association 2018). While the nature of for-profit and non-profit organizations may differ with respect to how excess revenues are used, employment by a non-profit faith-based organization does not, by definition, mean the individual sacrifices salary or loses ability to accumulate wealth.

Conclusion

In the current US political environment, it is likely that for-profit organizations will continue to gain religious freedom rights. Indeed, recent federal proposals would allow publicly traded firms (as opposed to closely held for-profit organizations) to be exempt from the ACA birth control mandate due to sincere religious objections (Levy and Neubauser 2017). Using Rawls' Theory of Justice, we argue that these rights can threaten the good life for the least advantaged. We provide preliminary guidance on a set of rules for-profit organizations and public policy makers can use to navigate the thorny issues that arise when a firm's religious expression threatens consumers' and employees' ability to obtain the good life. Our overriding purpose is to evoke serious, thoughtful conversations to identify a set of general ideas to which most (those with sincerely held religious beliefs, the non-religious, and the least advantaged) can agree. The imperfect principles proposed are offered not as a final answer, but rather as the beginning of thoughtful debate and rational direction to a consensus on a difficult issue.

Acknowledgements The authors thank Joseph Levin and Elizabeth Gratz for their assistance with this paper, and West Virginia University for supporting sabbatical leave for the lead author.

Funding This study was not funded by any grant.

Compliance with Ethical Standards

Conflict of interest All authors declare that they have no conflict of interest.

Ethical Approval This article does not contain any studies with human participants performed by any of the authors.

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