Equal treatment and exemptions: cultural commitments and expensive tastes

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Religious and cultural minorities are today often exempted from rules that continue to bind their fellow citizens, particularly when these rules directly burden minorities' freedom of religion--for example, restrictions on the carrying of knives in public that prevent Sikhs from carrying one of their five articles of faith, the kirpan (a metal dagger) (1)--but also when the universal enforcement of rules, such as crash helmet laws, would prevent minorities from accessing opportunities more readily available to members of more dominant groups. While multiculturalists celebrate the provision of cultural exemptions as realizing a more substantive equality than that achieved under a difference-blind model of citizenship, (2) critics argue that cultural exemptions are unwarranted in theory and discriminatory in practice. The fairness of the law, it is argued, is not a function of the size of the burden that it imposes upon minorities and majorities alike but of its facial neutrality. This requirement is met insofar as no individual or group is explicitly discriminated against and all enjoy formally equivalent opportunity sets. (3) Indeed, critics claim that the provision of exemptions is here not only unnecessary, it is unfair. As Jeremy Waldron puts it, "[i]t would be quite repugnant if there were one law for the rich and another for the poor"; so why should there be one law for religious minorities and another for the rest of the citizenry? (4) After all, cultural minorities are not the only groups who are substantially burdened by general rules. Crash helmet laws, to take one off-cited example, also heavily burden the interests of Hell's Angels, who strongly desire to ride with the wind in their hair. Yet, the state's interest in reducing the number of serious injuries from motorcycle accidents is here considered to justify forcing Hell's Angels to wear crash helmets; so why should Sikhs be excused from the obligation to wear a crash helmet? (5)

The upshot of this critique is that we should treat the burdens of minority cultural and religious commitments much like the costs of expensive tastes: just as people can reasonably be expected to internalize the costs of their tastes, minorities can be expected to shoulder the opportunity-costs of their religious and cultural commitments in the face of otherwise generally applicable laws. So if Jews and Muslims find that they cannot eat meat because they are unwilling to eat animals that have been slaughtered while unconscious, that is simply a cost that they must endure for the sake of their beliefs in the same way that someone who will only eat organic, sustainably farmed meat may too have to go without meat because of her objection to dominant farming practices. (6) In this paper, I explain why this critique of exemptions is mistaken and why commitment to the principle of equality of opportunity, understood in resource-egalitarian terms, supports the provision of certain cultural exemptions. I do so by pointing to a number of important differences between the way in which people endorse their deep-seated convictions and commitments of conscience (of which I take the religious and cultural commitments at issue in exemption claims to be examples) and the way that people hold the sort of expensive tastes that feature prominently in the "equality of what" debate. (7) Many of the religious and cultural commitments at issue in exemption claims, I argue, have the status of beliefs, and people cannot simply decide to forsake beliefs because of their costliness in the way that someone might, for example, choose to forgo fine claret for a cheaper alternative in the face of resource constraints. A further important difference between people's attachment to their religious and cultural commitments, on the one hand, and their attachment to their preferences and tastes, on the other, is that a person's self-respect is not as bound up with the satisfaction of his or her tastes and preferences as it is with the integrity of his or her religious beliefs and cultural commitments. Whereas a person who is unable to indulge her expensive tastes is unlikely to lose respect for herself as a result, because of the way in which people's self-respect is bound up with their conviction in the value of their life-plan and their belief that they act and will continue to act in

ways that are prized by that life plan, having to forgo one's religious and cultural commitments can be highly destructive of self-respect. If I am fight about this, important implications follow for how we ought to treat the provision of exemptions from a resource-egalitarian perspective in that we cannot reasonably expect people to have to forgo their religious beliefs and cultural commitments for the sake of accessing the liberties, opportunities, and resources that they, along with everyone else, are entitled to as a matter of justice.

This is a controversial line of argument that is frequently criticized for treating people's religious beliefs and cultural commitments "as effectively unchosen, rigid, and inhospitable to contestation." (8) After all, if religious and cultural commitments are voluntary and contestable, then they are chosen, and egalitarian justice only requires us to reduce unchosen disadvantages. But we don't have to treat people's religious and cultural commitments as immutable attachments in order to understand why they cannot easily be revised in the face of resource constraints or to see how they differ from expensive tastes. Indeed, even autonomously endorsed commitments of conscience can be unrevisable in the face of resource constraints in the sense that the costliness of these commitments is not the sort of consideration that can motivate their rational revision. In section 2, I set out this argument in more detail and I defend the distinction between the revisability of religious beliefs/cultural commitments and preferences/tastes at greater length. However, before taking up these arguments it is necessary to say something about the sort of exemption and accommodation claims that I am interested in defending, not least because the exemption and accommodation claims at issue in the vast literature on group-differentiated fights concern a diversity of normatively irreducible issues.

1. A Typology of Claims

Because they frequently involve the removal of an obstacle to the free exercise of religious belief, exemption claims are often characterized as contestations over freedom of religion and the right of the state to coerce citizens' liberty of conscience. Debates regarding the exemption of religious minorities from drug prohibitions that make their ritual ceremonies unlawful are often characterized in these terms, with commentators such as Michael McConnell arguing that exemptions follow from a pluralist understanding of the constitutional protection to the free exercise of religion.

(9) This may be a good description of what's at issue in these particular disputes, but not all exemption claims can be so easily reduced to contestations over the right to freedom of religion. As is evident from the brief list below, exemption and accommodation claims raise a diversity of conceptually distinct and normatively irreducible issues:

* Exempting Halal and Kosher abattoirs from animal slaughtering regulations

* Allowing Jewish citizens to vote a day early because the election date falls on the Jewish Sabbath

* Exempting Muslim students from having to sit exams during Ramadan

* Allowing Sikhs to wear their turbans while working on construction sites, riding motorcycles, in the police force, and in school

* Exempting religious minorities from mandatory educational requirements, such as excusing Amish children from the requirement to attend school up until the age of sixteen and exempting Muslim students in Canada from compulsory music classes

* Exempting Native Americans and Rastafarians from drug prohibitions

* Exempting religious communities from prohibitions against discrimination in employment (10)

These claims for accommodation do not lend themselves to being analyzed in singular terms. Some, for example, concern corporately exercised privileges, whereas others concern privileges that can only be exercised by individuals. For instance, while it is up to individual Sikhs to decide whether or not to wear a turban instead of a hard-hat or crash helmet, only a congregation can refuse to hire a woman as its priest. There are exemptions that fall between being corporately or individually exercised. An example here might be the exemption of Native Americans from the ban on peyote if the privilege to ingest peyote as an act of worship only applies when members of the Native American Church come together in congregation. Whether an exemption is individually or corporately exercised has implications for its justification. Corporately exercised exemptions raise the issue of the extent to which sub-state communities may structure their associational life along illiberal lines, highlighting the tension between safeguarding the liberty of individuals and recognizing group rights. This is a complex issue that requires setting out an account of the limits of liberal toleration and the right of groups to associate in illiberal ways, something that I cannot hope to achieve here. Instead, I will concentrate on the merits of claims to individually exercised exemptions, though even here important distinctions must be made.

Claims that seek the reform of laws so as to allow minorities to engage in practices that are currently prohibited even in private--smoking marijuana, female circumcision, ritual slaughtering of animals--can be distinguished from exemptions that enable minorities to retain certain practices within particular institutional settings (schools, the police, the military) that they are otherwise permitted to engage in, such as wearing the hijab or turban. While the former are perhaps best described as contestations over the boundaries of liberal toleration, the latter are better described as raising "questions of control over resources, exclusion from benefits of political influence or economic participation, strategic power, or segregation from opportunities." (11) Mandatory uniform requirements and crash helmet laws, for example, do not directly coerce the religious freedom of Sikhs or prohibit them from wearing a turban; they merely impose certain opportunity costs on those Sikhs who refuse to give up wearing a turban. As Lord Widgery judged in response to Sikh claims that motorcycle safety laws prevented the free exercise of their religion, "No one is bound to ride a motor cycle. All that the law prescribes is that if you do ride a motor cycle you must wear a crash helmet." (12) What is therefore at issue in exemption claims of this sort is the legitimacy of the opportunity costs that general rules impose upon minorities because of their beliefs and commitments--having to forgo riding motorcycles, attending public schools, voting in an election and so on--rather than minorities' right to exercise the beliefs and commitments that produce those opportunity costs in the first place. It is exemption and accommodation claims of this sort that I will be concerned with defending. I focus on these sorts of claims because, as I argue below, the refusal of an exemption in these instances deprives members of religious and cultural minorities of their fair share of the primary goods to which they are entitled as a matter of justice. By primary goods, I mean here the set of all-purpose means that citizens need access to so as to enable them to freely form, revise, and pursue life-plans and to participate as equal members of society. (13) These include, among other things, basic rights and liberties, freedom of movement and free choice of occupation against a background of diverse opportunities, access to the powers and prerogatives of office, income and wealth, and the social bases of self-respect, as well as those goods, such as education, that the enjoyment of these basic liberties, opportunities, and resources depends on (e.g., all must have access to education if citizens are genuinely to enjoy free choice of occupation against a background of diverse opportunities). (14)

This way of defending the provision of exemptions and accommodations necessarily calls to mind the equality-of-what debate over the sorts of inequalities that we should try to reduce as a matter of justice. In particular, should we only care about inequalities in people's shares of primary goods or should we also care about other sorts of inequalities that might cause some people to undeservedly suffer diminished life chances? For instance, people with disabilities require more resources to achieve the same level of functioning and to enjoy access to the same sorts of opportunities as people without a disability, and so merely ensuring equality of resources will not ensure that people with disabilities enjoy equal life chances. (15) This criticism of equality of resources has been largely taken on board by resource egalitarians, who now recognize that justice requires reducing the effects on people's life chances of inequalities in their circumstances over which they have no control, such as being born with a disability. (16) For instance, ensuring that all enjoy access to the good of education requires the differential treatment of persons in that those who are vision-impaired need to be provided with books and information in a format they can access, such as Braille--something that can be very costly. It would be unfair to make the vision-impaired pay the additional costs of meeting their educational needs, as this would leave them with fewer resources than sighted people with equivalent aims and ambitions to spend on the pursuit of their projects. How well a person's life goes should be a function of her level of ambition, not the circumstances in which she finds herself. Hence, we must not allow the pattern of advantages and disadvantages in society to be determined by inequalities in people's circumstances over which they have no control. (17)

Welfare egalitarians argue that similar considerations support compensating those with unchosen expensive tastes for the additional costs of realizing their preferences. (18) If it is unfair that some should be worse off than others through no fault or choice of their own, holding people responsible for the costs of their tastes is inconsistent, as it unfairly forces those with unchosen expensive tastes to suffer diminished opportunities for well-being. Consider someone who has acquired an expensive taste through no fault of her own, such as someone who develops an interest in horse-riding after being encouraged from an early age by her parents. As an adult she finds that no other hobby can provide her with the same level of enjoyment and satisfaction as horse-riding because of how adept she has become at it and the enjoyment she now gets from taking part in show-jumping competitions. She is now unable to give up horse-riding without suffering a considerable loss of well-being. Welfare egalitarians argue that in such a case of an unchosen expensive taste, we ought to subsidize the costs of people's tastes, since not to do so is to allow brute luck to give rise to morally arbitrary inequalities between people in terms of their opportunities for well-being. (19) But although resource egalitarians now accept that justice requires reducing the effects of undeserved inequalities in people's circumstances on their opportunities to pursue aims and ambitions, resource egalitarians stop short of compensating people for differences in the costs of realizing their preferences and tastes, even when these are unchosen. Individuals, resource egalitarians insist, must accommodate their aims, ambitions, preferences, and tastes to the share of resources that they can expect to receive under an equality of resources schema. (20)

One reason why resource egalitarians are reluctant to subsidize expensive tastes is that distributing resources according to the costs of people's preferences and tastes means taking from some so that others can have more. This inevitably reduces the liberty of those with less costly preferences and tastes to freely form and revise their conceptions of the good. To see this, suppose that Smith prefers option A (costing $60) and Jones prefers option B (costing $40) and that there is $100 to distribute. Smith is given $60 and Jones $40 so that each may choose his preferred option. Suppose also that there are multiple A's and multiple B's so that, in choosing A, Smith does not deny Jones the opportunity to choose A. Nonetheless, if Jones is only given $40 he cannot choose A should he change his mind about the value of B, whereas Smith continues to enjoy the opportunity of choosing B should he change his mind about the value of A. This is partly why resource egalitarians insist on specifying people's entitlement claims in terms of an objective list of liberties, opportunities, and resources that does not turn on the content of people's preferences, tastes, or ambitions and by which interpersonal comparisons of advantage and disadvantage are to be made.

I cannot possibly do justice here to the complexities of the equality-of-what debate. Nonetheless, it is helpful to briefly consider the difference that adopting a resourcist rather than welfarist approach makes if we allow that disadvantages stemming from differences in people's religious beliefs and cultural commitments can give rise to distributive claims. Take the example of the additional costs that Jews and Muslims who, for religious reasons, will only eat the meat of animals that have been slaughtered while conscious face in acquiring meat in a society in which stunning animals before slaughter is common practice. In the same way that it is possible that a preference for horse-riding might be an unchosen expensive taste, it is not too difficult to imagine circumstances in which a taste for Kosher or Halal meat could equally be seen as an unchosen expensive taste. And if someone with an unchosen expensive taste for Kosher or Halal meat would suffer diminished well-being were he or she unable to eat such meat, a welfare egalitarian approach plausibly requires us to subsidize the purchase of Halal and Kosher meat. But a resource-egalitarian approach will not do so unless it can be shown that the opportunity to eat meat is a primary good or all-purpose means that all are entitled to as a matter of justice (and I am not aware of any resource egalitarian who would make this claim). Insofar as the opportunity to eat meat is not a primary good, any obstacle that certain Jews and Muslims might face in procuring meat as a result of their religious commitments does not itself result in their enjoying an unequal share of primary goods. Hence, they have no claim for accommodation or special treatment. This point highlights an important point of difference between the provision of cultural exemptions and the subsidization of expensive tastes: whereas the subsidization of expensive tastes necessarily involves distributing resources unequally between those with cheaper and more expensive tastes, the provision of cultural exemptions, by contrast, is aimed at ensuring that all enjoy an equal share of primary goods. The welfare egalitarian argument for the subsidization of unchosen expensive tastes rejects the notion that people's entitlement claims can be specified with reference to an objective list of primary goods that does not turn on the content of people's preferences, tastes, or ambitions. But the criticism that this paper levels against resource egalitarians who dismiss cultural exemptions as being unnecessary and unfair is altogether different: it is not that providing all with an equivalent share of primary goods is unfair to those with expensive tastes, but rather that minorities do not enjoy access to the same share of primary goods as members of more dominant religious and cultural groups when the rules governing access to those primary goods require minorities--but not the majority--to forgo their religious and cultural commitments.

2. Egalitarianism, Culture, and Choice

Notably, when general rules governing access to important goods or opportunities make it more difficult for people with disabilities to avail of those goods or opportunities, resource egalitarians are generally agreed that justice requires exemption and accommodation. Consider rules against taking animals on public transport, from which people with vision impairment are generally excluded. (21) This exemption is justified on the basis that the universal application of a ban on the carrying of pets would make it extremely difficult for people who are vision-impaired to travel on public transport, and all should have access to public transport. For similar reasons, people with diabetes are exempted from rules that prohibit the carrying of syringes in public places, such as schools. (22) If there is a justice case for exempting people with disabilities and health needs from general rules, why is there not a similar case for exempting religious and cultural minorities from general rules that similarly constrain their enjoyment of important goods and opportunities? Egalitarians give a number of reasons for distinguishing between the exemption claims of people with disabilities and those of religious and cultural minorities. One initial reason appeals to the idea that disabilities are un wanted disadvantages that people feel they would be better off without, whereas people endorse their religious beliefs and cultural commitments. As Brian Barry writes, "somebody who freely embraces a religious belief that prohibits certain activities will rightly deny the imputation that this is to be seen as analogous to the unwelcome burden of physical disability." (23) However, the idea that they should treat their disability as an unwelcome burden is anathema to many who have a disability. Robert Sparrow here cites examples of deaf parents celebrating in neonatal wards "upon learning that a child will be unable to hear' and of deaf couples seeking genetic counseling "in an attempt to ensure that their children will be born deaf." (24)

What many people who are deaf regret is not their deafness but the disadvantages that attend to deafness in a society in which the means of communication have been rigged "in ways that leave them out of the conversation." (25) Similarly, Sikhs, Jews, Muslims, and other minorities burdened by general rules may regret the opportunity costs that they have to endure because of their minority status, without having to regard being Sikh, Jewish, or Muslim as an unwelcome burden. Consider here the distinction that Peter Jones draws between the burdens (or direct costs) and consequences (or indirect costs) of beliefs. (26) Abstaining from meat in a society that prohibits the slaughtering of conscious animals is a consequence of the interaction between certain interpretations of Jewish belief and contemporary slaughtering laws. But abstaining from eating pork is a burden of belief for some Jews in that they would refuse to eat pork regardless of how it was prepared. The person who believes that eating pork under any circumstance is a violation of Jewish law will not treat his inability to eat pork as an unwelcome disadvantage or think that his life would have gone better had he been able to eat pork. But this is different from the Sikh who cannot ride a motorcycle or join the police force only because societal rules prevent him from wearing his turban while riding a motorcycle or serving in uniform. Such a person can regret the opportunity costs that he must endure for the sake of wearing his turban without having to treat turban-wearing itself as an unwelcome burden.

A second way in which egalitarians distinguish between the accommodation claims of those with disabilities and those of religious and cultural minorities appeals to the idea that whereas "individuals who are disabled or sick have not chosen their condition," the disadvantages facing minorities as a result of holding the religious and cultural commitments that they do are disadvantages that they could have avoided by choosing to "renounc[e] their religion or reinterpret[] it in a manner that makes accommodation requests superfluous." (27) Hence, there is no obligation to reduce the disadvantages facing minorities as a result of holding the religious and cultural commitments that they do, since these are chosen disadvantages.

The force of the idea that justice requires that people pay for the costs of their choices is well captured by Will Kymlicka's

example (adapted from Ronald Dworkin) of the tennis player who chooses to work only a few hours a day so that he can spend the rest of his time playing tennis. As a result, he earns considerably less than his neighbor, the industrious gardener, who has deliberately chosen to work hard so that she can earn more (both are equally talented and start out with the same resources in the example). Since the tennis player "could have chosen income-producing gardening if he wished, just as [the gardener] could have chosen non-income producing tennis," the inequality in resource holdings between the two is not unjust, or so Kymlicka argues. (28) Indeed, were we to tax the gardener to compensate the tennis player for his lack of income this would be to unfairly force the gardener to pay the full costs for her choice of income over leisure while relieving the tennis player of having to pay the full costs of his choice for leisure over income. Notice here that it is incidental whether the tennis player or gardener acquired their respective tastes deliberately or through no fault of their own. Indeed, resource egalitarians argue that people should take responsibility for their preferences and tastes "whether or not they have arisen from [their] actual choices." (29) What matters is not whether the gardener and tennis player deliberately cultivated their respective tastes for gardening and playing tennis, but that the tennis player could have given up playing tennis all day so as to spend more time in productive work. Similarly, we might say that even though religious and cultural commitments may be commitments that people have acquired through upbringing rather than choice, religious and cultural minorities should still have to pay the costs of those commitments just insofar as they can choose to forgo or change those commitments in the face of any opportunity costs they might face.

The point of the resource-egalitarian idea of holding individuals responsible for the costs of their choices is to encourage people to consider the cost that their choices impose on themselves and on others, in the expectation that they will make decisions that are less costly than others they could have made. (30) But, as Rawls acknowledges, this expectation is only reasonable on the presumption that "citizens can regulate and revise their ends and preferences in light of their expectations of primary goods." (31) I want to suggest that while this might be a reasonable presumption as far as many of the tastes that feature in the well-known examples of expensive tastes are concerned, we cannot similarly expect people to revise or to forgo their religious beliefs and cultural commitments in the face of resource constraints. First, this is because many (though by no means all) aspects of people's religious and cultural commitments have the status of beliefs. And beliefs, as Peter Jones explains, do not function as options that can be simply given up because of their costliness in the way that one might decide to choose a less expensive vacation when faced with more limited resources:

"[C]hoosing to believe" implies an optionality of a sort that is not normally a part of the believing process. I choose to go to France for a holiday when I might have chosen to buy a yacht or to have spent my money on something else. But it is not similarly open to me to choose to believe that the square on the hypotenuse is not equal to the sum of the squares of the two other sides of a right-angled triangle. Nor can I simply opt to believe that New York is in Canada or Mexico rather than in the USA. (32)

Beliefs are not the sort of thing we can knowingly bring about or undo through an act of volition. (33) We do not believe something because we "choose" to do so (though the desire to believe something can of course motivate us to find confirming evidence). Indeed, the idea that we could will beliefs would undermine our confidence in the veracity of our beliefs. As Bernard Williams explains,

[i]f I could acquire a belief at will, ... I could acquire it whether it was true or not; moreover I would know that I could acquire it whether it was true or not. If in full consciousness I could acquire a "belief" irrespective of its truth, it is unclear that before the event I could seriously think of it as a belief, i.e. as something purporting to represent reality. (34)

The act of giving up or acquiring a belief is thus very different from a volitional action, such as choosing from a dinner menu, where a person can acknowledge that it is only because of her wish to eat salmon that she has chosen it; that she could just as easily have chosen steak instead. (35)

Consider the difference between the way in which people identify with their career choices, such as choosing to become a professional footballer or choosing to study for a Ph.D., and the way in which they identify with their religious and cultural commitments. The professional footballer can plausibly acknowledge that there are many things he might have done instead of being a professional footballer, while the Ph.D. candidate can admit that she could have been a civil servant had she wanted to and that her life might have still gone reasonably well had she done so. Admitting that they could have clone otherwise in no way jeopardizes the integrity of their choices. By contrast, most Christians will dispute that they could have become a Muslim had they wanted to; that the fact one is a Christian rather than a Muslim is merely a product of one's preference for Christianity over Islam (or vice versa). (36) This is not to say that religious believers are incapable of changing their religion or of giving up religious belief altogether. (37) People can--and often do--come to reject their religious beliefs in light of what they take to be epistemically or morally superior alternatives. Nonetheless, religious conversion should not be confused with deciding to pursue one option rather than another simply because one wants to. The convert comes to see the error of her previous ways. She is "drawn," "found," or "saved"; she does not choose one religion when she might have chosen another, thinking that her life might have gone reasonably well either way. She does not see herself as being free "to make a genuine decision between two viable alternatives." (38)

Critics of exemption rights argue that distinguishing beliefs from other sorts of preferences and tastes in this way entails treating religious and cultural commitments as immutable attachments, beyond contestability and revision. However, nothing in the argument entails that believers lack autonomy or treat their beliefs and commitments as being beyond contestability. The point is not that beliefs per se are unrevisable or incontestable, but that resource considerations provide the wrong sorts of

grounds for motivating people to revise their religious beliefs or cultural commitments. Indeed, the argument is consistent with recognizing diversity of belief within religious and cultural communities, since there can be diversity of belief within a community and yet each member may still treat her particular interpretation of the requirements of her faith as being more than just a preference for one way of believing rather than another that can be adapted in response to resource constraints. Indeed, even commitments of conscience that are endorsed in a wholly autonomous way can strike those holding them as being nonrevisable for the sake of resources. Consider a secular pacifist who wants to go to university to study philosophy so that he can write a book on the immorality of war. He cannot afford the tuition fees, but the military has posted an advertisement in his local newspaper offering university scholarships to cadets in training. If he agrees to train as a cadet, the military will cover the costs of his tuition so long as he serves for at least five years in a combat unit. Suppose that this scholarship is the only way the pacifist can afford to go to university. Does he enjoy a meaningful opportunity to go to university in this instance? The pacifist's beliefs about the wrongfulness of warfare will prevent him from taking up the scholarship since he cannot, in good conscience, take up a scholarship that requires him to violate core convictions of his conscience. As William James puts it, "when his interests clash with the world ... [the believer] is not free to gain harmony by sacrificing the ideal interests. According to him, these latter should be as they are and not otherwise." (39) Of course, there will always be examples of people who do sacrifice their ideal interests when they clash with the world, Peter's denial of Christ being one of the better known examples. But what is especially significant about cases in which people either choose or are made to forgo their convictions of conscience is the destructive effect this can have on a person's sense of integrity and self-respect.

Self-respect in the sense of a person's "secure conviction that his conception of his good, his plan of life, is worth carrying out" and "a confidence in one's own abilities, so far as it is within one's power, to fulfill one's intentions" is considered by many egalitarians to be the most important primary good. (40) Indeed, Rawls argues that the parties to his original position "would wish to avoid at almost any cost the social conditions that undermine self-respect" since without it "nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them." (41) To this end, individuals' ability to form, revise, and pursue their conceptions of the good is contingent on the possession of self-respect. But people's self-respect can be corroded if they see themselves as acting in ways that violate the norms and patterns of behavior prized by their conception of the good. This is because people's self-respect depends on their viewing themselves as committed "to a conception of a worthwhile and appropriate life and of themselves as living that life." Robin Dillon refers to this form of self-respect as evaluative self-respect. The person with evaluative self-respect, Dillon argues, "believes that [she] acts in accord with [her] conception of worthy behavior and has confidence that [she] will continue to do so." (42) Conversely, if she believes that her behavior is wholly unbefitting of a person committed to her conception of the good, her confidence in her own ability to act in ways that are valuable and worthwhile will be corroded. This can in turn elicit shame insofar as the ashamed person "believes she has fallen short of her ideals; she thinks she could and should have done or been better. She regards herself as less than she ought to be and her worth as thereby threatened." (43)

This point about the relationship between self-respect and belief in the worthiness of one's behavior points to a further point of difference between having to give up one's religious and cultural commitments for the sake of resources and having to revise one's tastes and preferences in favor of cheaper alternatives. Having to give up on one's tastes can cause people considerable regret, and people may regard the fact that they were unable to indulge their tastes as highly unfortunate. But this is different from feeling shame or from suffering a wound to one's self-respect. (44) Consider again the example of the person who acquires an expensive taste for horse-riding as a result of her upbringing. If, due to a lack of resources, she is unable to pursue this expensive taste, she may well suffer some loss of well-being compared to the person whose favored hobby is cheaper to pursue. She may well hold that her life would have gone better had she been able to ride horses more regularly. But it is not obvious that she might think any less of herself as a person on the basis of her not being able to ride horses as much as she would have liked. Compromising on the pursuit of her favored pastime in this way is not the sort of compromise that amounts to a compromise of herself. By contrast, precisely because religious beliefs, cultural commitments, and other deep-seated convictions of conscience are more central to people's sense of integrity and self-worth, acting (and being made to act) in ways that go against these beliefs and commitments is the sort of compromise that can amount to a compromise of oneself, one that can be devastating to a person's evaluative self-respect. We see this clearly in the abuse of prisoners in Abu Ghraib and Guantanamo, where Muslim detainees were deliberately exposed and forced to engage in sexual behavior prohibited by the Koran, precisely so as to humiliate them. (45) This relationship between people's self-respect and their fidelity to their religious beliefs and cultural commitments helps us to see why "the decision of a Muslim girl to wear the headscarf cannot be put on the same footing as her male classmate's decision to wear a cap." (46) As one French Muslim student responded when interviewed by the media, "What does this veil mean to me? It's part of who I am. It's not just some bit of fabric on my head. It's everything. Looking back on it, I can't imagine taking it off." (47)

People's self-respect can also be wounded in a second way by laws that require them to forsake their religious and cultural commitments. Rawls often talks of the good of self-respect not just in terms of individuals having a subjective confidence in their ability to pursue valuable and worthwhile life projects, but also in the more comparative sense of individuals having a sense of their own dignity and standing as equal persons whose needs and interests matter as much as those of their fellow citizens and who are equally capable of leading their lives from within. When Rawls talks about individuals' self-respect being "secured by the public affirmation of the status of equal citizenship for all," it is this notion of self-respect that he seems to have in mind: (48)

The basis for self-respect in a just society is not then one's income share but the publicly affirmed distribution of fundamental rights and liberties. And this distribution being equal, everyone has a similar and secure status when they meet to conduct the common affairs of the wider society. No one is inclined to look beyond the constitutional affirmation of equality for further political ways of securing his status. Nor, on the other hand, are men disposed to acknowledge a less than equal liberty. For one thing, doing this would put them at a disadvantage and weaken their political position. It would also have the effect of

publicly establishing their inferiority as defined by the basic structure of society. This subordinate ranking in public life would indeed be humiliating and destructive of self-esteem. (49)

Robin Dillon proposes the term recognition respect to distinguish this sense of having respect for oneself from the evaluative self-respect described earlier. (50) It is a sense of self-respect that is derived primarily from one's sense of interpersonal worth and status as a member of the community of persons rather than from one's subjective confidence in one's ability to act in accordance with one's beliefs about the good. What thus matters for a person's self-respect is one's "understanding of oneself as a person with a certain value and standing in the moral community" and one's belief in one's "fundamental interpersonal worth"; "that as a person one is owed the equal respect of others, including their respect for one's basic rights." (51) Whether people enjoy such recognition self-respect is influenced to a considerable degree by how they are treated by others and by the design of social and political structures. As Dillon argues, "the experience of a person may not be the experience of being a moral equal. A poor woman of color in contemporary American society may not have the same experience of interpersonal worth as a privileged white man and so may lack recognition self-respect." (52)

The denial of equal rights can be especially destructive of recognition self-respect. (53) But as multiculturalists have argued, individuals' recognition self-respect is as much a function of how the social groups with which they identify are treated by the state as it is a product of the distribution of the fundamental rights and liberties. (54) For even if cultural minorities enjoy formal equality with other citizens, the tacit establishment of majority forms of cultural identification as the norm in the public sphere--through the selection of public holidays, choice of dress codes, and the tone of a society's media---coupled with an insistence on the privatization of minority forms of identification can undermine minorities' confidence in their standing as persons who are entitled to be treated with equal dignity and consideration. Such privileging of majority forms of cultural identification "allow[s] the particular experience and perspective of privileged groups to parade as universal," thereby constructing the differences that minorities exhibit "as lack and negation." Thus, those who wear religious headdress in schools and in places of work are viewed not merely as different but as deviant, while "[j]ust as everyone knows that the earth goes around the sun, so everyone knows that gay people are promiscuous, that Indians are alcoholics, and that women are good with children." (55) What such groups receive from their fellow citizens is not recognition of their status as equal persons but "only the judgment that [they are] different, marked, or inferior." (56)

The social groups that matter here to people's recognition self-respect are not the sort of organizations or associations centered around the pursuit of common hobbies and pastimes, such as a chess club or football club, but the communities that provide members with a shared sense of history and identity that colors their experience of the world and through which nonmembers relate to them. The social groups that play this role in people's lives are typically the ethnic, racial, and cultural communities with which they identify and by which they are identified. As Iris Young points out, "our identities are defined in relation to how others identify us, and they do so in terms of groups which are always already associated with specific attributes, stereotypes, and norms." (57) This is not to claim that organizations, such as clubs and voluntary associations, are unimportant to people's lives. However, membership in a club association, unlike people's ethnic or cultural membership, is largely a politically invisible feature of their lives in that it rarely defines how they are treated and perceived socially, economically, and politically by nonmembers and by state institutions. A person can leave her club memberships behind in social life. But even someone who no longer wishes to identify as a Native American will find that this social identity continues to cast a long shadow over how she is perceived and treated by others.

The problem here as far as exemption claims are concerned is that "[t]he 'identity' assertions of cultural groups usually appear in the context of structural relations of privilege and disadvantage." (58) And when the commitments of privileged majorities are rarely if ever burdened by the state, the refusal to accommodate minorities' cultural commitments can convey to minorities that they do not count as persons who deserve to be treated with equal dignity and respect. The case of Employment Division v. Smith (1990), involving an appeal by two members of the Native American Church against a decision to deny them social security after they had lost their jobs for ritually ingesting peyote, illustrates this point. (59) The claimants argued that Oregon's ban on peyote violated their constitutional fight to freedom of religion but the court rejected this argument on the grounds that "if prohibiting the exercise of religion ... is not the object ... but merely the incidental effect of a generally applicable law and otherwise valid provision, the First Amendment has not been offended." (60) This ruling departed from an earlier ruling, Sherbert v. Verner, in which it was held that a law infringing a person's exercise of her religion could only be enforced against her if the state could demonstrate that the law serves a compelling interest that cannot be adequately served by less burdensome means. (61) The difficulty with this decision is that Native Americans can point to the fact that "when legislatures have adopted prohibitions of alcohol use they have made exceptions for the sacramental use of wine." (62) They can also be confident that the privilege to ritually ingest peyote would have been granted had the sacramental use of peyote been a mainstream religious practice. Whether the prohibition is intentionally discriminatory or not, it is incidentally affecting Native Americans in a way that it would never have been allowed to do were they a more dominant social group. This is a cause for Native Americans to feel unjustly treated, since it is only because they are a minority that they are being asked to forgo their religious and cultural commitments. The law signals that their "preferences, values or beliefs ... are comparatively less significant than those of their fellow citizens and as such are less worthy of consideration." (63) Their sense of themselves as citizens of equal dignity and standing stands in tension with the reality that they "are receiving at the hands of the state a very real slap in the face" that they would not be receiving were they members of a majority religion. (64)

Insofar as people's recognition self-respect is tied to their experience of their interpersonal worth, requiring cultural minorities to choose between adherence to their cultural commitments and access to resources when more privileged groups would never be expected to make such a choice is damaging to members' self-respect above and beyond any impact that forcing minorities to act in ways that violate their conception of the good might have on their evaluative self-respect. (65)

3. The Limits of Entitlement

In light of the above, we can identify three ways in which having to forsake religious beliefs and cultural commitments for the sake of accessing resources is qualitatively different from having to forgo expensive tastes for cheaper alternatives. First, religious and cultural commitments often have the status of beliefs that cannot be changed through an act of volition alone. People can of course choose not to act on their religious beliefs and cultural commitments, or to act in ways that contradict them. But doing so endangers their evaluative self-respect. This highlights a second source of difference between asking people to forsake their religious beliefs and cultural commitments and asking them to forgo expensive tastes. Finally, in cases in which privileged groups' religious beliefs and cultural commitments have historically been accommodated in functionally equivalent cases, requiring minorities to forgo their beliefs and commitments can strike minorities as highly discriminatory and unfair, thereby wounding their recognition self-respect. What follows from this analysis concerning the provision of exemptions and accommodations? Are religious and cultural minorities entitled to additional resources simply because of the costliness of their commitments?

On a resource-egalitarian approach, people may only advance claims against each other in respect of their enjoyment of primary goods, not the costliness of realizing their aims and ambitions. So the fact that, say, Jews who observe Kosher face additional costs acquiring meat in a society in which they are a small minority does not itself show that we ought to subsidize the costs that they face acquiring Kosher meat. What has to be further demonstrated is that general rules burden people's religious beliefs and cultural commitments in a way that prevents them from accessing their fair share of primary goods. How do general rules interact with minorities' religious beliefs and cultural commitments to deny them their fair share of primary goods? There are two types of cases that need to be considered: direct and indirect cases.

Direct Cases

Direct cases are instances where the contested rules requiring minorities to forgo their religious or cultural commitments concern the conditions of access to important primary goods or resources, such as education. Examples here are the accommodation requests by Jews to be allowed to vote on a day other than a Saturday, and requests by Muslims and Sikhs to be exempted from mandatory school uniform requirements inasmuch as these claims relate specifically to the conditions of access to goods/opportunities that all, regardless of race, ethnicity, or religion have a right to as a matter of justice from a resource-egalitarian perspective. Direct cases are the clearest instances of where an equality of resources approach supports exemption rights. For if, as I have argued, religious beliefs and cultural commitments are nonrevisable for the sake of resource expectations, people cannot be expected to have to give up these commitments for the sake of accessing primary goods to which they are entitled to as a matter of justice, especially when this might endanger their evaluative self-respect. To insist on the universal enforcement of contested rules in these cases leads to an inequality of resources: if those claiming exemption forgo their religious or cultural commitments for the sake of accessing the primary good in question, they jeopardize their evaluative self-respect. On the other hand, if they refuse to give up their religious or cultural commitments for the sake of safeguarding their personal integrity and self-respect, then they must forgo a primary good that members of more privileged groups can access without jeopardizing their evaluative self-respect.

When the refusal of an exemption would also endanger claimants' recognition self-respect--either because privileged groups have historically received similar exemptions or would receive an exemption were it their interests and needs that were being burdened by the law--the case for awarding an exemption is stronger again given the additional harms that the universal enforcement of the contested rule would do to minorities' self-respect. However, it is not essential that claimants' recognition self-respect be at stake in order for an exemption to be warranted. That a contested rule, if universally enforced, would force some to choose between retaining their evaluative self-respect or accessing the primary good regulated by the rule provides a sufficient reason to grant an exemption. An example here might be a claim by Jehovah's Witnesses that they should have a fight to be treated with synthetic blood substitutes when receiving medical treatment (the availability of synthetic blood substitutes makes it possible to perform surgery in some cases without infringing Jehovah's Witnesses' beliefs). (66) Access to healthcare is clearly an important good from a resource-egalitarian perspective. And, although requiring Jehovah's Witnesses to receive a blood transfusion would endanger their evaluative self-respect, it is not clear that this would also threaten their recognition self-respect, since Jehovah's Witnesses have not generally been subject to discriminatory treatment at the hands of the majority in the way that, say, Native Americans have. Nonetheless, there is still a prima facie case for accommodating Jehovah's Witnesses' beliefs here insofar as, if we assume a universal fight to healthcare, then the refusal to provide synthetic blood substitutes instead of human blood transfusions would prevent many Jehovah's Witnesses from accessing a good to which they have a right to as a matter of justice. I say that the case for accommodation is a prima facie one, however, because it is important to also consider what the costs of accommodation would be in terms of other people's access to primary goods and in terms of the state's ability to safeguard important public purposes.

Even when general rules burden minorities' commitments in a way that makes it difficult for them to access a particular primary good without endangering their evaluative self-respect, accommodation can sometimes put at risk important public purposes and even other people's enjoyment of primary goods. To continue with the example of synthetic blood substitutes, these are very costly to provide, and so granting an unconditional fight to Jehovah's Witnesses to be treated with blood substitutes wherever possible could put the medical treatment of non-Jehovah's Witnesses at risk. (67) Accommodation in such cases does not succeed in ensuring that all enjoy access to their fair share of primary goods, since it jeopardizes non-Jehovah's Witnesses' access to healthcare. Hence, the resource-egalitarian argument for accommodation/ exemption arguably fails in this

instance. Similarly with accommodation demands that would undermine claimants' own access to the primary goods at issue in contested rules. Consider the numerous demands that minorities have made to be exempted from mandatory educational requirements, such as the request by the Amish in Wisconsin to be exempted from the requirement to attend school up until the age of 16 and requests by conservative Christians to have their children excused from science classes in which evolution is taught. (68) If we assume that the sort of educational opportunities that liberal egalitarians would insist upon include learning about science and staying in school beyond the tenth grade--admittedly, this in itself is a controversial assumption--it is difficult to see how either of these accommodations would promote equality of resources or reduce the obstacles that claimants face accessing the primary good of education in the way that, say, exemptions from mandatory uniform requirements remove impediments preventing certain minorities from availing of the same educational opportunities as members of more privileged groups.

Notwithstanding cases in which the provision of an exemption would itself threaten either claimants' or other people's enjoyment of primary goods, there is a strong resource-egalitarian case for awarding exemptions when the universal enforcement of contested rules governing the conditions of access to primary goods would put at risk claimants' evaluative self-respect. Of course, which particular exemption rights can be defended via this line of argument will depend on which goods and opportunities are counted as primary goods. While the exemption of Sikhs, Jews, and Muslims from mandatory uniform requirements in the police and in schools and the accommodation of Jews' observance of the Sabbath in the scheduling of elections can be straightforwardly justified on this approach, inasmuch as access to education and the opportunity to serve in the police and to vote in elections are undeniably important opportunities from a resource-egalitarian perspective, other oft-cited claims less obviously involve opportunities that uncontroversially count as primary goods. Take the example of the exemption that Sikhs have sought from the requirement to wear a crash helmet while riding a motorcycle or bicycle. Is the opportunity to ride a motorcycle or bicycle a primary good? Certainly, in industrialized societies in which people often live a long way from their place of work and from important public services and amenities, access to some form of transport is undoubtedly important. But if those seeking an exemption from the requirement to wear a crash helmet can easily afford to travel by car instead of by motorcycle or bicycle, or they have access to a public transport network that adequately services their transport needs, the case for an exemption on grounds of equality of resources may be relatively weak.

The provision of a comprehensive account of when an exemption claim counts as a direct case involving a conflict between claimants' evaluative self-respect and their access to primary goods would require setting out a detailed account of the index of primary goods, a project that is beyond the scope of this paper. While the absence of such an account of the index of primary goods inevitably leaves many questions unanswered about the particular exemption and accommodation claims that can be defended on grounds of equality of resources, my purpose in this paper is not so much to arrive at a definitive list of justified exemption and accommodation claims, but to explain how the provision of cultural exemptions is different from the subsidization of expensive tastes and why the provision of cultural exemptions can be justified from a resource-egalitarian perspective. This project does not depend on being committed to any particular account of the index of primary goods. Different indices of primary goods will pick out different exemption claims as being justifiable on grounds of equality of resources. But this does not change the logic of the argument for why these exemptions are justifiable from a resource-egalitarian perspective, only the cases to which it applies.

Indirect cases

Indirect cases are instances where the contested rules do not relate specifically to the conditions of access to a primary good but where the universal enforcement of the contested rule may nevertheless put claimants' evaluative or recognition self-respect at risk. Exemption claims from animal slaughtering laws are examples of indirect cases insofar as the opportunity to eat meat is generally not regarded as a primary good to which all should be entitled as a matter of justice. Hence, if the design of animal slaughtering laws means that certain Jews and Muslims find themselves unable to eat meat, this does not mean that they thereby enjoy less than their fair share of primary goods. The argument for accommodation is weaker in indirect cases because there is no fight as a matter of justice to the good/opportunity regulated by the contested rule. The universal enforcement of general rules in indirect cases, in contrast to direct cases, will not necessarily cause claimants to suffer a deficit in primary goods. Even so, considerations of fairness and reasonableness may still support the provision of exemptions in certain indirect cases.

Considerations of fairness support the provision of exemptions in indirect cases in instances where the religious and cultural commitments of privileged groups have before been accommodated in functionally equivalent ways and where the refusal of accommodation would consequently be destructive to claimants' recognition self-respect because it would signal disrespect for their status as citizens of equal dignity and standing. The refusal to exempt the ritual ingesting of peyote from drug prohibitions when the sacramental use of wine has previously been exempted from alcohol prohibitions is a case in point. It is important to recognize, however, that the case for exemptions on grounds of fairness is wholly conditional: had the sacramental use of wine not been accommodated previously within alcohol prohibitions, and had Native Americans not historically been subject to discriminatory and oppressive treatment at the hands of the majority, the refusal to exempt the ritual ingesting of peyote from drug prohibitions would not elicit disrespect for the equal dignity and standing of Native Americans in anything like the same way. (69)

In indirect cases in which the uniform application of a rule would put claimants' evaluative rather than recognition self-respect at risk, the refusal of accommodation is not necessarily unfair, but it may be unreasonable. The cases I have in mind are cases in which general rules require people to violate commitments of conscience. An example here is the burden that military service

requirements place on conscientious objectors. What distinguishes this example from the previous example is that whereas drug prohibitions do not require Native Americans to violate their convictions of conscience, military service requirements necessarily endanger conscientious objectors' evaluative self-respect by compelling them to do what they are opposed in conscience to doing. The refusal of accommodation in such cases could be considered unreasonable inasmuch as the state "should usually not try to compel people to do what they are opposed in conscience to doing." (70) One reason is that compelling people to do what they are opposed in conscience to doing threatens people's attachment to the state insofar as people's attachment to the state is partly bound up with their sense that the state is an instrument of their freedom rather than their oppression. Another important consideration in favor of not compelling people to do what they are opposed in conscience to doing stems from the centrality of liberty of conscience to liberal freedom, a point well captured by Charles Taylor in his response to the hypothetical apologist for Albanian socialism:

We recognise that religion has been abolished in Albania, whereas it hasn't in Britain. But on the other hand there are probably far fewer traffic lights per head in Tirana than in London ... Suppose an apologist for Albanian Socialism were nevertheless to claim that this country were far freer than Britain, because the number of acts restricted was far smaller. After all, only a minority of Londoners practice some religion in public places, but all have to negotiate their way through traffic. Those who do practise a religion generally do so on one day of the week, while they are held up at traffic lights every day. (71)

Taylor's response is to point out that what matters is not the number of freedoms that people enjoy, but the quality of those freedoms. Sometimes people's commitments of conscience are such that it is impossible to avoid forcing them to do what they are opposed in conscience to doing without seriously undermining important public purposes. Some Amish, for example, are opposed to making social security contributions for religious reasons. (72) But in other cases in which it is feasible to avoid forcing citizens to violate their commitments of conscience without incurring serious cost, or without infringing upon people's rights, it seems unreasonable not to do so. However, the case for exemption here is much weaker than in direct cases, as claimants have no right to the goods and opportunities regulated by the contested rules in indirect cases, and it is practically impossible for the state to ensure that all citizens possess evaluative self-respect (e.g., some citizens' enjoyment of evaluative self-respect may depend on successfully carrying out a life-plan that is fundamentally unjust). To this extent, the argument here for the provision of exemptions is one from benevolence rather than justice in that there is no obligation of justice to accommodate the law to minorities' religious beliefs and cultural commitments, although the impact that a universal enforcement of the law would have on individuals' liberty of conscience provides a powerful reason to grant an exemption in cases in which it is feasible to do so.

4. Exemptions for Whom?

We have so far considered the kinds of exemption and accommodation claims that are defensible from a resource-egalitarian perspective: (a) direct cases involving general rules that cause a conflict between claimants' access to primary goods and the conditions of their evaluative self-respect; (b) indirect cases in which the refusal of accommodation, for contingent, historical reasons, would threaten the social bases of claimants' recognition self-respect; and, to a lesser extent, (c) indirect cases where general rules unreasonably force claimants to do what they are opposed in conscience to doing. But we have yet to properly consider the question of who should be entitled to an exemption in cases that fit the relevant descriptions: only members of particular named religious or cultural communities whose commitments are burdened by the contested rules or any individual who can make a claim that a contested rule burdens her commitments of conscience in the functionally relevant way? For example, if Sikhs are to be exempted from prohibitions against the carrying of knives so as to allow them to carry their kirpans in public, should we not also exempt individuals who have similar reasons for objecting to restrictions against the carrying of weapons even though they may not belong to any group protesting those rules? British Sikhs' request to be allowed to carry their kirpans was accommodated within the provisions of the U.K. Criminal Justice Act (1988) restricting the carrying of weapons by writing into the provisions that it is a defense for a person accused of breaching the provisions to prove that he had the article with him for "religious reasons." Hence, Sikhs as a group are not explicitly exempted, although the liberty of individual Sikhs to carry a kirpan is still safeguarded. Famously, Arthur Uther Pendragon, a former Hell's Angel who was arrested at a demonstration in Trafalgar Square, successfully contested the confiscation of his three-foot-long, double-edged sword by police by appealing to the provisions of the U.K. Criminal Justice Act intended for the accommodation of Sikhs. He argued that, as the Official Swordbearer of the Secular Order of Druids, and being the twentieth-century reincarnation of King Arthur, he had religious reasons for carrying his sword to the demonstration. The magistrate agreed. (73) But should a person's entitlement to an exemption turn on his or her group membership?

The group membership of claimants is arguably a very important consideration in indirect cases in which the refusal of accommodation would be destructive of a person's recognition self-respect because of the fact he or she is a member of a minority group that has been historically oppressed by the majority and because of the fact that the law has historically accommodated the beliefs and commitments of more privileged groups in functionally equivalent cases. But where those seeking accommodation are individuals with idiosyncratic commitments of conscience rather than members of minority religious and cultural groups who have been historically oppressed, concerns about the consequences of nonaccommodation on claimants' recognition self-respect are less relevant. However, when the exemption claims at issue concern a conflict between general rules and people's evaluative self-respect, making the case for exemption turn on a person's group membership is problematic. First, awarding exemptions on a group-differentiated basis is unfair to nongroup members and individuals with idiosyncratic commitments of conscience whose beliefs and commitments are burdened by general rules in functionally equivalent ways. Consider the example of exemptions from mandatory military service requirements, which were initially awarded only to select religious groups such as Quakers, Jehovah's Witnesses, and Mennonites. (74) Such an approach is unfairly discriminatory insofar as the beliefs of individual conscientious objectors prevent them from serving in the

military in functionally equivalent ways to those of Quakers, Jehovah's Witnesses, and Mennonites. A second difficulty with awarding exemptions on an explicitly group-differentiated basis is that this can undermine diversity of belief and liberty of conscience within communities.

Not all Sikhs accept that they have a religious obligation to wear a turban or to carry the kirpan. (75) If Sikhs are exempted as a group from the requirement to wear a crash helmet on the grounds that the majority of Sikhs take wearing a turban to be a requirement of Sikhism, this can reify and entrench the view that Sikh men must wear a turban.(76) Any ruling by a legislature or court that wearing a turban is a requirement of Sikhism would of course be an infringement of the separation between church and state; "the State is in no position to be, nor should it become, the arbiter of religious dogma," as Justice Lacobucci of the Supreme Court of Canada has rightly argued. (77) Courts in the U.S., Canada, and elsewhere have, for this reason, adopted a subjectivist or personal conception of freedom of religion when assessing the merit of accommodation and exemption claims. Such an approach downplays the role of religious leaders and scholars in establishing whether a contested law or practice burdens claimants' freedom of belief, and instead bases the case for exemption on what particular individuals claiming exemption perceive the requirements of their faith to be. Thus, in the Multani case, the Supreme Court of Canada accepted that a school's ban on the carrying of knives burdened a Sikh student's freedom of religion and prevented him from enjoying the opportunity of attending public school even though other Sikh students were prepared to wear replica kirpans made out of material. (78) Similarly in Thomas v. Review Board--a U.S. case involving an appeal by a Jehovah's Witness against a decision to deny him unemployment assistance for quitting his job without "good cause"--the court accepted that the claimant was sincere in his belief that he would be violating a deep-seated religious commitment if he worked on a production line manufacturing weapons parts even though other Jehovah's Witnesses were prepared to do such work. (79) As Justice Berger argued in handing down his ruling, "it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith." (80) Rather, all that must be considered is the sincerity of the petitioner's claim that the contested rule substantially burdens a religious belief or commitment of conscience that he or she holds in good faith. This is established not by considering what the claimant's co-religionists or religious leaders take to be the requirements of his or her faith, but by considering whether the belief or commitment in question is being asserted in good faith and in consistency with his or her other beliefs and commitments. (81)

One criticism leveled against such an individualized and subjective approach to the provision of exemptions is the difficulty that it creates for administration of the law. It is far easier to establish whether a contested rule substantially burdens a person's commitments of conscience when that person is a member of a recognized religious or cultural group and the commitments at issue are widely known to be professed by members of that community. Consider a religious believer, such as a Catholic, whose religion is not widely considered to be opposed to war but who, upon being nominated for mandatory combat duty, claims that the Angel Gabriel visited him in a dream to command him not to go to war. How are we to determine whether he is being sincere or opportunist? Fortunately, the danger that adopting an individualist approach to exemptions might lead to an escalation in fraudulent claims can be offset by structuring the provision of exemptions so that the costs involved in taking up exemption militate against fraudulent claims. For example, Kent Greenawalt suggests that those who apply to be exempted from combat duty should instead have to perform a substantially lengthier period of civilian service (for example, three years of civilian service instead of one year of combat duty). (82) Greenawalt elsewhere entertains the idea of imposing a monetary levy on those who take up other sorts of exemptions as a way of further reducing the risk of fraudulent claims. (83) For example, Sikhs wishing to avoid crash helmet requirements could be asked to pay higher insurance premiums, or school students wishing to carry a kirpan could be charged a fee to do so. While this may well reduce the risk of fraudulent claims, it does so only by imposing unfair costs on those whose commitments of conscience preclude them from accessing primary goods in the absence of accommodation. If the cost of having to renege on deep-seated commitments of conscience unfairly inhibits Sikhs from accessing public education in the absence of an exemption from mandatory uniform requirements, then it is equally unfair to force Sikhs to pay more than other students to access education. Nonetheless, there are other, less punitive, ways in which we can structure exemptions that need not be any less effective in reducing the risk of fraudulent claims. For example, one possibility with respect to providing exemptions from mandatory crash helmet laws is to require those seeking exemption to present two signed statutory declarations from witnesses in support of their claim before granting them a permit to ride without a crash helmet. Other types of exemptions could be similarly structured to reduce the risk of fraudulent claims. Schools, for instance, could insist that a student's parent or guardian first meet with school officials before excusing that student from mandatory dress codes. In most cases, students who did not have a conscientious objection to mandatory uniform requirements would be unlikely to receive the support of their parent or guardian in avoiding school uniform requirements. The details of how exemptions could be structured to reduce the risk of fraudulent claims would need to be worked out in much greater detail of course. But I see no reason to think that the provision of exemptions along an individual rather than group-differentiated approach necessarily leads to an excess risk of fraudulent claims or that it would make the administration of law impossible.

5. Conclusion

If the argument of this paper is correct, requiring people to forgo religious beliefs or cultural commitments (along with other types of conviction of conscience) in response to resource expectations is qualitatively distinct from requiring those with expensive tastes to revise these in favor of cheaper alternatives inasmuch as people's religious beliefs and cultural commitments often feature as beliefs that cannot be forsaken simply because of their costliness and inasmuch as the conditions of people's self-respect are bound up with the integrity of their religious beliefs and cultural commitments in a way that does not apply to the pursuit of the expensive tastes that feature prominently in the literature. Because we cannot reasonably expect people to give up their deep-seated convictions of conscience in the face of resource expectations, ensuring that all enjoy a fair share of primary goods requires the provision of cultural exemptions where general rules force minorities to choose between upholding their religious beliefs and cultural commitments, on the one hand, and enjoying their fare share of

primary goods, on the other. This is all the more so in cases in which the beliefs and commitments of more privileged groups have been accommodated in functionally equivalent cases, given the consequences of nonaccommodation for minorities' recognition self-respect. While many difficult questions concerning the provision of cultural exemptions undoubtedly remain--for example, how do we determine whether particular claims constitute direct or indirect cases--I hope that this paper has shown that the provision of cultural exemptions can be successfully distinguished from the subsidization of expensive tastes and that the expensive tastes objection to cultural exemptions can be faced down without having to resort to a primordial view of culture that places people's religious beliefs and cultural commitments as beyond contestation and revision. (84)

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(1) So that Sikhs may carry kirpans, the provisions of the U.K. Criminal Justice Act of 1988 prohibiting the carrying of weapons allow that it is a defense for an accused to prove that he had the article with him "for religious reasons." Cited in Brian Barry, Culture & Equality: An Egalitarian Critique of Multiculturalism (Cambridge: Polity Press, 2001), p. 51. See section 4 for a detailed discussion of this exemption.

(2) See, for example, Anna Elisabetta Galeotti, "Contemporary Pluralism and Toleration," Ratio Juris 10 (1997): 223-35; Bhikhu C. Parekh, Rethinking Multiculturalism, 2nd ed. (New York: Palgrave Macmillan, 2000), pp. 241-49; Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," Ethics 99 (1989): 250-74, and Justice and the Politics of Difference (Princeton: Princeton University Press, 1990).

(3) Barry, Culture & Equality, p. 45.

(4) Jeremy Waldron, "One Law for All? The Logic of Cultural Accommodation," Washington & Lee Law Review 59 (2002): 3-34, p. 3.

(5) See Sonu Bedi, "What Is So Special About Religion? The Dilemma of Religious Exemption," The Journal of Political Philosophy 15 (2007): 235-49, p. 240; Waldron, "One Law for All?" p. 21.

(6) Barry pursues precisely this line of argument (among others) against cultural exemptions. See Culture & Equality, pp. 40-41.

(7) I follow Bouchard and Taylor in talking of the identity claims at issue in exemption and accommodation claims as "deep-seated convictions or convictions of conscience," and in also counting religious convictions and cultural commitments as a subset of convictions of conscience. See Gerard Bouchard and Charles Taylor, "Building the Future: A Time for Reconciliation" (Quebec: Commission De Consultation Sur Les Practiques D'Accommodement Reuees aux Differences Culturelles, 2008), p. 144. I thank an anonymous reviewer for recommending Taylor and Bouchard's report to me.

(8) Bedi, "What Is So Special About Religion?" pp. 236-40. See also Anne Phillips, Multiculturalism without Culture (Princeton: Princeton University Press, 2007), p. 100.

(9) See, for example, Michael McConnell, "Believers as Equal Citizens," in Nancy L. Rosenblum (ed.), Obligations of Citizenship and Demands of Faith: Religious Accommodation in Pluralist Democracies (Princeton: Princeton University Press, 2000), pp. 90-110.

(10) I have drawn this list from a variety of sources. One excellent account of controversial demands for accommodation can be found in Parekh, Rethinking Multiculturalism, pp. 264-65. Brian Barry also offers a comprehensive discussion of demands for accommodation in Culture & Equality, esp. chap. 2. Other lists can be found in Simon Caney, "Equal Treatment, Exceptions and Cultural Diversity," in P.J. Kelly (ed.), Multiculturalism Reconsidered: 'Culture and Equality' and Its Critics (Cambridge: Polity Press in association with Blackwell Publishers, 2002), pp. 81-101; and Monica McGoldrick, "Multiculturalism and Its Discontents," Human Rights Law Review 5 (2005): 27-56.

(11) Iris Marion Young, Inclusion and Democracy (Oxford: Oxford University Press, 2000), p. 105.

(12) Quoted in Barry, Culture & Equality, p. 44.

(13) Rawls describes primary goods as goods that have a use "whatever a person's rational plan of life." John Rawls, A Theory of Justice, revised ed. (Cambridge, Mass.: Harvard University Press, 1999), p. 54.

(14) John Rawls, Political Liberalism, revised ed. (New York: Columbia University Press, 1996), p. 181. This list is by no means exhaustive, and a number of additional goods could easily be added to it. Rawls, for instance, suggests that leisure time could be added to it.

(15) Richard Arneson, "Equality," in Robert E. Goodin and Philip Pettit (eds.), A Companion to Contemporary Political Philosophy (Melbourne: Blackwell, 1995), pp. 491-92. See also Martha Nussbaum, "Capabilities as Fundamental Entitlements: Sen and Social Justice," in Alexander Kaufman (ed.), Capabilities Equality: Basic Issues and Problems (New York: Routledge, 2006), p. 46; Amartya Sen, The Idea of Justice (Cambridge, Mass.: Harvard University Press, 2009), p. 12.

(16) See, for instance, Ronald M. Dworkin, "What is Equality? Part 2: Equality of Resources," Philosophy & Public Affairs 10 (1981): 283-345.

(17) Dworkin, "What is Equality? Part 2: Equality of Resources," p. 311.

(18) See, for example, G.A. Cohen, "On the Currency of Egalitarian Justice," Ethics 99 (1989): 906-44, p. 907.

(19) Ibid., pp. 923, 935.

(20) Ronald M. Dworkin, "Liberalism," in A Matter of Principle (Cambridge, Mass.: Harvard University Press, 1985), p. 193.

(21) In Australia, a business that refuses to allow someone with vision impairment to bring her guide dog onto its premises may be held in breach of the Disability Discrimination Act (1992). See Grovenor v. Eldridge [2000] Federal Court of Australia 1574 (19 October 2000). Available at http://www.austlii.edu.au/au/cases/cth/federal_ct/2000/1574.html.

(22) See Bouchard and Taylor, "Building the Future," p. 143.

(23) Barry, Culture & Equality, p. 37 (my emphasis).

(24) Robert Sparrow, "Defending Deaf Culture: The Case of Cochlear Implants," The Journal of Political Philosophy 13 (2005): 135-52, p. 137.

(25) Elizabeth Anderson, "What Is the Point of Equality?" Ethics 109 (1999): 287-337, p. 305.

(26) Peter Jones, "Bearing the Consequences of Belief," The Journal of Political Philosophy 2 (1994): 24-43, p. 38.

(27) Bouchard and Taylor, "Building the Future," p. 143.

(28) Will Kymlicka, Contemporary Political Philosophy: An Introduction (Oxford: Oxford University Press, 2002), p. 73.

(29) Rawls, Political Liberalism, p. 185.

(30) On this point, see Joseph Heath, "Culture: Choice or Circumstance?" Constellations 5 (1998): 183-200, p. 193. See also Dworkin, "Liberalism," p. 193.

(31) Rawls, Political Liberalism, p. 186 (my emphasis).

(32) Jones, "Beating the Consequences of Belief," p. 32.

(33) See Bernard Williams, "Deciding to Believe," in Problems of the Self: Philosophical Papers 1956-1972 (Cambridge: Cambridge University Press, 1973), p. 148.

(34) Ibid.

(35) For a more detailed discussion of this point, see Dion Scott-Kakures, "On Belief

and the Captivity of the Will," Philosophy and Phenomenological Research 54 (1994): 77-103, p. 102.

(36) There is some room for movement here between denominations of the same religion. An Anglican may be capable of admitting she could have become a Baptist or a member of a Pentecostal congregation if she had wanted to, though this will depend on how closely the beliefs of these other denominations fit with her Anglican convictions.

(37) I am grateful to an anonymous reviewer for encouraging me to be clearer about this point.

(38) Edna Ullmann-Margalit, "Big Decisions: Opting, Converting, Drifting," Royal Institute of Philosophy Supplement 58 (2006): 157-72, p. 162 (my emphasis).

(39) William James, "The Sentiment of Rationality," in The Will to Believe and Other Essays in Popular Philosophy (Cambridge, Mass.: Harvard University Press, 1979), p. 86.

(40) Rawls, A Theory of Justice, p. 386.

(41) Ibid.

(42) For a discussion of the relationship between having respect for oneself and acting in accordance with value judgments, see Stephen J. Massey, "Is Self-Respect a Moral or a Psychological Concept?" Ethics 93 (1983): 246-61, pp. 248-50.

(43) Robin S. Dillon, "How to Lose Your Self-Respect," American Philosophical Quarterly 29 (1992): 125-39, p. 128. See also Rawls, A Theory of Justice, pp. 390-91.

(44) For a discussion of the distinction between shame and regret, see Rawls, A Theory of Justice, pp. 388-89.

(45) Josh White, "Abu Ghraib Tactics Were First Used at Guantanamo," Washington Post, July 14, 2005.

(46) Bouchard and Taylor, "Building the Future," p. 144.

(47) Quoted in Elizabeth Jones, "Muslim Girls Unveil Their Fears," BBC, March 28, 2005, This World, http://news.bbc.co.uk/2/hi/programmes/this_world/4352171.stm; accessed January 18, 2011.

(48) Rawls, A Theory of Justice, p. 478.

(49) Ibid., p. 477 (my emphasis). See also John Rawls, Justice as Fairness: A Restatement, ed. Erin Kelly (Cambridge, Mass.: Harvard University Press, 2001), pp. 59-60. Rawls uses the terms self-respect and self-esteem interchangeably.

(50) Dillon, "How to Lose Your Self-Respect," p. 133.

(51) Ibid., p. 126.

(52) Ibid., p. 138.

(53) On this point, see Axel Honneth, "Integrity and Disrespect: Principles of a Conception of Morality Based on the Theory of Recognition," Political Theory 20 (1992): 187-201, p. 191.

(54) Iris Marion Young, Justice and the Politics of Difference (Princeton University Press, 1990), pp. 27, 10.

(55) Ibid., p. 59.

(56) Ibid., p. 60.

(57) Ibid., p. 46.

(58) Young, Inclusion and Democracy, p. 106.

(59) Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990).

(60) Cited in Kent Greenawalt, Religion and the Constitution: Vol I: Free Exercise and Fairness, Kindle ed. (Princeton: Princeton University Press, 2009), chap. 5.

(61) Sherbert v. Verner, 374 U.S. 398 (1963). Sherbert involved a Seventh Day Adventist who had been denied unemployment benefits for refusing to make herself available for suitable work after she gave up her job at a textile mill once she was required to work Saturdays. For a detailed discussion of this case, see Greenawalt, Religion and the Constitution, chap. 10.

(62) Greenawalt, "Moral and Religious Convictions as Categories for Special Treatment: The Exemption Strategy," William & Mary Law Review 48 (2006): 1606-42, p. 1621.

(63) Andrew Shorten, "Cultural Exemptions, Equality and Basic Interests," Ethnicities 10 (2010): 100-126, p. 115.

(64) H.N. Hirsch, "Let Them Eat Incidentals: RFRA, the Rehnquist Court, and Freedom of Religion," in Rosenblum (ed.), Obligations of Citizenship and Demands of Faith, pp. 280-93, at p. 285.

(65) Notice here that laws that threaten people's recognition self-respect do not always threaten people's evaluative self-respect and vice versa. For instance, a Native American who feels no obligation to ritually ingest peyote may feel that, given the historical precedence of exempting the sacramental use of wine from alcohol prohibitions, the Smith decision amounts to the discriminatory and unequal treatment of Native Americans and, therefore, an insult to the status of Native Americans as equal citizens.

(66) Jehovah's Witnesses do not object to medical treatment altogether, but to the use of blood and blood-related products during treatment. Moreover, many Jehovah's Witnesses have been successfully treated using blood substitutes such as hetastarch, and promising alternative blood substitutes are in development that may facilitate future treatment. See J.L. Dixon and M.G. Smalley, "Jehovah's Witnesses. The Surgical/Ethical Challenge," Journal of the American Medical Association 246 (1981): 2471-72.

(67) Much here depends on what the costs of accommodation would be. For example, if synthetic blood substitutes became significantly cheaper to supply to the point that the difference in costs between using synthetic and organic blood was negligible, the argument against accommodation would collapse.

(68) Wisconsin v. Yoder, 406 U.S. 205 (1972). Members of an Old Order Amish community (together with a small number of Mennonites) successfully pleaded for an exemption from the legal requirement of the state of Wisconsin that children attend high-school up until the age of 16. The case is widely discussed by political theorists and legal scholars. See, for example, Kent Greenawalt, "Five Questions About Religion Judges Are Afraid to Ask," in Rosenblum (ed.), Obligations of Citizenship and Demands of Faith, pp. 196-224, at p. 206; Stephen Macedo, "Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls," Ethics 105 (1995): 468-96, pp. 488-90; Andrew K. Wahlstrom, "Liberal Democracies and Encompassing Religious Communities: A Defense of Autonomy and Accommodation," Journal of Social Philosophy 36 (2005): 31-48. In two cases that I am aware of, Edwards v. Aguillard (1987) and McLean v. Arkansas Board of Education (1983), Christian Fundamentalists have argued that the teaching of evolution is a violation of the free exercise and establishment clauses of the U.S. Constitution. For a detailed discussion of the dispute over the teaching of evolution, see Stephen L. Carter, "Evolutionism, Creationism, and Treating Religion as a Hobby," Duke Law Journal 1987 (1987): 977-96, pp. 984-88.

(69) It is tempting to allow the role that the provision of exemptions can play in securing minorities' recognition self-respect to play a much greater role in the overall argument for exemptions. Where I employ the appeal to recognition self-respect in a largely negative way--would the refusal of exemption corrode claimants' recognition self-respect because of the historical

accommodation of more privileged groups in functionally equivalent cases?--others argue that the primary justification for a wide range of exemptions consists in the positive contribution that accommodation can make to minorities' recognition self-respect. In other words, we should accommodate the needs and commitments of religious and cultural minorities through the provision of exemptions because doing so elicits respect for their status as full participants and equal members of the political community. Certainly, exemptions can play an important role in securing the social bases of minorities' self-respect. Allowing Sikhs to wear their turban in place of the traditional headgear of the Royal Canadian Mounted Police, for example, enables Sikhs as a group to occupy a more prominent place in society by transforming public perceptions about the sort of work that Sikhs do and the contribution that Sikhs make to society. However, I am reluctant to ground the argument for exemptions in this way, as this justification, in my view, provides too indeterminate a basis upon which to establish a regime of exemptions. There are many ways of securing the social bases of minorities' recognition self-respect, and, instances where the beliefs and commitments of privileged groups have been accommodated in functionally equivalent cases aside, it is not clear that any particular exemption or accommodation is integral to securing minorities' recognition self-respect. For example, if the sole justification for exemptions is the role that the public recognition of minority forms of identification plays in securing the social bases of minorities' self-respect, how are we to distinguish between the urgency of exempting Muslim abattoirs from humane slaughtering requirements and exempting Muslim students' wishing to wear the hijab from mandatory uniform requirements? This is why I restrict the scope of the appeal to the impact on recognition self-respect to the issue of whether nonaccommodation would be destructive of recognition self-respect. For a similar criticism of this way of arguing for exemptions, see Shorten, "Cultural Exemptions, Equality and Basic Interests," pp. 109-10.

(70) Greenawalt, "Moral and Religious Convictions as Categories for Special Treatment," p. 1617.

(71) Charles Taylor, "What's Wrong with Negative Liberty," in Alan Ryan (ed.), The Idea of Freedom: Essays in Honour of Isaiah Berlin (Oxford: Oxford University Press, 1979), pp. 175-93, at p. 183.

(72) In United States v. Lee, 455 U.S. 252 (1982), Amish employers sought an exemption from paying social security on behalf of their Amish employees. The case is discussed in Barry, Culture & Equality, pp. 191-92.

(73) "Druid reunited with Excalibur," The Independent (London, November 6, 1997), online edition, http://www.independent.co.uk/news/druid-reunited-with-excalibur-1292317 .html., accessed January 18, 2011. The case is discussed at length in Barry, Culture & Equality, pp. 51-53.

(74) In the United States, only members of pacifist religions were originally exempted from mandatory combat duty under the Civil War Draft Act of 1864 and the Draft Act of 1917. In the 1940s, the Selective Service Act extended the exemption to anyone "who, by way of religious training and belief, is conscientiously opposed to participation in war in any form," though Congress later made it clear that this did not include secular conscientious objectors. In subsequent court cases, such as United States v. Seeger, judges have expanded the exemption to include secular conscientious objectors by extending the concept of religious belief under the law. For a critical discussion of how U.S. courts have understood and defined religious belief, see Greenawalt, Religion and the Constitution, chap. 8. See also David Malament, "Selective Conscientious Objection and the Gillette Decision," Philosophy & Public Affairs 1 (1972): 363-86.

(75) For an insightful discussion of the diversity of opinion amongst Sikhs on this issue, see Bedi, "What Is So Special About Religion?" pp. 238-40.

(76) On this objection, see Mafia Paola Ferretti, "Exemptions for Whom? On the Relevant Focus of Egalitarian Concern," Res Publica 15 (2009): 269-87, p. 278; also Bedi, "what Is So Special About Religion?" p. 240.

(77) Syndicat Northcrest v. Amselem, 2 S.C.R. 551 2004 SCC 47 (2004), para. 50.

(78) Multani v. Commission Scolaire Marguerite-Bourgeoys, 1 S.C.R. 256 2006 SCC 6 (2006), para. 35. As Justice Charron opined, "[t]he fact that different people practice the same religion in different ways does not affect the validity of the case of a person alleging that his or her freedom of religion has been infringed."

(79) Thomas v. Review Bd, 450 U.S. 707 (1981). For a more detailed discussion of this case, see Greenawalt, Religion and the Constitution, chap. 10.

(80) Cited in Syndicat Northcrest v. Amselem, para. 45.

(81) See ibid., paras. 52-53; and Multani v. Commission Scolaire Marguerite-Bourgeoys, paras. 34-25.

(82) See Greenawalt, Religion and the Constitution, chap. 4.

(83) Greenawalt, "Moral and Religious Convictions as Categories for Special Treatment," p. 1634.

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