Contents

Conscientious Objection and Human Rights: A Systematic Analysis Grégor Puppinck Abstract 1 Keywords 1 Introduction 2 Conscientious Objection: A Clarification of Concepts T 3 1 Conscience 3 a Psychological and Moral Functions of Conscience 3 Psychological Conscience i 3 ii Moral Conscience 4 b The Mechanism of Moral Conscience 5 c Social and Religious Norms are Transcended through the Moral Sense Perceived by Personal Conscience 7 2 Convictions (or Beliefs) 9 3 Forum Internum and Forum Externum 10 a Forum Internum 11 b Forum Externum 12 4 Objection 12 Conscientious Objection in Positive Law II 13 1 Conscientious Objection as a Duty 14 a In international and European Law 14 b In Domestic Law 16 2 Conscientious Objection as a Right 17 a Refusal of Military Service 17 b Refusal of Abortion and of Certain Biotechnologies 24 c Refusal to Swear on the Gospels 27 d Refusal to Attend Religious Education Classes or to Take Part in Religious Activities 27 e Refusal to Reveal and Express One's Beliefs 28 f Refusal to Celebrate the Union of Two Persons of the Same Sex 29 g Refusal to Allow Hunting 29 h Refusal of Vaccination 30 **Evaluation Criteria of Conscientious Objection** III 31 1 Distinguishing whether the Refusal Comes from a Reasonable Person 32

- 2 Distinguishing between Positive Manifestation and Negative Expression of Freedom of Conscience 34
 - a Positive and Negative Manifestations of Freedom of Conscience 34
 - i Positive Manifestation of Freedom of Conscience (or Positive Freedom) 34
 - ii Negative Dimension of Freedom of Conscience (or Negative Freedom) 35
 - iii Differences in the Scope of Interference Depending on whether it Aims at a Positive or Negative Manifestation 36
 - b Consequences of such Distinction 38
- 3 Distinguishing between "Convictions" and "Personal Conveniences" 39
 - a Evaluation Criteria for the Quality of Beliefs (of the Motive of the Objection) 40
 - b Evaluation Criteria for the Quality of the Objection 41
 - c Dealing with Personal Convenience and Other Opinions 43
- 4 Distinguishing between "Moral Objection" and "Religious Objection" 45
 - a The Distinction between Moral Objection and Religious Objection 46
 - i Moral Objection 46
 - ii Religious Objection 47
 - iii Mixed Objections 48
 - b How to Recognize a Moral Objection (Based on Justice) 49
 - i The Moral Objection should Aim to Respect what is Just and Good 49
 - ii The Commandment Objected to Derogates from a Right or a Basic Principle 50
 - iii The Objection is Universalizable 52
 - iv The Objection is about an Ethically Sensitive Question 53
- 5 Distance between the Object and Motive of the Objection 53
 - a The Need for a Direct Nexus, and the Doctrine of the Double Effect 54
 - b The Need for a Close Nexus 55
- 6 The Question of the Relationship with Nature 56

- IV Rights and Obligations of the State 59
 - 1 Faced with a "Personal Convenience" 59
 - 2 Faced with a Moral Conviction or a Religious Belief 60
 - a Faced with a Moral Conviction 60
 - i The Objector cannot be Coerced nor Sanctioned 60
 - ii It is Incumbent upon the State to Positively Guarantee Respect for this Right by Taking Reasonable and Appropriate Measures 61
 - b Faced with a Religious or Philosophical Belief 63
 - i Foundation of Respect for a Person whose Objection is Based on a Religious Belief 63
 - ii Obligations of Public Authorities in Case of an Objection Based on a Religious Belief 66

Table of Authorities71Bibliography74