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Egalitarianism and exemptions from generally applicable law

Does equality require granting exemptions from generally applicable law for religious and cultural beliefs?

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Introduction

Is it justifiable for the liberal democratic state to grant exemptions from laws of general applicability to beliefs which are religious and culturally based? In which instant is it considered an overstep by the state to try and reconcile inequalities through 'special rights'? Clearly neutral laws of general applicability are bound to disadvantage some people over others. Laws prohibiting drugs for example, will have a disproportionate impact on people who use drugs, while it will have no effect on people who do not. This seems reasonable enough, but what is the just thing for the state to do when someone claims that she needs access to certain drugs as part of her religion or culture? Is this a sufficient reason to argue that the law itself is unequal? Should an exemption be made in order to satisfy this person's religious obligation? Should the person adapt her beliefs in compliance with the law? Or should the law perhaps be repealed altogether?

A number of liberal political theorist have aimed in answering these kinds of question in the context of the multicultural state, where a number of different cultural groups form the society. The peculiarity of liberalism is that it has often been used to address issues in a homogeneous state. Whether liberalism is compatible with multiculturalism is a task which has preoccupied a number of different theorists, and thus advancing a liberal theory of equality within the multicultural setting is not an easy task. In the modern conception of liberal democracy which its key characteristic is a plethora of values adhered to by citizens,

religious and cultural affiliations are just some of the many ways people seek to find meaning in their lives.

To defend the thesis that religious and cultural exemptions are not justified, I begin, in the next section, to formulate the case for looking at what egalitarian theories tell us about compensating things that either fall in the 'chance' or 'choice' category. Then an account for what counts as a choice is examined before looking at how claims of conscience are a particular kind of preference. The third section then turns to develop the case for accommodating policies. Kymlicka's account of culture as context of choice will be outlined and criticized in contrast with what his account is vis-à-vis religious and cultural exemptions. Bhikhu Parekh's arguments for cultural sensitivity in regards to respect, equality and the law will be examined, and how a lack of cultural relevance in these factors leads to significant 'moral loss' to the individual. The next section looks at the concept of universal egalitarianism through the writings of Brian Barry, and his 'Rule and Exemptions' approach will be examined in order to demonstrate how the 'no exemptions' approach is a more suited approach to the issue of exemptions. Then the issue of religious versus non-religious (or cultural) claims will be examined, in order to identify whether the difference in treatment account for a privilege on the part of the religious and cultural exemptions. It will be argued that religion and culture are being unfairly privileged in today's legal system at the expense of other secular claims. In order to reconcile these inequalities, I fist look at a solution which suggests the room for exemptions should be expanded to all claims of conscience, before rejecting it for pragmatic reasons. Finally the thesis will defend that a 'No exemptions approach, except exemptions which are not burden shifting' is the most adequate response to deal with the exemptions debate in today's multicultural society.

Typologies of Exemptions

As an essential prerequisite to conducting an investigation into the justification of exemptions, it is first necessary to clarify precisely what is meant by exemptions for the purposes of this paper. Jacob Levy in *Multiculturalism of Fear* defined exemptions in the following way. He says that exemptions are individually exercised negative liberties granted to members of a religious or cultural group whose practices are such that . . . neutral law would be a distinctive burden on them (Levy, 2000; 278). This definition allows us to isolate the peculiar characteristics which will be used in this thesis. It also raises the following important questions. On what basis are exemptions granted? Should exemptions be granted to groups or individuals? The difference underlined in the way exemption claims are carried may give rise to different implications which consequently might lead political philosophers to different conclusions as to whether these are allowed from an egalitarian perspective.

Exemptions can be classified into three categories, namely: 1) exemptions through individual claims, 2) exemptions through group differentiated rights, and 3) exemptions through group rights. The first category includes claims made by individuals against the generally applicable law. An example of this form of exemption would include an individual claiming an exemption from the seat-belt law because of a heavily injured shoulder. In order for her to claim this exemption she would not really have to show allegiance to any specific culture, or prove to what extent this law reduces her capacity for equal opportunities. The second category is exemptions through group differentiated rights. Both individual rights and group differentiated rights are individual. However the distinction is made because individual claims, unlike group differentiated claims, do not derive their objection towards the law to a specific culture or religion. Group differentiated rights include the exemption for Sikhs to not abide by the helmet requirement law when operating a motorcycle. Although this law is

theoretically applicable to Sikhs as a whole, it is considered a group differentiated right because the exemption is granted on the level of the individual, and not to the Sikh community in its entirety. The third category includes exemptions granted to groups as a whole. An example of this would be the self-governing rights given to Aboriginals in Australia, or the exemptions given to Amish in the U.S. regarding withdrawing their children from Public education.

The exemptions which this thesis is centrally concerned with are ones which pertain to the 'Freedom of Religion' and 'Freedom of Conscience'. In many cases, especially in the U.S., the same debate regarding religious/cultural exemptions is grounded on the 'Freedom of Religion' clause. The Amish for example, when excluding their children from the public educational system, do not so through the language of exemptions, but rather through the 'freedom of religion' clause that is embedded in the U.S. constitution.
The distinction between 'Freedom of Religion' and 'Freedom of Conscience' is crucial because as we shall see, calling for an accommodating policy which allows for exemptions for religious claims, could still fail to meet the egalitarian standards. This is so because such policy initiative may favour certain groups over others. Exemptions derived from religious or cultural reasoning are much more pervasive and substantive than exemptions granted for any other claim of conscience. However, one could make the claim that religious or cultural claims of exemptions should be granted under a utilitarian premise, since most of the exemption requests have to do with conflicts deriving from the general applicable law and religious claims of conscience.

Chapter 1: Egalitarianism and compensating inequalitie

Which theories of equality talk about exemptions?

This has been known as the 'equality of what' debate. Should the right be prioritized over the good? Or should the good dictate the way exemptions should be distributed?

A number of different approaches can be used in order to strengthen or weaken the claim for exemptions. For example, by taking on the prudence view of justifying exemptions, one will find that the claim is not based on grounds of equality, rather on grounds of political stability. From this standpoint exemptions act as justified inequalities rather than a method to secure equality (Shorten, 2010). Brian Barry takes a similar stance when he describes exemptions from neutral law as 'anomalies to be tolerated' (Barry, 2001; 51). By this logic exemptions contravene egalitarian demands, but are a necessary evil to the extent that removing them might lead to a greater alienation of the minority (Barry, 2001; 51). However, a number of dominant theories of equality are using the language of exemptions in an attempt reduce inequalities between different segments of the population. This is the main reason why the exemptions/accommodations debate is a very controversial one. Formal equality, through equality of citizens under universal application of general applicable law is being compromised for the sake of a different kind of equality. This alternative form of equality is not based on the 'one rule for all' model, but rather one which takes into account culture, religion, and identity of people and the paths they seek to follow. Distributive justice theories have to do with how the allocation of rights and resources should be distributed among the society. Any argument in support of minority rights and exemptions is usually funneled through a 'distributive justice lens'. A key issue which is at stake is whether culture and religion can be interpreted as being part of people's conscience 'choice', or part of 'unchosen circumstances'.

Unchosen circumstances versus choice

How do we defend the position of that religious and cultural affiliations are part of one's unchosen circumstances, rather than choice? Does such an endeavor entail that accommodations that cannot be justified? This can be done by asking the question of what egalitarianism requires vis-à-vis people's decisions. In order to do this, an analysis is required of the arguments used the connect expensive tastes and religious cultural affiliations as well as looking at the dimensions in which they are distinct. This is because arguments which support the claim that religious or cultural exemptions should not be granted, often invoke the assertion that beliefs and practices are a matter of choice rather than unchosen circumstances. Dworkin rightly identified the way in which changes in circumstances can affect decisions regarding how to best interpret an action. The perception of natural disasters, which have catastrophic effects in some parts of the world, can no longer be supported by the arguments that it was caused by either demons or other superstitions. Once we came to acknowledge that these events cannot be controlled by the people affected, the "whole network of our moral and ethical convictions changed" (Dworkin, 2002; 287). Thus, our morals convictions are intrinsic to on our ability to distinguish on this very complicated dichotomy as the burden of responsibility usually falls within the category of 'choice' rather than unchosen circumstances. As Dworkin (2002, 287) puts it, "Individuals should be relieved of consequential responsibility for those unfortunate features of their situation that are brute bad luck, but not from those that should be seen as flowing form their own choices".

We are faced with two types of inequalities. One type invokes inequalities which arise due to circumstances beyond the control of individuals or groups. A person who is born blind for example, finds herself disadvantaged relative to the rest of the society out of no fault of her own. An egalitarian accommodating policy based on luck egalitarianism would argue that

compensations are justified for this particular person. The second type of inequality relates to inequalities which arise out of people's choices. Luck egalitarianism assumes that choices made by rational people should be respected, and therein people should bear the resulting burden of their own actions as well as enjoy the fruits of their own labour. For example, if a person invests all of her money in the stock exchange, in the hope of acquiring a greater return, and the company he invested in went bankrupt, it is clear that the inequality on her part is due to her own action and therefore does not deserve compensation.

Claims of conscience as a particular type of subjective preference

Taylor and Maclure defend the claim that core beliefs and commitments should be accommodated because they are different than expensive tastes or preferences. Part of the justification they use for the distinction is that they form a central part of the believers identity or character, therefore they should be taken into account when the general law is being applied. They argue that "the more a belief is linked to an individuals' sense of moral integrity, the more it is a condition for his self-respect, and the stronger must be the legal protection it enjoys" (Taylor & Maclure, 2011; 76). The more powerful grip the belief has on a person mental wellbeing, the stronger the case for protecting it by accommodation. Michael McGann also supports this claim by saying that beliefs different from preferences in the sense that their non-fulfillment can endangering a person's self-respect (McGann, 2012). Two conditions are put forward in order to determine whether an exemption should be granted. One being the need to prove that their beliefs actually provide meaning and direction to their lives. And secondly, the need to make the claim that respecting them is condition to their self-respect (ibid; 77). In other words, they connect the power or the level of meaningfulness a belief has in one's life, with an *obligation* (emphasis mine) by the state to accommodate these beliefs. If on the other hand these beliefs contribute to one's wellbeing, but at the same time the opportunity cost of switching them or abandoning them is low, then these are not really

beliefs but preferences, and, according to Taylor & Maclure, preferences have no prima faice reason for accommodation.

In order to demonstrate the different level of impact and effect which beliefs have over preferences, they introduce the concept of 'moral loss' and attach it to whenever a person is not able to express his beliefs. To account for the moral loss of an individual is a very complicated matter. It is hard to determine the root of the moral loss, the intensity of it, as well as the duration of it. Perhaps the Sikh who is unable to carry his *kirpin* to school feels an immense moral loss initially, but then with time adapts to the new situation in which he is faced. Perhaps the case is that the Sikh refuses to go to school, skipping a whole semester of classes. It's hard to determine, but within the context of generally applicable laws these situations shouldn't surprise us.

Chapter 2: Liberal responses to diversity: Arguments in favour of accommodating religious/cultural minorities through exemptions

This part of the thesis outlines some of the predominant arguments used in order to justify group-differentiated rights. Although some of these arguments are not specifically adjusted to defend exemptions, the rationale of accommodating policies for cultural or religious minorities runs parallel with the present discussion both in the exemptions debate as well as the group-differentiated rights debate.

A number of valid points have been laid out by theorists as to why there is a strong case for reconciling the inequalities of burdened minorities with group differentiated rights. Furthermore, a strong case is also made as to the method in which these inequalities might be reconciled. These arguments take cultural attachment as a point of initiation, and assume that people have a considerable interest in maintaining this. It is argued that universal legal equality, meaning universality through law, should be balanced against equality among the different segments of the population which can only be achieved through group differentiated rights.

In order for this to be achieved it is necessary to have a culturally sensitive attitude. Theorists who defend group differentiated rights for minorities wish to avoid the confusion which seems to stem from the very heart of liberalism. That is the confusion between equal and identical treatment under the 'one rule for all' rationale.

This section evaluates the theory underlying the claim that equal treatment should be perused through accommodating policies. Particularly, this section will critique three claims for religious and cultural exemptions coming from two theorists, who argue that policies of recognition and accommodation are required by justice.

One being Will Kymlicka's theory of equality for minority rights. More specifically, this thesis criticizes the connection made between autonomy and cultural context as a path of meaningful choice. Furthermore, Kymlicka's 'Equality argument' will be outlined and connected to a similar argument made by Taylor and Maclure. In addition, this thesis finds faults with Bhikhu Parekh's argument for opportunity, as articulated in *Rethinking Multiculturalism*. The paper will address the reasons why these arguments have failed to eliminate inequalities within the group, as well as the reasons to why these may only have a limited success, insofar as they are attaching value to cultural context of choice.

Will Kymlicka

Will Kymlicka seeks to redefine liberalism and make it relevant within the multicultural nature of the liberal state. He provides a list of group differentiated rights as a way to safeguard cultural minorities from majoritarian neglect. His approach to minority rights oscillates around the concept of 'luck egalitarianism'. In his book, *Multicultural Citizenship: A Liberal Theory of Minority Rights* he stresses the importance of *rectifying unchosen inequalities (*emphasis mine) when it comes to theories of justice for minority rights (Kymlicka, 1995; 109). He provides two arguments which shall be analyzed here. One being 'societal cultures as context of choice', and the other being 'equality principle'.

Context of Choice as a precondition to Autonomy

Societal cultures acting as contexts of choice is the most prominent claim made by Kymlicka in order to defend group differentiated rights being afforded to minority groups within the liberal societies. He builds this argument by emphasizing the importance of individual autonomy. Autonomy is a key liberal principle and Kymlicka goes to great lengths to analyze his argument as to how to make autonomy flourish between and within groups. He argues that one of the fundamental components of liberalism is that it "ascribes certain fundamental freedoms to each individual" and in addition it "grants people a very wide freedom of choice in terms of how they lead their lives" (Kymlicka, 1995; 83). Kymlicka establishes the link of autonomy and choices following Joseph Raz, who in *Morality of Freedom* argues that the main condition for autonomy is having "adequacy of options" (Raz, 1986; 174). Without a number of choices, there would not really be a choice. Our position would be akin to that of the highway man, who can either choose giving his money to the robber, or risk losing her life. When the number of choices are too few, the possibility to of making an autonomous meaningful choice is diminished. Realizing this, Kymlicka proceeds by connecting the concept of autonomy with that of culture in order to safeguard autonomy from a potential erosion.

After arguing for context of choice as a precondition to autonomy, Kymlicka moves on to argue that culture is essential because it not only provides a range of choices, but also provides meaningful ones. Group differentiated rights, according to Kymlicka "secure and promote. . . access" to choices (Kymlicka, 1995; 83). These choices cannot be understood from people from other cultures, since they are part of the "shared vocabulary of tradition and convention" (ibid; 83). So a cultural setting is not only required to make meaningful choices,

but also it can also be used to understand different choices as well.

The three premises which Kymlicka considers to conclude that group differentiated rights are an adequate response in safeguarding individual autonomy can be summarized as follows:

1. Autonomy is essential for individuals to enjoy a good life and the state should engage in policies which promote this.
2. Autonomy is only guaranteed through the number of options available.
3. Cultures provide a good medium for increasing availability of meaningful options.

Therefore:

A. There is a prima facie reason for the state to pursue group differentiated rights

Kymlicka considers cultures valuable only insofar as they provide individual autonomy. However, it is somewhat implied in his work that the level of autonomy is correlated with the number of meaningful choices. If the number of choices decrease, then there could be a potential threat to autonomy. Returning to Raz and the highway robber, the number of options are inadequate to produce meaningful autonomy for the person who is being robbed. Kymlicka thus is only able to conclude on the value of group differentiated policies in so far as he can make the link between decay of cultures and decay of autonomy.

Alan Patten in *Equal Recognition: The moral Foundations of Minority Rights* rephrases a common objection to Kymlicka's conclusion. This is the 'particularity problem (Patten, 2014; 75). This objection is based on the fact that Kymlicka does not explicitly state why people need a *particular* culture in order to enjoy the advantage of autonomy and thus have access to meaningful choices.

The objection stipulates that as long as there is a sufficient number of cultures to provide people with options, there is no need to protect particular cultures from dissimilation through group differentiated rights. If Kymlicka is to argue that there is a strong reason to support particular cultures from dissimilation, then he has to support this claim by providing arguments for protecting cultures *qua* cultures. However he does not do this as he is only interested in cultures as long as they provide context of choice. Kymlicka addresses this objection by providing a number of reasons why people have strong objections in abandoning their culture and integrating into an alternative culture. He finds the type of objection which Patten poses as akin to treating "the loss of one's culture as similar to the loss of one's job" (Kymlicka, 1995; 84). Kymlicka argues that is some cases it is impossible for people to move between societal cultures, and that in some successful cases the opportunity cost is too high (ibid; 85).

This brings about the second objection to Kymlicka's theory. How does he differentiate between different minority groups? Kymlicka creates a hierarchy of minority status. He differentiates between 'immigrants 'and 'national minorities' therefore assigning different group-differentiated rights to each category. Kymlicka is more willing to grant accommodating polices to refugees and national minorities rather than to immigrants, on the basis that the immigrants voluntarily give up part of their culture. But how is the distinction between voluntary and involuntary migration made? He incites the motive factor, which argues that since immigrants "voluntarily" leave their country to seek work they "relinquish some. . . rights that go along with their original national membership" (ibid; 96).

Kukathas highlights the difficulties faced in trying differentiate groups in this manner. He notes that many migrants do not move voluntarily, that 'not all national minorities' are

involuntary, and that some member of indigenous populations became part of the national minorities by choice (Kukathas, 2003; 110). He asserts that the distinction is not as clear as Kymlicka argues, and since the distinction is important as to the allocation of rights, it weakens rather than strengthens Kymlicka's position to argue for these rights. Whether the choices of migrants are voluntary, and whether they desire to preserve their old culture is something which Kymlicka assumes and provides no further explanation. It could be possible that migrants voluntarily give up their own culture, but it can also be the case that they want to preserve as much of it as possible.

The distinction between migrants and national minorities is one which Kymlicka seems too eager to make. If we accept the premise that migrants are voluntary actors, the only difference between them and national minorities is that the latter group has been around for a longer period of time. This seems sufficient for Kymlicka to make the distinction, and thus allows for contrasting group-differentiated rights. Patten also objects along the same lines and asks whether this distinction has any moral foundation all. He questions whether it is a question of "luck and power" under a "first come, first serve" basis (Patten, 2014; 270). These objections are crucial in understanding the rationale behind Kymlicka's approach to minority rights. He recognizes characteristics of different minority groups, and tries to formulate his theory around it.

A third objection suggests that Kymlicka is taking an unnecessary step in his attempt to reconcile inequalities between majority and minority cultures. This is the attachment of culture as the only means of identifying oppression or marginalization. In doing so, he places all the members of minority cultures on an equal footing. Kukathas addresses this problem by noting that even if the Aboriginal community in Australia are, on average, worse off in the society than the rest of Australians, it does not follow that all aboriginals are in a relatively

disadvantaged position when juxtaposed with the rest of Australians (Kukathas, 1992; 123). It could be the case that some aboriginals are in fact better off, in terms of money and status, than many Australians. By demarcating them into cultural categories, Kymlicka is less likely to detect these discrepancies between the cultures, thus limiting his effort to reconcile these inequalities. In the case of exemptions, it would follow that Kymlicka is ready to grant exemptions and group-differentiated rights to some Aborigines, without granting the same rights to other Austrialians who are actually worst off in the relevant aspects.

The State's lack of neutrality as indirect discrimination

Three similar arguments have been articulated on this issue. It is argued that the state unintentionally privileges the majoritarian culture at the expense of minorities. To support this claim the 'Equality argument' as articulated by Will Kymlicka will be used as well as his objection to 'benign neglect' In addition this part examines the 'indirect discrimination' argument as put forward by Taylor & Maclure in *Secularism and Freedom of Conscience* . Will Kymlicka argues that "responding to cultural differences with benign neglect makes no sense", since government decisions on language, holidays, and symbols "unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups" (Kymlicka, 1995; 108). Benign neglect means that the state should act with indifference towards cultures, and thus make decisions and policies which are culture-neutral. According to Kymlicka benign neglect "ignores the fact that members of national minorities face a disadvantage which he members of the majority do not face" (Kymlicka, 1995; 110). The argument goes that since this laissez-faire attitude does not attach cultures or religions to individual citizens, decisions made by the state transcend cultural differences, therefore

treating citizens in an equal manner.

Kymlicka's objection to benign neglect has to do with the fact that laws are adapted by the state in order to fit the characteristics of the majority population. This norm may appear ostensibly neutral on its face, while at the same time "producing in its application effects detrimental to members of a given group" (Taylor & Maclure, 2011; 73). These take the form of dates for Public holidays, the color or design of official uniforms, the official language used in courts, the curriculum they teach at schools etc. etc. Given the range of issues which have been adapted to fit the preferences and needs of the majority, it is very unlikely for a state to be neutral and have no cultural preferences what so ever. The state he argues, left on its own, will inevitably recognize some cultural groups. "Having adopted dress-codes that meet Christian needs, one can hardly object to exemptions for Sikhs and Orthodox Jews on the ground that they violate 'benign neglect'(Kymlicka;1995; 114).Kymlicka therefore wants to reconcile this inequality by providing accommodating policies to minorities.

The equality argument runs as follows:

(1) Institutions of a liberal state have been adapted to fit the majority (Christian) tradition.
(2) The majority (Christians) is already accommodated within the system.

Therefore:

A. Minorities are at least entitled to the same accommodations already enjoyed by the majority.

Kymlicka argues that since neutrality is impossible, it would favour equality to accommodate minorities in as much as the majority is accommodated in various institutions. In order to protect groupings from potential assimilation, language transformation, or other types of reforms, he argues that some special measures must be created in order to preserve the survival of these groupings under the pressures of change. This resembles Alan Patten's concerns regarding the tendency of the state to reproduce the values or reflect the values of the majority. He argues that in the lack of accommodating policies the state will: (1)

symbolically affirm the value of some but not all ways of life; (2) accommodated associated practices in a way that is not true for other ways of life; and (3) promote the maintenance and reproduction of some but not all ways of life (Patten, 2000, cited in Shorten, 2010; 107).

Premise (1) and (2) lie on the fact that the state cannot be neutral in all regards. In some direct or indirect way the state will tend to favour and accommodate the demands of the majority. This may be justifiable, given that it would be very difficult to remove existing accommodating principles which states have introduced at the very first stages of their formation.

Stuart White makes the following counter argument against the conclusion reached in (A). Given the fact that the majority has accommodated their religious and cultural affiliations within the state, two interpretations are possible. The first interpretation says that the majority is wrong for accommodating their religious and cultural beliefs into the system. If liberal democracy is to be neutral then the majority shouldn't have its beliefs and customs accommodated in the system, given that minorities do not share this privilege. What would follow from this? According to White then the best possible solution for them is to remove them completely. If the majority is wrong to accommodate their beliefs, then accommodating other beliefs through exemptions doesn't necessarily follow, unless recognized as the "second-best policy"(White, 2012; 105). Under the idea of the neutral liberal state, the right should be prioritized over the good. If this assumption is broken from the beginning then the rules should be rewritten. Take the example of religious symbols in courtrooms. In a Christian society there are no laws which dictate that one shouldn't wear a wedding ring in the courtroom. If a Muslim judge wants to wear her hijab however, this wouldn't be allowed due to the uniformity of the dress code which is required inside the court room. However, this

does not mean that the neutral position is for the Muslim to remove her headscarf. The state in this case would truly be neutral if they had a rule disallowing any form of religious/cultural expressions from the uniform. The reason why this rule was not implemented in the first place, can partly be explained by the fact that the religious symbols of Christianity are much more subtle and discrete, therefore making the drafting of such a rule unnecessary. During this time however Christians are able to enjoy their freedom of expressing their religion, by wearing a cross underneath their shirt or a wedding ring, while Muslims are told to remove their headscarves in order to respect the neutrality of the court.

Bhikhu Parekh

In *Rethinking Multiculturalism,* Bhikhu Parekh starts by criticizing the classical monist perception of the good way of life. He argues that monist tradition, from ancient Greeks, to Christians down to J.S. Mill, "cannot see any good outside their favoured way of life" and he notices the "ease with which these and other groups justified or condoned egregious violence against alternative e ways of life," (Parekh, 2000; 49). He is therefore skeptical on how helpful traditional political theory is in dealing with cultural diversity. So Parekh is very cautious on any sign of moral monism, since even with the most benign intentions, the universality and the imposition of values is in itself dangerous. H understands culture as "the beliefs or views human beings form about the meaning and significance of human life and its activities" (ibid; 142) and therefore sees both shared human interests as well as cultural embeddedness as equally important factors which contribute to the concept of equality.

Parekh takes the stance that uniformity through law does not take the culture-sensitive position which is required to account for the differences people have within their cultural communities. In his own words: "Equal rights do not mean identical rights, for individuals with different cultural backgrounds and needs might require different rights to enjoy equality in respect of whatever happens to be the content of their rights" (Parekh, 2000; 240). This is because for Parekh equality entails a "full recognition of legitimate and relevant ones" (Parekh, 2000; 240). Above all levels of equality, he emphasizes the importance of equality of respect and opportunity. In order to do this one must take the cultural background and the beliefs of the person into account, to empathize with them, and to enter "into his world of thought" (ibid; 241). For Parekh, equal respect, opportunity, and equality before the law should be defined in a culturally sensitive manner (ibid, 2000; 240-241).

His syllogism on the cultural-sensitive account of equality may be summarized as follows:

1. equality should not be grounded in human uniformity but rather on an "interplay of uniformity and difference"
2. sensitivity to the difference is important in respects to opportunity, respect, and law)

Therefore:

A. Equality necessitates recognition of legitimate and relevant differences

He then gives a list of examples to illustrate how opportunity, if not funneled through a cultural-sensitive manner is actually a 'mute' opportunity (Parekh, 2000; 241).

i. Jewish person who is required to remove his yarmulke in school

ii. Vegetarian Hindu who is required to eat beef as a precondition for a job

Examples (i) and (ii) stress that these two people are very different as to what gives meaning to their lives. One is a practicing Jew and the other a vegetarian Hindu. What has contributed in forming their identity of the Jew is very different from the Hindu. Their 'unchosen

circumstances' in conjunction with their own individual character has contributed to the development of their respective beliefs. It would be unfair according to the second premise to dismiss or ignore these steps which have contributed in their self-development, and to therefore treat them in an identical manner. In order to treat them equally, according to Parekh, it is important to maintain a certain level of sensitivity towards these differences and take them into account in order identifying the appropriate egalitarian response to them.

In premise (2) he makes the claim that sensitivity to differences is important in order to safeguard equality in terms of opportunity and. In order to make the leap from premise (3) to the conclusion (A) he implicitly adds another premise (3a) which runs as follows:

3a. Lack of recognition or respect is tantamount to moral loss

This is because, if the people illustrated in the examples did not face any kind of disadvantage due to their differences not being recognized, the case for (A) would weaken. The 'mute' opportunity entails that the Jewish person as well as the Hindu technically have the opportunity to either attend school without the yarmulke or eat beef, "but for all practical reasons choose not to" (Parekh, 2000; 241).Therefore, it is the lack of recognition and respect within the rules which makes the Jewish student unable to attend his school, although the opportunity has not been taken away from him. This inability, according to Parekh, "is cultural and not physical" however, "this inability cannot be overcome without a significant moral loss" although sometimes "it may be overcome with relative ease" (ibid, 2000; 241).

Objection to 'extension by analogy':

This brings about the objection to Parekh's conclusion on the basis of 'extension by analogy'. The extension by analogy is a method used by a number of theorists to justify their rationale for allowing accommodating principles. Consider for example the connection often made between physical disability and religious and cultural affiliations as Parekh just illustrated. An analogy by extension may argue that a physical disability is as much of a concern for egalitarians as a cultural handicap.

In this case, Parekh proceeds to make the claim that a cultural inability can, in some instances, be just as bad as a physical disabilities. However, he does not provide any scale as to how this moral loss is accounted. Given that he admits that the inability to comply with certain rules in some cases can be easily overturned, why does he make the argument that since *some* will find it harder from *others* to comply, the solution should be to allow for exemptions based on religion and culture? The same argument could be used in the opposite manner. If we know that the cultural inability to comply with certain rules is subjective and depends on the individual, why not argue that it is best to remove the exemption altogether, given that there is a good reason for the rule, as well as the difficulties in accounting for the subjective moral loss faced by different individuals? In discussing the exemption Sikhs have to carry the *kirpan*, Parekh confronts the objection that non-Sikhs are discriminated in the fact that they do not have this right. In order to support this objection, he argues that there is no inequality because everybody's religious commitments have been respected. Parekh is suggesting that if any other religious group had asked for an analogous exemption, it would be granted. This may be true, but why is Parekh placing an absolute value on the freedom to practice one's religion to the fullest, given that he admits that in some instances the inability to overcome cultural and religious beliefs in order to comply with the rules might not be great?

Chapter 3: Universal Egalitarianism

The most common criticisms of religious and cultural accommodations have to do with the distinctions they draw in the law between different citizens. This part of the paper evaluates arguments made against accommodating principles, by looking at the benefits of the general applicability of the law as well as the limitations which come as soon as the state starts to identify individuals as members of various groups as a matter of justice. For example, Jeremy Waldron asks the question of whether we "should treasure the fact that in our multicultural society there are many ways to spousal adultery, not just one? (Waldron, 2002; 12). A fine line is drawn between cultural and religious diversity on the one hand, and the ways in which these diversities area recognized through exemptions from the generally applicable law.

Brian Barry

Barry Brian's book *Culture and Equality: An Egalitarian Critique of Multiculturalism* accounts for a universalistic model of citizenship. By taking a liberal approach to individual rights he perceives that there should be equal rights between citizens. Barry accounts for a

universal human nature which can he argues underlines fundamental common characteristics and interests shared by all humans. By universalizing human rights, he argues that there are some rights which for no reason can be trumped upon.

"The defining feature of liberalism is, the principles of equal freedom that underwrite basic liberal institutions: civic equality, freedom of speech and religion, non-discrimination, equal opportunity" (Barry, 2001; 122). He notices that autonomy is key for liberalism as, other things being equal, the society would be better off if the society is "widely diffused among its members" due to the "disposition to ask if beliefs and practices can be justified" (Barry, 2001; 119). However, he note that it does not follow that the "state should take a its mission to the inculcation of autonomy" (ibid; 119). Liberalism is a theory of how states ought to behave towards its people. However it does not stop there, as the state is only plays a minimal role compared to other institutions which have an effect on people's lives. If the liberal state exists, but at the same time the private sector is allowed to discriminate at will, then liberalism would only be able to enjoy a minimal success. So intervention and re-adjustment of some institutions to fit the liberal framework are essential.

Barry takes the defining feature of liberalism, i.e. civic equality and equal opportunity, and argues that they should be applied to all citizens equally. By acknowledging that liberalism entails intervention is some cases, such as the example of the workplace, he justifies his 'all or nothing' approach to exemptions in this way. There is no room for Barry to allow for exemptions which have a potential of jeopardizing the equal opportunity which should be available to all citizens on an equal level. He does not add any specific value to diversity and argues that it is against the liberal principles for the state to promote diversity in the name of autonomy (Barry, 2001; 123-125).

Given this, Barry's stance takes a liberal approach to individual liberties by advancing uniformity through law. He commences by arguing that uniformity through law is by no means inherently unjust. All laws can be said to affect people in different ways. A speeding law would have a different impact on someone who just bought a Ferrari than to someone who drives a forty year old Lada. However, road safety regulations need to be uniform. There can't be one speeding law for one brand of cars and a different one for another. The question which needs to be posed is whether the Ferrari driver is losing out in opportunity because of the greater restriction he faces because of his choice of car. If the speeding limit is 100 mph and his car is capable of reaching 250 mph, it doesn't follow that he has less of an opportunity to speed and therefore is entitled to compensation. What follows is that the person will have to limit himself, given the rationality of the law. This point is crucial in the formation of Barry's thesis. Namely, that equality of opportunity is an objective term, which cannot be affected by any cultural handicap. Once equal opportunities resources and rights are distributed fairly, then the difference in outcome does not necessarily equate to an unequal outcome.

Barry's position on this reflects from the idea that there is no prima facie reason for compensating 'expensive tastes. He does not consider it legitimate to compensate people who prefer to drink "vintage claret" over "beer" to reach the same level of satisfaction. (Barry, 2001; 35). By treating religious and cultural beliefs as expensive tastes, he argues that people do have a choice as to how much strength they attribute to each belief. By arguing that he prefers strawberry to vanilla ice cream, he points out that his preference is subject to chance given an increase in the opportunity cost of choosing something else (Barry, 2001; 36). If the price for strawberry ice-cream is much higher than vanilla, and Barry couldn't afford the strawberry one, he would have to internally decide on how he will tailor his preference around

this obstacle. He by no means advocates a subsidy for his 'expensive taste', but other things being equal, he will always choose strawberry.

Barry argues that liberalism is not a culturally neutral theory. Advancing the private/public dichotomy has implications as to who decides what to remain public and what private. Privatizing religion, according to Barry, "fails to accommodate all those whose beliefs include the notion that religion ought to have public expression (Barry, 2001; 26). Privatizing religion is according to Barry the only way in which different religions can be given equal opportunities. Just like the speeding law, laws of general applicability will inevitably have different impacts among different religions. One of the victories of liberalism is that it has achieved in privatize religions. The religious wars of the 16th and 17th century had destroyed Europe and an appropriate response was necessary in order for toleration to be achieved between religious segments. Multicultural policies which aim to go against the victories won by the enlightenment movement could very well jeopardize the progress which has been made.

However, it could be said that this argument attacks Barry's thesis instead of defending it. As already mentioned, the state has several ways to hide the biases against religious minorities. The law against the ritual slaughtering of animals for example will have no impact on Christians, while it will have some impact upon people of the Jewish and Muslim Faith. This unequal outcome that the law will have on different religions has nothing to do with the right to exercise one's religion to the fullest. It just so happened that Jews and Muslims were affected the most, because of the categorical demands that their religion ascribes. Barry makes little effort to attack the 'built in injustice' argument, which states that the majority have already incorporated their religious and cultural practices into existing law, therefore

excluding the case for an exemption since their preferences are already accommodated (Kymlicka, 1995) (Shorten, 2010). This limits Barry's critique of multicultural policies, as his arguments for not allowing further exemptions can be immediately countered by arguing the 'State's lack on neutrality' argument, as analyzed in chapter 2. However Barry is more than willing to allow for existing exemptions to continue. In his 'pragmatic cases for exemptions, he acknowledges that deviations from rules can be justified if it is for the benefit of social relations and stability (Barry, 2001; 51). He gives a number of examples to illustrate this such as Sikhs working in the construction business and for religious clothing from schools (Barry, 2001; 49, 61). So Barry's stance cannot be seen as a strictly 'all or nothing' approach, since compared to Kymlicka and Parekh, he just seems to disagree on the mere numbers of exemptions that thus far have been allowed, and is skeptical about furthering this scope to include additional exemptions based on religion and culture.

Barry's "Rule and Exemption Approach"

Barry's 'Rule and Exemption' approach can be used in order to decide whether this law is prima facie unjust towards these religious groups, and by extension allow for compensations. Barry is not convinced that tolerating minority groups entails granting them exemptions to neutral laws which would not otherwise be granted. In his own words, Barry looks at the rationale behind both laws and exemptions and concludes that "either the case for the law is strong enough to rule out exemptions, or the case that can be made for exemptions is strong enough to suggest that there should be no law anyway" (Barry, 2001; 39). Barry seems to find no intermediary path between having the law without exemptions, or having no law whatsoever. The argument goes that when exemptions are granted to a certain degree, then the objective of the law potentially gets undermined. What good will the law do if everyone who

can claim an exemption will most likely have it granted? If exemptions are granted to a degree higher than a specific threshold, then the case for the law gets undermined.

The only way for Barry to accept that there is good enough reason for the law and the exemption to exist is to show that:

1) There is a good reason for a law to be there
2) There is a reason for exempting some people from this rule
3) This reason pertains only to some and not to all.

These three points in combination fulfill Barry's criteria for having both the rule and the exemption. Barry makes the claim that religious and cultural reasons for exemptions rarely pass these criteria in order for the exemption to be made.

This part uses Barry's reasoning, to see how Barry's responds to the claim that exemptions should be made for religious reasons on the use of ritual slaughter. Firstly to take premise (1) in relation with the exemption in question. What is the case for the law against ritual slaughter? Barry cites the reports conducted by various animal welfare committees which concluded that ritual slaughter causes a greater degree of pain and suffering to the animal (Barry, 2001; 40-42). This justification is good enough for the rule once enough information is available regarding the welfare of animals.

Now the point comes where Muslim and Jewish people seek an exemption from this rule (2). In order for the rule and exemption approach to be accepted, the people seeking exemption (2) must show that they have a good enough reason to seek an exemptions from that law, which is only justified in its affordance to them. If the reason for an exemption was applicable to all, and not just some (3), then the strength of the law would weaken, and Barry would argue that the law should be repealed.

Barry argues that the neutrality of the law derives from the fact that it does not aim at infringing religious or cultural liberty per se. It just so happens that some religions/cultures are affected to a greater extent than others, given the requirements of their beliefs. In the case of the ritual slaughter this means that since there is no obligation for Jews and Muslims to eat meat, the law on itself does not burden their religious conscience. He supports this claim by pointing out to the examples of Sweden and Switzerland, where the law had passed in banning ritual slaughters. The religious authorities in that case eased the strictness of their faith by saying that pre-stunned meat was also acceptable for consumption. The alternative choice is one offered by Peter Singer, who argues that meat consumption is a luxury of its own (Singer, 1993). Given that there is no requirement for Jews or Muslims to eat meat, the choice for people who really feel that ritual slaughter is important is to cut back on meat altogether. Given that Barry doesn't find a sufficient reason to grant (2) and (3), he says that the exemption is not just.

Multiculturalist theorists (Kymlicka; 1995, Parekh; 2000) argue that cultural preferences play an important role in determining (3). That is to say, they identify which 'some' are worth the exemptions and which do not. As the second chapter illustrated, the definition of 'some' (of premise (2) & (3)) varies greatly in relation to which aspect of human interests one is willing to prioritize. Luck egalitarianism would prioritize the ones who are oppressed out of no fault of their own. Barry would agree with this insofar as physical disabilities are considered. He would not agree with the premise that physical disabilities have equal weight as conscientious objections to general applicable laws, as he does not agree with the premise that the opportunities of the culturally disposed are being reduced. "Justice and freedom of religion do not require exemptions form generally applicable laws simply on the basis of their having a differential effect on people according to their beliefs" (Barry, 2001; 171).

Sikh Exemption debate

This is the well-known example which has attracted the attention of a number of political philosophers. It is often used an as example because of unique characteristics which make it easy to generalize from. Firstly, it's a paternalistic law, meaning that the state is restricting the liberty of its citizens for their own good. Unlike other liberty limiting principles, such as the harm principle, legal paternalism is usually excluded by liberals. In cases of legal paternalism, it follows that the justification used by the state must be stronger than any other type of law. Helmets have been noted to reduce the chance of head injury upon a crash. If the state has seeks to increase the welfare of its population by reducing the potential of head injuries or death, then this rule is justified. In addition, the only known case for exemptions for helmets are given to Sikhs, meaning that exemptions to a neutral law of general applicability have been granted for religious/cultural reasons. These make it an ideal example to examine, and see how the different egalitarian theorists respond to this exemption. The UK passed a law in 1971 which required all motorcycle drivers to wear a helmet. This had a significant impact on the Sikh population of the UK, and a number of Sikhs had refused for some years to wear a helmet as a sign of protest. This had led the parliament to grant an exemption on the rule based for Sikhs as to allow for them to practice their religion to the fullest.

Barry's stance on this issue finds its initial foundation in off the 'Rule and Exemption Approach'. According to Barry there is a prima facie reason to argue that the state is justified in restricting its citizen's liberty. Since the debate involved a religious community, namely Sikhs, the discussion revolved around the concept of freedom of religion and the way in which religious beliefs can be expressed. Barry argues that it was unnecessary for the debate to be skewed in the direction of religious liberty. The categorical demands of the Sikh faith

doesn't require Sikhs to ride motorcycles, meaning that there is no obligations that Sikhs should ride motorcycles. The law simply asks that if one decides to ride a motorcycle, she should wear a helmet. Accommodating principles are supposed to relieve the burden carried by marginal members of society. Barry's concern for equal opportunities though, does not entail that an exemption should be made here. For this reason he emphasizes on the difference between 'denial of equal opportunities' on the one hand, and 'choices people make from a certain set of equal opportunities (Barry, 2001; 45). It is important to note that Barry is supporting accommodating principles in so far as they have to do with physical disabilities or economic disadvantage. His objection to the exemption in this case derives from the idea that religious affiliations are similar to expensive tastes, and that a case for an exemption from a neutral law of general applicability for this reason cannot therefore be justified.

Barry overemphasizes the obligation people have to obey the law. He does argue that this is only the case when there is a good enough reason for the law to be there in the first place, but this does not suffice. His universalist approach to liberal theory explicitly argues that there is "a single best way for human beings to live" and this follows that if there are strong enough reasons of doing something then "culture is no excuse" (Barry, 2001; 258). Barry's approach is limited to the extent that he does not address the counterargument developed on Chapter 2, namely that the neutrality of the state towards religious minorities is often skewed causing religious minorities to be victims of majoritarian neglect. This would significantly undermine his premise on the moral duty of citizens to obey the law, given that the formation of the law could have been done in order to accommodate majoritarian demands.

Parekh on the other hand defends the exemptions given to Sikhs. He says that the state is willing to compromise on the issue of the helmet if two conditions were met. One being that

the alternative head-gear should provide adequate protection, and secondly that making this choice makes you responsible for additional injuries caused by this alternative head-gear. In his own words: "such an arrangement respects differences without violating the principle of equality, and accommodates individual choice without imposing unfair financial and other burdens on the rest of their fellow citizens" (Parekh, 2000; 244). Let's examine Parekh's arguments more closely. Firstly, he disagrees with Barry on the point that the turban does not provide adequate protection. However this is neither here nor there. What is important is the two conditions offered by the British state make no specific reference to culture or respect for difference. It just says that it will tolerate a different head-gear on the conditions that were mentioned. Namely that it offers adequate protection, and that people take responsibility for the extra risk which they take upon themselves. Parekh claims that this exemption is supporting his theory of making the law subject to cultural differences, however it is evident that if it were not for the two provisions, the case for an exemption would be much weaker. It is not evident how Parekh would justify the exemption to Sihks without the supporting argumentation of adequate protection and the additional responsibility.

But surely the two conditions made by Parekh are so vague that pretty much any form of headgear could pass the test. It is not clear why he needs to further support this decision by providing culture sensitive arguments in order to defend the exemption.
Let's contrast the exemption to Sihks with a similar non-cultural conscientious objection to wearing a helmet. Imagine that the motorcycle gang 'Hell's Angels' might also prefer to ride their motorcycle without the interference of the helmet. Living life on the edge and experiencing the full capacity of motorcycling is very important to the persona of Hell's Angels. The law passes which requires all motorcycle drivers to wear a helmet, and Hell's Angels find that law burdensome towards their way of life.

How would Parekh respond to this? Given the two provisions outlined for the Sihk example, adequate protection and additional responsibility, it is possible that Barekh would allow this exemption. However, in order for Barekh to make this claim, he would have to argue that the Hell's Angels claim has the same standing as the Sihks. Following Parekh's line of thinking, as long as Hell' Angels are voluntarily putting their selves in harm's way by deciding not to wear the helmet, then an exemption can be made for them. This conclusion regarding the exemption would not violate equality in Parekhs terms. If one group can argue that its actions will only affect the individual members of the group who take the burden of this risk, then the same could be argued for the Hell's Angels example, where the same risk would be welcome by them in order to live rich fulfilling lives with the wind blowing through their hair.

However, it does not necessarily follow that this would be the case. A potential counter argument by Parekh could be that there is something special about Sihks and their way of life which is absent in the case of Hell's Angels and therefore the exemption should be given to the former but not to the latter group. In order for him to do this he would have to differentiate the claims along the lines of what Ronald Dworkin labeled as *experimental* and *critical* interests (emphasis mine) (Dworkin, 1993; 201). Experimental interests refer to things which "we like the experience of doing them" and are "essential to a good life" (Ibid; 201). Examples of these include watching movies, taking a long walk, watching sports etc. On the other hand you have critical interests, which are identified as "interests which make life genuinely better to satisfy, interests they would be genuinely worse off, if they did not recognize (ibid; 201).

In order to make the claim that it is consistent to argue for an exemption for the Sihks and not for Hell's Angels, Parekh would need to argue that the Sihhks desirability not to comply with

the helmet law and keep the turban is part of their critical interests. It is required for them, if they are to live fulfilling lives as true Sihks, that they do not reveal their hair, while Hell's Angels enjoyment of the motorcycle with the wind blowing through their hair is merely experimental interest, meaning that it still gives them fulfillment and enjoyment, but it is not as essential to their well-being as critical interests would be. This would suffice to make the distinction clear, but it still leaves a number of questions unanswered. For example, at what point do experimental interests become critical interests? Hell's Angels might have endorsed this way of life, and plan to live by the biker's 'code' for as long as they live. The non-religious element of their bond could be strong enough for them to act as if they belong to the Hell's Angels culture.

If the distinction between experimental and critical interests is possible, then I allow exemptions for this reason, but I think it is hard to make the distinction given the post-secular nature of the world and the immense ways in which people find meaning. Critical interests should be reconstructed to allow for a greater ranger of possibilities in which people collectively find meaning in their lives. Vegetarianism is a good example which can be used to further support this claim. It would be quite difficult for people to argue that vegetarianism is part of someone's critical interests up until some years ago. Before Singer and the 'mainstrimization' of ideas regarding animal liberation, the vegetarian would find herself in the same position as the lone eccentric. It would be hard for vegetarians to seek for exemptions in the prison system or in the workplace. However, if a collectivization or a movement of vegetarians came together, then the moral ground in which they can argue from strengthens, as they would increase their chances of recognition.

Barry would argue that the law should be removed altogether. If the argument may be made in favour of individuals taking the risk upon themselves regarding various cases where the state suggests otherwise, then there is no reason for the law to begin with. On the other hand, this argument can expanded to the extent that any libertarian reasoning can be used by anyone to seek exemption from this law. If religious and cultural affiliations as such have no authority to argue for an exemption on their own, then following this line of thought concludes that any conscientious objection should be regarded in equal footing. Having said this, equal footing does not necessarily entail equal chance of granting exemptions.

There is a another argument, the libertarian argument, which finds its place within the writings of Jeremy Waldron and Chandran Kukathas. This shifts the burden of justification towards the authoritative power, namely the state. Waldron asks the question of "which regime of regulation should prevail" (Waldron, 2002). Waldron does a good deal in reminding us that the norms regulating behaviour and customs exist well beyond the one set up by the state. Cultural societies, religions and customs may have impacted and influenced people's behaviour way before the state made its existence. It is therefore reasonable to argue that the state needs more justification to coerce, rather than the individual to be exempt from a law. Chandran Kukathas in the *Liberal Archipelago* uses skepticism towards authority to argue that the state has the potential to be far more dangerous than any subgrouping which might even restrict the freedoms of its own populations. By prioritizing toleration over autonomy, Kukathas makes it clear that the "most seductive and dangerous move in politics is that move which asserts identity to be not political but, somehow, natural or original." (Kukathas, 2003; 90).

He challenges the premise in which other liberal theorists have initiated from, that is, the idea that "justice should be the first virtue of social institutions" (Kakuthas, 2003; 263). This is because he understands that through different cultures, religions, and geographical location, it is not feasible at this stage to have a homogenous view on justice. Liberal justice as the answer to the issue of diversity could potentially create more conflict than solving it for the simple reason that even the concept of justice is too diverse and hard to isolate. In this sense, the case for exemptions can have as much if not more rational basis as a form of justice, since the state's motives and interests for pushing forward coercive laws which come in conflict with people's conscience can be brought into question.

Chapter 4: Differentiating between cases for exemptions

This chapter looks at ways in which differentiating between claims of exemptions lead to inequalities. Defending the thesis which argues that equality entails granting exemptions for cultural and religious reasons does not necessarily address the question of how to deal with claims which are outside the religious/cultural domain. Without addressing these different aspect of exemptions, an egalitarian theory on exemptions may only be half complete, since these discrepancies are undermined by the liberal multicultural theorists which this thesis has attacked Requests for exemptions from generally applicable law have usually been associated with freedom of religion. This is because, except cases of military conscription, there are rarely any exemptions granted to non-religious conscientious objections. This part of the thesis outlines the different methods used to grant exemptions and show that they provide ill effective. In addition, this part will defend the claim that a certain level of 'protection' of religious and cultural conscientious objections tantamount to privilege, therefore creating an inequality within the different claims of exemptions.

Objections to religious and cultural exemptions should be contrasted in two ways. One would be the relationship between the majority's religion versus minority religions and cultures. This has been analyzed through the 'indirect discrimination' objection raised by Taylor and Maclure, as well as the 'equal regard' criticism of Kymlicka, Parekh, and Nussbaum. As already acknowledged, there is the debate between already recognized and granted religious/cultural exemptions (which could be given to either the majority or the minority) and exemptions granted to non-religious conscientious objections. The idea is that egalitarian

approaches to the issue of religious and cultural exemptions fail to provide an adequate response to the objection which rests on the unfair status which religion and culture have in the case for granting exemptions.

Brian Leiter in *Why Tolerate Religion* makes two arguments regarding the puzzle of religious exemptions from generally applicable law. Firstly, he argues that there is no principled argument to defend the claim that exemptions for religious purposes *qua* religious purposes should be granted. He builds this claim by looking at what utilitarian and deontological traditions tell us about tolerating deviant beliefs within the state. He comes to the conclusion that the state has a number of different reasons to respect the private beliefs of its citizens, but by no means does that entail protecting religion *qua* religion. His argument, deriving from utilitarian and deontological premises, rests that the state has a compelling reason to "tolerate a plethora of private choices and conscientious commitments. . . but none of these single out religion for anything like the special treatment it is accorded in existing Western legal systems" (Leiter, 2013; 7). This special treatment, according to Leiter, causes inequalities within the existing sphere of exemptions. This brings about Leiter's second proposition, namely that there should be no exemptions apart from those who do not 'shift burdens'. According to Leiter, this would provide a solution to the problem of inequalities within existing claims for exemption

Let's look at one example offered by Taylor and Maclure in order to illustrate the problem which Leiter emphasizes on, before moving to what he labels as the 'Rousseaunian' objection to exemptions. This example includes a religious and the other a non-religious claim for an exemption from work.

a) "I want to leave work at four o'clock of Saturdays because I want to avoid rush hour traffic".
b) "I want to leave work at four o'clock on Saturdays because I need to get home before sundown to respect the Shabbat (Taylor & Maclure, 2011; 79)

They argue that there is nothing similar about these claims, and that one cannot conclude the two reasons for exemptions are of equal importance. However, the reason they are using to support this claim is that by acknowledging the similarities between the two claims of conscience would lead to a reductionist approach of boiling down freedom of religion and freedom of conscience, which they perceive as highly important, to freedom of thought. Could they use a different way of explaining what should be the case for this example, rather than simply dismissing case (b) as being relatively unimportant in comparison to (a)?

Essentialism and claims of exemptions

This brings about the critique of essentialism in multicultural polices. Essentialism is when certain features are singled out from a given group and attributed to that group alone. An essentialist account of Christianity for example would say that all Christians believe in the holy trinity and divine revelation. These two sum up the Christian doctrine to some extent. It wouldn't be irrational for someone to attach these features to Christianity. However it would be an exaggeration to say that "all Christians believe in the holy trinity as well as divine revelation through prophets", since this is clearly not the case. The problem of essentialism in regards to minority rights and exemptions rises through a "pick and choose" strategy in which it is convenient to use essentialism in order to make decisions on practical issues.

Let's consider the following example. Two people seek an exemption from working on a Saturday. One seeks it because he is Jewish and wishes to respect the Sabbath, and the other wishes to watch a football match. On its face, it seems that the Jewish person has a greater claim for the exemption rather than the person who wishes to enjoy a football match, given the general attachment of religion to identity, opportunity and conscience.

The example here is used to illustrate the fact that religious affiliations are considered to have a strong bearing in people's conscience. So strong that they are perceived to impose categorical demands on their followers to act in certain ways. However, how would the distinction be made between different claims of conscience regarding the burden they impose upon followers? Suppose that the Jewish person takes his religion in a very casual à la carte manner, and that the football fan religiously follows his team everywhere they play, and what we care about is that each individual does not act in ways in which their conscience is being compromised. Which of the two would have a stronger claim in the exemption? This distinction is a very weak one, and I do not claim to equate the two, however this is the path we're bound to follow if we let external actors, other than the burdened person, conceptualize in terms of beliefs and resources. Judges and lawmakers only have access to the scripts and traditions which are superficially evident in distinct religions and cultures. Essentialism basically gives easy access to people who can in some way link their claim of exemption with something which is accessible and easy to grasp.

Jeremy Waldron warns us of the dangers of a society which has "*both* a single set of laws *and* a complex mosaic of exemptions and defenses, clustered around particular minority cultures (Waldron, 2002; 13). He argues that this would pave the way in which "each defendant would be encouraged by his lawyer to scour his past, his ancestry, and his affiliations for *something* that can bring him within the benefit of the exemptions recognized for a newly-formed cultural group (ibid; 13). Although the rationale of not working on Saturdays has no significance on its own for every other person besides Jews, it is assumed that each individual Jew would care more about not working on Saturday than anyone else, therefore making his

claim carry more weight, and therefore increasing the changes that the exemption will be granted.

The essentialist critique of multicultural policies also addresses the fact that multiculturalist theorists have been too preoccupied in dealing with inequalities between minorities therefore neglecting inequalities within minorities. A post-multicultural critique of essentialism argues for example that multiculturalism

"exaggerates the internal unity of cultures and solidifies differences that are currently more fluid" (Phillips 2007: 14). By allowing for exemptions on the basis of cultures, it might be the case that the exemptions will be granted to the more vocal and active cultures, which does not necessarily mean that they are the ones who deserve it most. In addition, this might bring about conformity to the hierarchy of the existing culture, since the exemptions might only be provided for as long as the culture seems to be relevant and active.

Rousseauian worry about exemptions.

The Rousseauian Worry about exemptions derives from the idea that the laws drafted in the state are a legitimate expression of the common good. Following this, any deviations from the laws could translate into a deviation from the common good. Leiter uses this in order to show that some exemptions might 'shift the burden' of the common good towards those individuals who do not have a strong case for an exemption (Leiter, 2013; 99). He uses the term 'common good' or 'general welfare' in a loose manner. It does not follow that the laws are just, or that there is no moral obligation for civil disobedience if the law goes against the conscience of the individual. This is because the state should not purposely pass laws which burden claims of conscience if it's to be consistent with 'principled toleration' (Leiter, 2013; 101). However,

in the neutral domains such as health and safety, the laws are generally drafted in a neutral way and in line with what the majority claims to be good.

Why Burden-Shifting is prima facie objectionable

The need for a distinction between burden shifting and non-burden shifting claims of exemptions is one which has the power to shift the whole debate on religious and cultural exemptions. That is to say, the categorization of exemptions should be adjusted in order to alleviate the inequalities which, according to Leiter, are being neglected under the current philosophical debate. So firstly the syllogism of Leiter will be outlined, followed by a number of examples to illustrate his thesis.

Leiter's argument runs as follows:

1. There is a need to comply with laws in order to promote the common good
2. Exemptions from those laws is objectionable on the grounds that it may jeopardize the common good (Leiter, 2013; 99).

Therefore:
A. No exemptions which are 'burden shifting' should be allowed for religious or cultural reasons.

Let's take three examples in order to illustrate this point:

1. A person seeking exemption from removing his religious headwear from his Identity Card.
2. An Amish seeking exemption from jury duty because of his religious faith.
3. A Sikh seeking exemption from wearing a helmet because of his religious convictions to constantly wear the turban.
4. A Jehovah 's Witness seeking exemption from vaccinating his child.

What do these cases have in common? All four people have their religious convictions burdened by the law. In order to express the full potential of their faith they seek for

exemptions on these neutral laws. Burden shifting exemptions are ones which will impose an unfair burden to those citizens of a society who either 1) do not want to seek an exemption and 2) to those who do not have a reason that will be recognized as sufficient for the exemption to be granted.

Example (1) can be labeled as non-burden shifting. This means that regardless of the number of exemptions given for people to wear religious headwear on their identity card (as long as it doesn't cover the full face), no other citizens will receive additional burden. This, according to Leiter, is a prima facie reason to grant exemptions. Moreover, this exemption can be granted at an equal rate to all claims of conscience. A famous example of this is an Australian citizen who asked to wear a chef's net on his head claiming that he follows the religion of the Flying Spaghetti Monster and claimed to be a 'Pastafarian'. Granting this exemption to anyone who seeks it on conscientious grounds would alleviate the inequality between those who have been able to enjoy the exemption so far i.e. the religious orthodox, with anyone else who might have been rejected due to the unrecognizable and unmeasurable nature of his convictions. Of course, the counterargument, as would be perhaps articulated by Brian Barry, is that if there is not a good enough reason for the law, and if it's easy to grant exemptions to it, then maybe the law should be removed completely. However Barry's inability to make the distinction between burden shifting and non-burden shifting shows that he has a more firm stance on the uniformity of the law and would reject exemptions based on cultural or religious reasoning rather than differentiate the exemptions debate in the way Leiter does.

For example (2) however the tables shift. The Amish (this is a hypothetical example) seek to be exempt from jury duty since they are already quite autonomous from the rest of the United States. However, the nature of the exemption here is different. In this case, you have a certain

percentage of the population, who by definition, will never be able to serve in jury, therefore making the rest of the population more likely, by a very small percentage, to take part in this. In addition, the Roussaunian argument would say that the solidarity of citizens in this case is being undermined if a group continuously seek to exempt themselves to what the U.S. consider to be the cornerstone of their democratic system. Anarchists for example who have trouble accepting the legitimacy of the state in their conscience cannot be exempted on grounds of conscientious objections and will therefore be fined if they refuse to accept the responsibility of jury duty.

Example (3) is the well cited example which this thesis has already touched upon. As analyzed previously, Parekh's argument regarding self-respect and identity as motives for granting exemptions could only be realized when he smuggled in the extra cost which Sikhs must carry, namely the fact that any injury which results because of their lack of use of a helmet should be taken upon themselves. Parekh here unconsciously used the non-burden shifting principle to make his case. This becomes even more evident when the contrast between Sikhs and Hell's Angels. The extra responsibility accepted by Hell's Angels is sufficient to grant the exemption, since no burden gets shifted to any other members of the population. The distinction between burden shifting and non-burden shifting here becomes a bit weak in examples like this, and this is a big weakness for Leiter's thesis. Using the 'common good' argument, one could say that although the helmet exemption is not burden shifting per se, in a state with universal healthcare, an increase in the number of head injuries could shift the burden of financing the hospitals to all the other citizens, who take the appropriate precaution in regards to road safety. However this argument is too weak on its face to attack the position which Leiter put forward. The weakness of Leiter's claim becomes less evident in more clear cut and relevant examples, such as (1) and (4).

Example (4) is a very interesting example because it highlights the fact that non-burden shifting examples may in time turn into burden shifting. The law for vaccinations is clearly one which is in the best interests of its citizens and can unarguably be said that it does promote the 'general welfare'. The Jehovah 's Witness who considers the issue of vaccinations as a personal choice, may argue that she is hurting no one but herself if she chooses not to vaccinate herself or her child, therefore the state has an obligation to respect her personal and religious convictions and allow for an exemption. The particularity of this example lies in the fact that as long as the number of people who do not vaccinate their children is low, then the risk of them getting ill is minimal. At this point, the people not getting the vaccination are 'freeriding' on the fact that most of the population have done so. As soon as the number of exemptions for this rule increase however, then it may be witnessed that a number of diseases might resurface.

Where does all this leave us vis-à-vis exemptions? Having shown that the non-religious and non-cultural claims for exemptions can be as significant as religious claims for exemptions, given that they rest of the freedom of conscience, defenders of exemptions would perhaps argue that the right response is to remove the emphasis on religion and reduce it down to different claims of conscience. This approach would have the benefit of removing the privileged position which religion and culture have in the current system of exemptions, and therefore treat all cases of conscience in the same manner. The next section deals with this claim and argues that this is not the best approach before defending a more loose concept of Leiter's 'No Exemption Approach' in combination with Barry's 'Rule and Exemption' approach.

1. Expanding the scope of exemptions

Expanding the scope of exemptions could very well be the answer in alleviating the inequality between different types of conscientious objections. This would allow for a more inclusive concept of freedom of consciousness as the basis for an exemption from generally applicable law. However, there are number of fundamental problems with this approach. Firstly, it is implausible that any government would publicly endorse this. Imagine that in every neutral law of general applicability there was the clause which states that "you might object to this if it goes against your conscience". This would come very close to "legalizing anarchy" (Leiter, 2013; 94). Barry would consider this claim to further support his 'Rule and Exemption' approach, since the greater the leeway for an exemption makes the law in question weaker. But even more so, if all claims of conscience were on equal footing, the challenge posed by the 'essentialism' objection would be too strong to fairly treat the cases. Of course this might not necessarily be a problem, since not all claims for exemptions would be successfully granted even within this expanding approach.

Exemptions for whom?

A weakness of exemptions based on claims on conscience lays in the 'equal regard' principle. Equal regard means treating equal cases alike. While this approach is mostly used by judges in the absence of a clear standard, political theorists also use this to some extent to justify their position on the issue of exemptions. For example, Parekh has argued that the law banning the use of illicit drugs in the U.S discriminates against Indians, because of use of peyote in rituals, and Rastafarians, because of the use of cannabis to communicate with God. Parekh here is willing to grant exemptions on the law prohibiting drug use for cultures and religions who use it (Parekh, 2000; 242). He builds the case for these exemptions through the different impact which laws have on people. To further justify this exemption he turns to the

exemption given to Christians and Jews in allowing them to use wine in ceremonies during the era of alcohol prohibition. Parekh here assumes that the exemption given to Christians followed from his own line of thinking that the Christian tradition needs to be taken into account and therefore adjust the rights given to them if they are to reach the same level of equality. Since Christians were burdened by the alcohol prohibition, it is to the best interest of the state to accommodate their claim.

This brings about what Christopher L. Eisgruber and Lawrence G. Sager argue for in *Religious Freedom and the Constitution*. They propose an 'equal liberty' policy as an anti-discriminatory principle. They ask whether a refusal of an exemption to religious groups amounts to a certain level of discrimination, given the way the state already exempts similar religious or secular claims. This approach, purposely fails to specify the criteria in which claims of exemption should rest upon. In doing so, the decision to grant the exemption is made on simply comparing already granted exemptions in order to reduce the discrimination among the claimants. They do admit that the equal liberty approach demands "consistency" across cases rather than "conformity to some idealized, theoretically specified regulatory equilibrium (Sager & Eisgruber, 2007; 91). In doing so, they search for non-religious analogies to strengthen their equality based approach on the issue of exemptions.

Let's consider an example of the exemptions Sager & Eigruber grant using the anti-discrimination approach:

> (1) Muslim police officers in Newark seeking exemption on uniform requirements to grow their beards.

Example (1) concerns the claims made by two Muslim police officers, who argued that it is a religious requirement for them to grow their beards, and sought for an exemption from the rule requiring all police officers to be clean shaved. The exemption was granted by the courts

on the grounds that exemptions have already been made in favour of police officers who, due to their skin condition, were unable to shave. Sager & Eigruber sympathized with the court's decision and said that "If Newark was willing to make an exemption for the special health needs of its officers, then it had to show equal regard for the special religious needs of its officers" (Sager & Eigruber, 2007; 91).They search for non-religious analogies to strengthen equality based idea and they resort to the analogy by extension argument, as Parekh previously advanced. As witnessed here, legal scholars who deal on the issue of exemptions use the extension by analogy in relation to physical disability with a cultural handicap and they do not consider this leap to be problematic. Using normative theory however, which is not constrained by the limits of constitutional law, can aid in illuminating this fallacy which is based on 'consistency' rather than some principle of justice.

What led to Sager and Eigruber resort to conclude for (1), among other reasons, is "the improbability that there would be a non-religious moral commitment to have a beard" (Sager and Eigruber, 2007; 96). But, by taking this assumption a priori, they immediately dismiss the possibility of individual claims of conscience which are not comparable or have analogous religious equivalence. This line of thinking is derived from a historical account as to which individuals tend to seek 'dress code' exemptions from generally applicable laws. At this point, it is unclear whether Sager and Eigruber accept that secular conscientious objections (to dress codes) are as valuable as the religious ones. They assume that secular commitments would not compel individuals to seek exemptions from generally applicable law on this issue. This however is not a normative claim which should influence court decisions, if they are to acknowledge the claim on freedom of conscience grounds. This is a prediction based on the fact that there have not been, at least successful, attempts by people to seek exemptions on this basis. Their argument therefore derives from the unlikelihood that one would attempt to

seek exemption on this ground, given the minimal chance of succeeding, and the overwhelming successful attempts by religiously motivated claims to exemptions. Thus, the equal liberty approach accommodates religious conscientious objections based on 'accidental justice' given the way religious claims are privileged over non-religious ones (White, 2012; 112). The removal of the emphasis on religion and culture when it comes to exemptions from law of general applicability has the benefit of sticking to claims of conscience. However, as argued, this reduction will not necessarily reconcile the unequal treatment of different claims, and there will still be a tendency to favour mainstream recognizable claims over others, thus making it improbable that the 'claims of conscience' will be the ones which are taken into consideration. The lack of tools and time for judges to distinguish between sincere versus non-sincere claims of conscience make it an unattractive path to follow.

Brian Barry when faced with the argument of equal treatment argues that an 'open-ended exemptions' approach, one that grants exemptions on the grounds that exemptions have been previously made for similar claims, will have unintended consequences. He therefore responds with the argument that the first exemptions shouldn't had been made in the first place. In his own words: "If the argument is made that it is inconsistent to have these exemptions and not others of a similar kind, the answer that can be given is that the current exemptions were a mistake that is awaiting ratification at an opportune time, so it would absurd to add to their number in the meantime. Moreover, those that do exist should be limited as tightly as possible" (Barry; 2001; 51). To illustrate this point, Barry points to the example of a person carrying a 3ft-long double-edged sword during a protest in London. The person claimed to be the reincarnation of King Arthur, and claimed to be the "Official Swordbearer of the Secular Order of Druids" (Barry, 2001; 52). Exemption from the law to carrying knives in public was already granted to the Sikh community. Therefore, the court

following a similar approach to the 'equal liberty' approach, has granted the exemption and concluded that "it is not in the public interest to pursuit this claim" (ibid;52).

Barry is in some way using the 'slippery slope' argument in order to defend the claim that the expansion of exemptions on religious and cultural grounds should be limited. He uses the term 'vicious spiral' in order to demonstrate how granting the exemption for carrying knives to the Sihks was used by Arthur in order to defend his own right to be exempt from the law for carrying a weapon. However Barry, although implicitly, takes into account the 'burden shifting' distinction in order to emphasize the mistake in allowing for such exemptions. Instead of strengthening the claim that religious and cultural reasons have no part to play in exemption seeking, he turns to public safety and the first premise of the 'Rule and Exemptions Approach'. There is a good reason for the state to be concerned about public safety, hence the rule. However, since public safety is an important rule, he does not go on to say that rule should be dismissed altogether, given the ease for granting exemptions to this is somewhat more relaxed than it previously was. Instead, he argues that "you are more likely to carry a knife just in case you might need it if you think that others are likely to be carrying them" (ibid; 54). Using the 'burden shifting approach', Barry's argument is that as long as some people are granted this exemption, the rest of society will carry an extra burden. In this case they will be more worried or suspicious of people because of the off chance that they are carrying a knife. Barry's stance on the knife exemption is far more adamant than the exemption for the helmet. Perhaps Barry realizes the extra strength of the argument for opposing exemptions given that the exemption in question is 'burden shifting'.

2. Remove all existing exemptions.

Removing all existing exemptions would lead to an immediate burden of all those enjoying exemptions up until now. Brian Barry, who strongly favours a universal approach to laws, argues that there are indeed pragmatic reasons for allowing existing exemptions to continue. He argues that although removing exemptions, for example on ritual animal slaughter, might have a positive impact on animal welfare, it might have "bad effects on the social relations between different religious groups" (Brian, 2001; 50). This argument would not pass as an egalitarian argument for exemptions. Since the factor of social relations and consequently political stability is taken into account by Barry, this would best be identified as a prudence argument, A similar reason for not removing existing exemptions is offers by Martha Nussbaum who argues that since the majority of claims made for exemptions are done through the freedom of religious exercise, it follows that an immediate ban of these exemptions would have a disproportional impact on these religious groups, who are often victims of the majority's neglect (Nussbaum, 2008; 116-120). This is unarguably true and perhaps there are also strong utilitarian reasons for preserving the system as such.

Laborde and Boucher offer a heavy criticism on Leiter's conclusion. They accuse Leiter's 'No Exemptions Approach' to be "morally problematic as it does not derive from a principled argument" (Laborde and Boucher, 2014; 12). Leiter used a theory of principled toleration to defend the claim that there is no moral reason to grant exemptions to religious claims *qua* religious claims. If exemptions are sometimes justified, according to Leiter, they should be in theory available to all claims of conscience, both religious and non-religious alike. Laborde and Boucher argue that Leiter overdoes it in his effort to refute any positive valuation of religion, and makes this his main argument against exemptions, while at the same time failing to look at the strongest claims for allowing exemptions, namely through theories of equality freedom and inclusion (ibid; 18). In addition, they argue that the 'burden shifting' concept to

exemptions does not suffice as it is not grounded on any theory of justice. For this reason, they argue that the "No Exemption except for non-burden shifting exemptions' conclusion which Leiter defends is a very weak one as it commits a 'status quo neutrality fallacy'" (ibid; 19).

The approaches used by judges today in order to grant exemptions do not lie in a comprehensive moral account as to which claims of conscience should prevail. For this reason it is not unreasonable to identify the current discrepancies within the exemptions debate which, all intentions aside, privilege rather than protect religious claims of conscience. The most adequate defense of exemptions should therefore make the argument that an appropriate response to reconcile these disparities is not to remove exemptions altogether, but rather to remove the emphasis on religion and thus encompass the whole range of 'conscientious objections' within the limits for claims of exemptions. This approach however has a number of practical difficulties, regarding how best to judge individual claims of conscience. Deciding on grounds of sincerity would have the benefit of treating claims for exemptions on a case by case basis. But this approach has proven to be problematic, in so far as it is easier and more convenient to grant exemptions on grounds of 'equal regard' or favour mainstream religious and cultural affiliations over more excluded ones.

The main thesis of Leiter has to do with the what are the implications of the current legal system of exemptions and how it could be following the 'No Exemption except non-burden shifting exemptions'. I find Laborde and Boucher's accusation of Leiter committing a 'status quo neutrality fallacy' unsubstantiated. They argue that: "assuming that currently existing laws and institutional arrangements are already fair and constitute an appropriate baseline against which demands for exemptions can be evaluated from a moral point of view"

(Laborde and Boucher, 2014; 24). However, Leiter makes no such assumption. In fact, in his response to Laborde and Boucher, he goes as far as to say that many of the laws in the U.S. and in Europe do not in fact promote the general welfare (Leiter, 2014; 9). In any case where the 'general welfare' is in doubt, Leiter's thesis becomes indefensible. Within the legal framework of exemptions in the examples that he employs, it is supporters of exemptions who fall into the trap of the 'status quo neutrality fallacy' He shows this by looking at the intentions in which exemptions are granted. He argues that "at least generally applicable laws *unintentionally* burden minority claims of conscience, whereas a regime of exemptions *intentionally* privileges religious claims of conscience, to the exclusion of others, even though there is no moral reason to do so" (Leiter, 2013; 102). The distinction between the claims of conscience which are burdened intentionally, and ones which are burdened unintentionally is a very important one. Not every claim of conscience for an exemption from a law of general applicability can be granted, and it does not follow from any theory of justice that it should. As in the criminal justice system, not all innocent people being accused can successfully claim their innocence. This is not an argument however of removing the process altogether. In this analogy the defendant, even if innocent, would have his freedom intentionally reduced by the state. However, all defendants would have a fighting chance. The current system, by favoring religious and cultural claims, will unintentionally burden all those who either cannot make a claim, or lack the necessary capacities language and rhetoric to make the claim. By putting forward the 'No exemptions except non burden shifting exemptions' Leiter equalizes this inequality, and gives members of society an equal chance to claim exemptions which are not burden shifting, while acknowledging that burden-shifting exemptions, on laws which promote the general welfare, are the cause of inequality.

Conclusion

This paper has looked at liberal theories of multiculturalism and how they account for accommodating policies through exemptions. The arguments for culture as context of choice, as well as the idea of self-respect and identity, although important, cannot be used as a leverage to argue for exemptions. On the other hand, the indirect discriminatory principle of the state is a much more convincing argument for granting exemptions to minorities. Universal egalitarianism, as proposed by Barry, is limited to the extent that it doesn't take this argument into account, and thus making Barry's position unsubstantiated to that respect. However none of the above theories have been able to escape the distinction of majority-minority religious and cultural conflicts towards the post-secular pluralistic value of freedom of conscience, where new values can shape one's identity beyond the rigid cultural and religious context. The implications of this is for theorists to fall into the trap essentialism. Post-multiculturalist theorist such as Phillips, have thrown caveats for the potential implications which follow by following this line of thought. This trap can only be avoided by shifting focus from religion and culture as the context of exemptions towards individual conscience. However, the paper has shown that although this might seem like the best option, the number of practical difficulties associated with it are too great. Judges would be unable to coop with this form of expansionist exemptions based on conscience and in addition it would be very unlikely that a state would openly say that rules are open for exemptions given the conscience of its individual members. This will highly challenges the normative theory on accommodations and exemptions, as it is not morally defensible to distinguish one claim of conscience over the other.

Bibliography

Anderson, E. (1999). What is the point of Equality? *Ethics , 109* (2), 287-337.

Barry, B. (2001). *Cultrure and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Polity Press.

Cohen, G. A. (1989). On the Currency of Egalitarian Justice. *Ethics , 99* (4), 906-944.

Dworkin, R. (1993). *Life's Dominion*. Vintage Books.

Dworkin, R. (2002). *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge: Harvard University Press.

Eisruber, C. L., & Sager, G. L. (2007). *Religious Freedom and the Constitution*. Cambridge: Harvard University Press.

Greene, A. Three Theories of Religious Equality . . . and of Exemptions. *Texas Law Review , 87*, 969-1006.

Kukathas, C. (1992). Are there any Cultural Rights? *Political Theory , 21* (1), 105-139.

Kukathas, C. (2003). *The Liberal Archipelago: A Theory of Diveristy and Freedom*. Oxford: Oxford University Press.

Kymlicka, W. (1995). *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford Univerirsity Press .

Laborde, C. (2013). Political Liberalism and Religion: On Separation and Establishment. *Journal of Political Philosophy , 21* (1), 67-86.

Laborde, C., & Boucher, F. (2014, November). Why Tolerate Conscience? *Criminal Law and Philosophy* , 1-23.

Leiter, B. (2014, August). Reply to Five Critics of Why Tolerate Religion? *Criminal Law & Philosophy, 2015, Forthcoming* .

Leiter, B. (2013). *Why Tolerate Religion*. Princeton: Princeton Univeristy Press.

Levy, J. T. (2000). *Multiculuturalism of Fear*. Oxford: Oxford University Press.

Lovett, F. (2010). Cultural Accommodation and Domination. *Political Theory , 38* (2), 2430267.

McConnel, M. (2000). The Problem of Singling Out Religion. *DePaul Law Review , 50* (1).

McGann, M. (2012). Equal Treatment and Exemptions:Cultural Commitments and Expensive Tastes. *Social Theory and Practice , 38* (1), 3-34.

Nussbaum, M. (2008). *Liberty of Conscience: In Defense of America's Tradition of Religious Equality*. New York: Perseus Books.

Parekh, B. (2000). *Rethinking Multiculuturalism*. Cambridge : Harvard University Press.

Patten, A. (2014). *Equal Recognition: The Moral Foundations of Minority Rights*. Princeton: Princeton University Press.

Phillips, A. (2007). *Multiculturalism Without Culture*. Princeton: Princeton University Press.

R, N. D. (1985). *As a Matter of Principle*. Cambridge: Harvard University Press.

Shorten, A. (2010). Cultural Exemptions, Equalit and Basic Interests. *Ethnicities , 10* (1), 100-126.

Singer, P. (2003). *Practical Ethics*. Cambridge: Cambridge University Press.

Taylor, C., & Maclure, J. (2011). *Secularism and Freedom of Conscience*. Cambridge: Harvard University Press.

Waldron, J. (2002). One Law for All? The Logic of Cultural Accommmodation. *Washington & Lee Law Review , 59* (3), 3-34.

White, S. (2012). Relegious Exemptions An Egalitarian Demand? *Law & Ethics of Human Rights , 6* (1), 99-118.