Standing as Equals: the Case of Religious and Cultural Exemptions

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Abstract

In recent years, political theorists have been showing increasing concern over the clashes and tensions between religious and cultural claims and generally applicable laws of liberal democracies. Religious/cultural exemptions under universal laws have become one of the most popular issues of the new millennium in the literature of political theory. However, there is no general consensus amongst political thinkers on which grounds can these exemptions be justified. In the following thesis, I argue that exemptions from generally applicable laws are justifiable on the grounds of the combination of Jonathan Quong's *fair equality of opportunity* and Paul Bou-Habib's *perceived duty-based* theories. I argue that the combination of these two arguments provides a better understanding than arguments based on *luck egalitarianism* which try to focus on the *chance/choice* distinction, and which is a very influential strand in multicultural debates. I argue that we should rather focus on individuals as *fellow citizens* who should have an *equal standing in society*.

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Introduction

In recent years, political theorists have been showing great concern towards the clashes and tensions between religious and cultural claims and generally applicable laws of liberal democracies. 'Accommodation' has become a buzzword of the new millennium in the literature of political theory and practice as well: it means that the burdens which are imposed by general rules to a cultural or religious practice should be mitigated so as to allow the affected groups to be able to follow the practice in question. Real world examples are the exemption of Sikhs from wearing crash helmets on motorcycles in the United Kingdom, Jews' and Muslims' exemptions from the animal slaughter regulations in most of the Western democracies, or the right of Jews to wear the *yarmulke* in the US Army during military service. These exemptions are not only theoretically controversial: in Canada there are no exceptions under crash helmet regulations, while in countries such as Switzerland, Sweden, or Norway religious slaughter is forbidden.

As far as political theory is concerned, the debate over cultural and religious exemptions got a new impulse after Brian Barry published his book *Culture and Equality* in 2001 (Barry 2001). He attacked exemptions arguing that these are justifiable only on the grounds of generosity or social prudence but not on the grounds of social justice (Barry 2001: 32-62). Barry thinks that rules-plus-exemptions are not only ill-conceived in most cases, but also the structure of this process of providing exemptions (that he calls the “rule-and-exemption approach”) is illogical. Other theorists disagree with Barry’s position arguing that exemptions are required by the “fair terms of integration” (Kymlicka 1995), by the properly

conceived notion of “fair equality of opportunity” (Quong 2006), or the “equal opportunity for well-being” (Bou-Habib 2006).

There is no general agreement, amongst political thinkers, however, on which grounds can these exemptions be justified. In the following thesis, I argue that exemptions from generally applicable laws are justifiable on the grounds of the combination of Jonathan Quong’s fair equality of opportunity and Paul Bou-Habib’s perceived duty-based approaches. I argue that the combination of these two arguments provides a better understanding than arguments based on luck egalitarianism which try to focus on the chance/choice distinction, and which is a very influential strand in multicultural debates. I argue that we should rather focus on individuals as *fellow citizens* who should have an *equal standing* in society.

The thesis proceeds as follows: in the first chapter, I will examine the “rule-and-exemption approach” and defend its logic and legitimacy. In the next chapter, I will outline and critique the argument of luck egalitarianism concluding that instead of this approach we should shift our focus to *oppression-free liberalism*. I build my argument on the work of Jonathan Quong which elegantly overcomes luck egalitarian reasons concentrating on the Rawlsian notion of fair equality of opportunity, hence it goes beyond “luck multiculturalism”. After this I find that there is an important link between Quong's equal opportunity and Bou-Habib's integrity-based approaches (we should, however, extend Bou-Habib's narrow conception of integrity to reach this goal). This is the *centrality argument*, which provides not only a connection between these two theories, but also a good parallel case with conscientious objection. I will argue that the best justification of religious/cultural accommodation is to consider these problems as conscientious objections, and be willing to provide an equal standing of individuals in the society as fellow citizens with equal rights and opportunities. This investigation is incomplete without the examination of *costs* and the nature of *opportunity sets* in these cases – this analysis provides the final part of the thesis.

1. The Rule-and-Exemption Approach

In every Western democracy, there are certain general rules that citizens (and non-citizens) have to abide by. Sometimes certain cultural and religious groups, however, opt for exemptions because these general laws have an impact to the members of these communities that they do not want to bear. This phenomenon is that Brian Barry calls the "rule-and-exemption approach" (Barry 2001, 40). The case of the rules plus exemptions as a practice goes beyond the claim of justificatory neutrality (Kymlicka 1989) which is supported by many liberals. The idea of justificatory neutrality is that if a justification of a law is impartial, then the unequal consequences of the law do not matter (Quong 2006). This is the standpoint that Barry defends: it is inevitable that a law does not have the same impact on everybody, but there is nothing wrong with it (Barry 1996, 540). This perspective looks a bit bizarre at first glance, but it has a very clear logic. We can rarely find two persons whom a particular law affects the same way, and at first look exemptions are simply unfair or unreasonable.

In Barry's intuitive argument:

> If we consider virtually any law, we shall find that it is much more burdensome to some people than to others. Speed limits inhibit only those who like to drive fast. Laws prohibiting drunk driving have no impact on teetotallers. Only smokers are stopped by prohibitions on smoking in public places. Only those who want to own a handgun are affected by a ban on them, and so on, *ad finitum*. This is simply how things are. The notion that inequality of impact is a sign of unfairness is not an insight derived from a more sophisticated conception of justice than that previously found in political philosophy. It is merely a mistake. This is not, of course, to deny that the unequal impact of a law may in some cases be an indication of its unfairness. It is simply to say that the charge will have to be substained in each case by showing exactly how the law is unfair. It is never enough to show no more than that it has a different impact on different people (Barry 2001, 34).

Barry's point directs our intention that there is something odd in the situation in which we give exemptions based on religious/cultural grounds, but not on the grounds that some people

simply want to do the specific activity in question. Although, in my opinion, he is wrong in that the abovementioned different impacts can be not only restrictive but disproportionate, which is a totally different case. Different impact has nothing to do with justice: there is nothing wrong with the fact if ticket prices of a local train affect passengers differently - as long as the local train is affordable for everyone. But if ticket prices are too high for one specific group of passengers and there is no other traveling alternatives, then this is a matter of justice, and there is a good reason to reduce ticket prices for these passengers. Those who are committed to equality of opportunity do not have to bind themselves to the idea that a law should affect everybody the same way, but they should bind themselves to the idea that a law does not affect certain people disproportionately. We have to notice, however, that cultural/religious groups who seek for exemptions do not complain because of *unequal impact* but because of *disproportionate impact*. It seems to be the case that Barry is aware of this, but his above cited argument tacitly assumes that if we are talking about cultural and religious claims, there is no good justification for these cases. I will return to this question later. Nevertheless he is right that we must carefully examine why in each case exemptions should be granted – moreover this investigation cannot be omitted because the resulting costs are different in every case.

But Barry goes further: he not only says that there is nothing wrong with the fact that laws affect people differently, he also asserts that the rule-and-exemption approach mostly ill-conceived:

> I do not wish to rule out the possibility to rule out that there will be cases in which both the general rule and the exemption are acceptable. Usually, though, either the case for the law (or some version of it) is strong enough to rule out exemptions, or the case that can be made for exemptions is strong enough to suggest that there should be no law anyway (Barry 2001, 39).

So either there is a good reason for upholding a law without any exceptions or abandoning the regulation in question entirely. So if we want to defend cultural and religious exemptions, our first task stem from the procedure itself and we have to prove that (1) justificatory neutrality is not enough and (2) the rule-and-exemption approach is sound.

As far as the first point is concerned, Jonathan Quong points out that properly conceived justificatory neutrality does not entail that a law should only be non-discriminatory (Quong 2006, 59). This is necessary but not sufficient to justify impartiality: "there are many laws that might meet the condition of being non-discriminatory in their intent, yet would clearly be unjustifiable on account of the unreasonable burdens they impose on certain persons. Justificatory neutrality requires not just that we avoid discriminatory intent, but also that we imagine what impact a given policy will have on all affected parties" (Quong 2006, 60). Quong stresses that impartiality requires what Rawls called the 'strains of commitment' condition: one fails to reason impartially if she supports a policy which place such burdens to someone which are not *reasonable* (Quong 2006, 60).[1] This means that one should choose only those policies behind the *veil of ignorance* that she would choose no matter in what social position she would later be (Quong 2006, 60). Quong concludes that if look justificatory neutrality from this perspective, then it recommends rather than objects to some of the cultural/religious exemptions (Quong 2006, 60). Obviously Quong's idea of justificatory neutrality goes beyond the standard view since it is not indifferent to consequences. However, it can be argued that it does not confront with the main idea of justificatory neutrality, because it does not say that a policy must have neutral consequences,

[1] In Rawls's terms, reasonable people are those who think that citizens are free and equal persons; society is a fair system of social cooperation; and they live in a plural society (which means that different persons arrive at different conclusions about the good life, even when they are all rational people). As Rawls puts it: "Reasonable persons … are not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept" (Rawls 1996, 50). The main idea of Rawls's reasonableness is reciprocity, which is also central to Thomas Scanlon's definition of reasonableness and unreasonableness. Thomas Scanlon is saying about unreasonableness the following: "When we say, in the course of an attempt to reach some collective decision, that a person is being unreasonable, what we often mean is that he or she is refusing to take other people's interests into account" (Scanlon 2000, 33).

only that a policy cannot place to much a burden to some specific group of individuals. Hence justificatory neutrality thus conceived does not rule out exemptions.

With respect to the second point, Simon Caney persuasively argues that rules-plus-exemptions are the well-known practice of everyday life since there are many cases which satisfy the following three criteria: a) there is a good case for a rule, b) there is some reason for exempting some from this rule, and c) this reason pertains only to some and not all (Caney 2002, 84). He then cites seven different examples which show that culturally based exemptions fit in this rationale. The upshot is that Caney not only provides a good argument that the rule-and-exemption approach is sound, but he proves that it can be easily applied to cultural claims as well (Caney 2002, 85-87). For the sake of completeness, we have to realize how Barry has changed his position concerning exemptions. Replying Caney, he admits that he was slightly misunderstood concerning exemptions: "There are many other deviations from a fixed rule that I would regard as not incompatible with justice. I would merely say about most of them that, for various reasons, they would seem to me not a good idea. The implication of this is that I have no objection grounded in justice to any of the exemptions that Caney defends. I might quarrel with their advisability in a few cases" (Barry 2002, 215).

In contrast to Barry, I think that the rule-and-exemption approach is generally defendable and not only in few cases. Moreover not only on the grounds of tolerance, but on the grounds of justice as well. In the following part of the thesis, I will purport to justify this position. But there is another thing that stems from the rule-and-exemption approach: Caney also points out that sometimes groups seek not exemptions but new rules (Caney 2002, 88-90). But I will not examine those claims when general rules should be dismissed, only those which are compatible with the rule-and-exemption approach, which is only logical if both the rules and the exemptions are justifiable. The difficulty of this project lies exactly in this fact, namely,

that most of the time there are enough good reasons for upholding a law. But what is a good reason for claiming an exemption?

One group of theorists try to provide exemptions as "neutralisers of inequalities" (Ferretti 2009, 275). Exemptions can be granted for those groups who suffer from inequalities by their unchosen circumstances or characteristics. This multicultural approach is the consequent application of a very influential strand of egalitarian theories of distributive justice, which tries to mitigate the role of luck in human life. Elizabeth Anderson labeled this strand "luck egalitarianism" (Anderson 1999), and indeed: this endeavour of trying to abolish the bad effects of luck in people's life, and compensating them for its consequences, is very vivid in the works of theorists such as Ronald Dworkin, John Rawls, Richard Arneson, or G. A. Cohen. In the next section, I will provide a brief overview of luck egalitarianism and its application to cultural exemptions. I will argue, however, that we should abandon this approach because it misses the point of cultural and religious exemptions.

2. Justifying Exemptions

2. 1 Luck Egalitarianism, Luck Multiculturalism: Cultures as Expensive Tastes?

As Susan Mendus puts it, the "desire" to avert the bad influence of fortune "has been central to egalitarianism for at least thirty years" (Mendus 2002, 35). The main feature of luck egalitarianism is the *chance/choice* distinction. The focal point of this dichotomy is *responsibility*: if I suffer due to bad brute luck I am entitled to compensation, but in the case my misfortune is a result of my choice, then I cannot ask for compensation since I am responsible for my choices and decisions. The intuition behind this idea is that one should bear the costs of her choices, but not the costs of others' choices. One of the biggest dilemma of luck egalitarians is whether we should provide compensation for *expensive tastes*. [2]

It is not surprising that luck egalitarian theorists recognized a familiar problem in certain aspects of the interaction of majority and minority groups in modern pluralist societies, which area came into the sphere of interest of political theorist more and more after the communitarian bang. It seems to be the case that the expensive tastes dilemma can occur in

[2] What are the expensive tastes and why they are expensive? In short, somebody has an expensive taste when he/she needs more or different resources to gain the same level of satisfaction than other people can gain from less (or cheaper) resources (Arrow 1973; Dworkin 1981). If I can drink only expensive champagne or ancient claret because I cannot stand beer, then I have an expensive taste. But here Cohen makes an important point: "a person's tastes are expensive if only if they are such that it costs more to provide her than to provide others with given levels of satisfaction or fulfillment. A person who insist on expensive cigars and fine wines is not *eo ipso* possessed of expensive tastes, in the required sense. For she may thereby be insisting on a higher level of fulfillment than the norm" (Cohen 1999, 85). So I do not drink beer, not because I want to have a fancier beverage or I like quality wine better than beer, but because I cannot drink beer for whatever psychological reasons only pre-phylloxera claret for example. Luck egalitarians are divided whether expensive tastes should be compensated or not. Resourcists, such as Dworkin, hold that what matters is equality of resources hence we should not compensate anybody for his/her extra-needs (Dworkin 1981; 2000, 285-299; 2004). By contrast welfarists, like Cohen, think that if those people who developed their expensive tastes (or 'schooled themselves' to them in Cohen's words) are not entitled to compensation, but those expensive tastes that are happen to be expensive by chance can be compensated (Cohen 1989; 2004*b*).

the case of cultural commitments and claims as well. The question is then, whether cultural or religious membership is a matter of chance or choice, because this aspect will determine whether cultural groups can opt for more resources or not. If one assumes that cultural or religious group membership is something one chooses, then group members do not deserve compensation, hence their practices should not be accommodated. But if one assumes these kind of memberships are the results of chance, since no one can choose which cultural group he or she is born into, then these ambitions are entitled to accommodation. Jonathan Quong calls this form of luck egalitarianism "luck multiculturalism", since it provides luck egalitarian arguments for multicultural accommodation (Quong 2006, 55). Quong firmly believes that luck multiculturalism is a dead end. He purports to illustrate this on the work of the most well-known multiculturalist, Will Kymlicka, whose theory's premises rests on luck egalitarian grounds as well (Kymlicka 1995). Quong thinks that Kymlicka's approach is incoherent and cannot offer a justification for rules-plus-exemptions (Quong 2006, 54-57). To put it briefly, Kymlicka defines culture as a *primary good* which provides the context within which individuals can have meaningful options enabling them to make intelligent judgments (Kymlicka 1995, 82-84). This idea is very close to Rawls's view of the person: Rawls thinks that individuals have "two moral powers" (Rawls 2001, 18). The first is the "capacity for a sense of justice" and the second is the "capacity for a conception of the good" (Rawls 2001, 18-19). Rawls defines conception of the good as the set of one's final aims and goals which "specifies a person's conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life" (Rawls 2001, 19). He thinks that the conception of the good life are "set within, and interpreted by, certain comprehensive religious, philosophical, or moral doctrines in the light of which the various ends and aims are ordered and understood" (Rawls 2001, 19). One's culture thus conceived will be the

context within which one can articulate her final aims and goals, her *conception of the good life* – hence we can hold culture as a primary good.

Having this primary good makes it possible for individuals to have autonomy, which is also of main importance for Kymlicka, as it is of main importance for most liberals. If one is not deprived of living within her culture, and her culture provides options which are meaningful to her, then she will have the ability to evaluate and revise her conception of the good life (Kymlicka 1995, 81-82). Hence this primary good should be distributed equally in a just society (Ferretti 2009, 275). But an obvious problem occurs here: if cultures are important because they foster autonomy, then there is nothing wrong with the case if a culture dies out and former members have to enter into a new one (Quong 2006, 54-55; Ferretti 2009, 275): keeping alive *one specific* culture is not the purpose of justice (Tomasi 1995).

Kymlicka tries to override this objection by pointing out that abandoning someone's culture for another might be too costly for the individual – this leads us to his notion of "fair terms of integration" (Quong 2006, 55; Kymlicka 2001, 164). Quong holds this position problematic because it could be true only to some kind of minorities such as national minorities who did not chose to move to a specific country, therefore claims called "polyethnic rights" by Kymlicka (Kymlicka 1995, 7) (rights which are to promote practices of certain cultural or religious groups) are not justifiable on this ground. If minorities which were not born in the country, but arrived to a specific country later as a result of their choice, then why should we treat this situation as a matter of luck? As he puts it:

> I think this [attempt to help cultural minorities to express their cultural particularity] is a laudable goal, but it doesn't follow from his [Kymlicka's] original argument about societal cultures and autonomy. If immigrants are not entitled to rights that would help them sustain their own societal culture because they made a choice to immigrate, why can't they be expected to make the same choice with regards to inclusion versus cultural particularity? Once you have admitted the chance/choice distinction into the theory, consistency would seem to require that culture - for immigrants – should be treated as a matter of *personal choice and responsibility, not as a matter of luck* (Quong 2006, 56; emphasis added).

What follows from this, says Quong, is that Kymlicka's argument becomes incoherent because he wants to compensate immigrants for the high costs of immigration, but his resourcist position makes this impossible if we assume they chose to emigrate: “if Kymlicka does not think we should compensate for expensive tastes, why should he think that we should compensate for expensive cultural habit that he himself has defined as chosen rather than unchosen?” (Quong 2006, 56). Hence Quong firmly believes that Kymlicka's approach cannot justify for example the claims of Sikhs in Western societies (especially in the UK) whose religious dress-code of wearing turbans cause some difficulties in public spaces and certain occupations, such as riding motorbikes and working on construction sites. He tries to prove this idea with the following example:

> Dan works as a political philosopher in a large, metropolitan city where going to the opera is relatively inexpensive – something that is great for Dan, since he loves the opera. He then chooses to relocate to a small rural town when he is offered his dream job of being a country veterinarian. Going to the opera is now very expensive for Dan as no one in his small rural town likes opera. Dan has chosen to put himself in a minority position with regard to his operatic preferences. Even if Dan did not choose his preference for opera, even if he genetically compelled to love opera, he is not owed any compensation in this story by luck egalitarian standards. Opera is only expensive for Dan because he choose to make it expensive: he decided his job preferences were more important to him than his opera preferences. If Dan was not owed any compensation before, that is, when he was a political philosopher in the big city, then he cannot possibly have a luck egalitarian claim to compensation when he immigrates to the small town (Quong 2006, 57).

In my view Quong's example suffers from two specific problems, which mean it cannot serve as a refutation of the luck multiculturalist argument. However, the failure of the example does not affect his theory as a whole. First, it applies the “billiard-ball” concept of cultures (Tully 2002, 104), i. e. it assumes that different cultures are internally homogenous and externally impenetrable. But if we hold cultures, paraphrasing James Tully, to be “overlapping, interactive, and internally negotiated” (Tully 2002, 104), then the fair terms of integration

obtains a new meaning. As Habermas points out, if the cultural/ethnical composition of a country changes, the “cultural horizon” which represents the nation's political landscape also shifts (Habermas 1994, 126). So, to put it bluntly, the example of Dan assumes that immigrants inevitably must accept the existing norms, practices, and laws in their new home-country. But if we assume that immigrants are citizens hence equals just like residents, then their claims, norms, preferences matter as much as residents'. If we take that integration has a dialogical character, then after the immigration process the “nation's perspective” will be changed – “other discourses will be held about the same questions and other decision will be reached” (Habermas 1994, 126). If I chose to put myself in the minority position, as Quong puts it, it is not a rule of thumb that I have to accept every existing norm of the majority. In this respect, Kymlicka's idea of a fair integration process is not misconceived per se, not even on luck egalitarian grounds.

Secondly, however nice is the example of Dan, Quong made a mistake because it cannot be applied to the British case (which is the precedent for Quong’s argument). Before 1971 (and before 1986 in the construction industry), wearing of helmets was not compulsory in the United Kingdom. So Sikhs came into the country where wearing helmets on motorcycles and construction sites was not compulsory, and the majority simply ignored their claims. This is totally different from that case if they had arrived to the country where wearing helmets would have been required.

If we look the issue from this perspective, Quong’s example looks like this: Dan is a political philosopher who chooses to move to a small town where he can realize his dream, he can work as a veterinarian there. He is a big opera-lover, and he is lucky because the town has an option: there is a direct service to his former metropolitan city and the ticket is not expensive. So in the Cohenian sense it is difficult to him to go to the opera, but not costly (Cohen 2004*a*, 136-137). Now the small town decides that the service is not affordable any more. Now Dan

has an expensive taste by chance, so, according to Cohen, he can resort to the local government for compensation. And this is the case for Sikhs as well, we cannot argue that their choice moving to the United Kingdom abolishes every aspect of luck. As Terry Price points out, it might have been just someone's bad luck that his/her cultivated preferences turn out to be expensive preferences by factors completely beyond his/her control (Price 1999, 271-272; quoted in Cohen 2004*b*, 26n12).[3]

Nevertheless, we had better, I would say, not to identify cultural claims as expensive tastes. In a convincing argument, David Miller draws attention to the fact that "the idea of expensive tastes only comes into play in contexts where we already know on independent grounds what a fair distribution of freedoms, rights and resources look like. … But in the present context it is precisely the proper distribution of freedom that is at issue" (Miller 2002, 56). He gives the example of religious slaughter: if we assume that this is something we should forbid, then kosher/halal butchery can be defined as expensive tastes, but if our assumption is that there is nothing wrong with this way of killing animals, then the claims of the supporters of animal rights is an expensive taste. Miller even goes as far as to assume that in the latter case "the animal welfarists should pay Jews and Muslims to abandon their dietary practices" (Quong 2006, 56).

A possible objection to Miller's argument that he picked up one of the most difficult cases of exemptions since animal rights are notoriously controversial issues. But in my opinion he does not miss the point: the most important feature of cultural and religious exemptions is that they are only expensive from the perspective of one side, for the other they are only *fair treatment*. Whereas in the case of the classical case of expensive tastes, those who can eat and

[3] Dworkin, by contrast, thinks that other people's preferences which do not intentionally aim to harm someone are not technically speaking matters of luck (Dworkin 2000, 298). This is because results of other people's choices are constitutive of one's opportunity cost. Although in this case, providing a range of options is necessary.

drink only plovers' eggs and pre-phylloxera claret know and admit that they tastes are expensive (that is another matter that they can feel they deserve more resources).[4]

2. 2 Beyond Luck Multiculturalism: The Fair Equality of Opportunity Approach

While I think Quong's example is not the best one to refute the luck multiculturalist position, I share his view that luck multiculturalism is fundamentally mistaken. My previous example concerning Sikhs illuminates what is the crux of the matter: between 1972 and 1976, wearing crash helmets were universally required in the United Kingdom. Sikhs protested against this regulation, claiming that "by making the crash helmet compulsory English law denied them equal opportunity to ride a motorcycle" (Mendus 2002, 32).

Articulating the problem in this way, it seems that luck multiculturalism simply misses the point. Focusing whether someone can be held responsible for his/her cultural preferences or not looks misleading since it fails to recognize what is at stake here – the consideration of *individuals as equals*. In her famous writing, *What is the Point of Equality*, Elizabeth Anderson challenges the luck egalitarian approach by pointing out that the point of equality is not the mitigation of the role of bad luck in people's life, but to protect the equal moral worth of persons (Anderson 1999, 312). Equality thus conceived oppose unequal social relations and hierarchies that can harm the equal moral status of individuals. Anderson takes this view from Iris Marion Young (Young 1990), but she also goes with Amartya Sen that for real freedom, states have to promote people's *functionings* (Anderson 1999, 316; Sen 1992). Some factors are indispensible for a person's well-being: health, nourishment, education and so on.

[4] We have to make a remark here, however, that things can be expensive in two ways: because of natural scarcity and because of the result of other people's choices.

But people need other things in life to live a full life: to be a parent, to enjoy arts, or to love somebody else - these factors are the person's functionings in Sen's view. These are the set of activities which "reflect her [the person] autonomous ends" and which constitute the capabilities of someone in a given time, hence "A person enjoys more freedom the greater the range of effectively accessible, significantly different opportunities she has for functioning or leading her life in ways she values the most" (Anderson 1999, 316). Anderson concludes that egalitarians should concentrate on the factor of capabilities: first negatively, because people are entitled to "whatever capabilities are necessary to enable them to avoid or escape entanglement in oppressive social relationship", and second positively, since "they are entitled to the capabilities necessary for functioning as an equal citizen in a democratic state" (Anderson 1999, 316).

This notion of egalitarianism as non-oppression captures the point of multicultural accommodation much better than luck egalitarianism. As Susan Mendus puts it:

> What the distinction between luck egalitarianism and oppression egalitarianism reveals is that the real issue is not whether religious and cultural beliefs are given or chosen. The real issue is whether religious and cultural commitment can run counter to one's ability to lead a fulfilling life, or whether what counts as a fulfilling life is partly a *function* of religious and cultural commitment (Mendus 2002, 39; emphasis in the original).

It is interesting that Quong arrives at a somewhat similar conclusion to Anderson, but on Rawlsian grounds (however it is not surprising if we consider the fact that he is committed to Anderson's anti-luck-egalitarian view). He borrows Jeremy Waldron's argument concerning road rules which have two main features: *compossibility* and *adequacy* (Quong 2006, 57). The former's aim is to enable travelling safely on roads for everybody. The latter's goal is the main purpose of travelling: everybody wants to reach a certain destination. In Waldron's view, the aim of liberalism is exactly this – to enable people to reach their goals without hindering others in the same activity. In Waldron's words:

> Formally speaking, the liberal claim may be described as the task of specifying a set of constraints on conduct (call it set C), satisfying two conditions: (1) no two actions permitted by C conflict with one other; and (2) for each individual who is subject to C, the range of actions permitted by C is adequate for the pursuit of his ends (Waldron 2003, 14).

Quong uses this Waldronian formula: citizen's conceptions of the good are the destinations where they want to go and justice should allow them to safely reach their goals (without harming others' same kind of goals) (Quong 2006, 57).

He supplements this idea with the Rawlsian proviso of free equality of opportunity that the state has to provide citizens to be able to advance their own conception of the good, which necessitates that people with similar abilities and ambitions should have the same chance of success (Rawls 1971, 71; Quong 2006, 57). As I mentioned already, Quong believes that this opportunity-based account can avoid the problems of luck egalitarianism and 'presents the principles of justice as an attempt to to fairly regulate the competing interests and pursuit of citizens in a liberal democratic society' (Quong 2006, 58). He thinks that this approach can shed new light on cultural exemptions from generally applicable laws. This new perspective leads to two kinds of exemptions:

> I will argue that cultural exemptions are permissible where a law disadvantages members of a particular cultural or religious group, but where the disadvantage does not affect the basic opportunities of citizenship. When a cultural disadvantage is also tied to these basic civic opportunities, then I claim that cultural exemptions can become the requirement of justice. (Quong 2006, 58)

Since the first kind of exemptions of Quong (which are *permissible* according to him) are enough for the purposes of this thesis, namely that exemptions are justifiable, I will not examine exemptions which are *required* by justice.

2. 3 Quong's Permissible Exemptions

Quong recommends that when a cultural practice of a minority conflicts with an existing law, then we should consider granting an exemption provided that the practice in question meets the following criteria (Quong 2006, 58):

> (1) The practice must not violate any basic rights or principles of justice
> (2) It must be a legitimate cultural or religious practice, that is, the practice must stem from beliefs that can be reasonably considered as central to the practitioner's sense of the self
> (3) The veracity of the claim must be demonstrable by some reasonable standard of evaluation

If we did not consider a claim which satisfies all of these points, that would harm the criterion of adequacy laid down above.[5] If laws did not meet the adequacy, only the compossibility condition – says Quong – they would be valueless from the perspective of those citizens who were unable to pursue their conception of the good life. Quong here differentiates two kinds of laws in liberal democracies: those which are *derived from basic principles of justice,* and those that, although ground in public reasons, *are not* (Quong 2006, 59).[6] It is at this point that what we said about justificatory neutrality in the first chapter becomes relevant: justificatory neutrality in his view justifies the exemption such as the Sikhs' case in construction sites who do not have to wear safety helmets and who satisfy his above outlined three points. Challenging Barry's view on the rule-and-exemption approach, he thinks that it

[5] The main idea of these criteria is simple: if a cultural practice is central to one's identity, and this fact can be proven, and it does not harm any basic rights, then *prima facie* the practice can be considered as worthy of protection.

[6] Quong applies here Rawls's concept of public reason, although he expands this concept. In Rawls's view, public reasons are reasons whose subject is the good of the whole public, and which are proposed by citizens and acceptable by every citizen (Rawls 1996, 213). Although Rawls stresses that public reasons refer only to the "constitutional essentials", Quong extend this concept to non-constitutional laws as well. For his argument about this extension see Quong 2004*a*. He also rejects the view in a separate paper that identity claims and public reasons are necessarily contradictory (Quong 2002).

is simply unfair if a particular law cannot apply to everyone, and he sets up four criteria that can determine whether granting exemptions is the best solution (Quong 2006, 61):

> 1. How important is the public goal or value that the law upholds? Laws where minorities seek exemptions are typically related to public issues like animal welfare, or public safety, or administrative efficiency. These are widely accepted goals, and all else being equal, can serve as a plausible justification for state action. But everything else is not equal, as these laws sometimes disadvantage cultural minorities. Given that the stated objectives are valuable, it may sometimes be desirable to retain the generally applicable law, but create an exemption for the disadvantaged minorities.
> 2. Whether this is the best available solution will also depend on whether the law is amenable to the rule-and-exemption approach. Laws about which side of the road we can drive on, for example, are not amenable to exemptions, whereas laws regulating uniforms for military and police officers are.
> 3. Even if the rule-and-exemption approach is possible, deciding if it is preferable as a solution will involve an idea of fairness. … exemptions are intended to ensure a distribution of the burdens and benefits in society that is more fair than the current rules allow. They are not meant to create new inequalities or disadvantages. So, for example, if employment holidays are structured around the religious holidays of the majority, exemptions from this rule for religious minorities should not mean that those employees work *fewer* days than the majority, only that they should be entitled to work *different* days. This expresses the basic idea that differential treatment is only valuable insofar as it is necessary to secure equal treatment.
> 4. … Other things being equal, the more central the religious/cultural practice is, the stronger the claim for exemption becomes.

Quong concludes:

> What is relevant is not whether the person in question can be said to possess their cultural or religious beliefs as a matter of chance or choice, but rather that they are disadvantaged by a particular law. The vision of justice underpinning this approach does not ask how people came to acquire their conception of the good – it simply claims that the purpose of a liberal society is to give everyone, as far as possible, a reasonable chance to pursue their conception of the good without preventing others from doing the same. Cultural exemptions from generally applicable laws are, at the very least, a permissible means of achieving this aim (Quong 2006, 61-62).

Quong's argument nicely detaches rules-plus-exemptions from the chance/choice dimension. Now we do not have to equalize the bad brute luck of the claimants of exemptions. In simple terms, we have to grant them these exemptions to confirm their *equal moral standing as citizens*.

If we take a look, however, at his first three and his second four criteria, then we can tell apart two main sets of issues on which his argument stands or falls. There are points in the two sets of criteria which are centred around the question of how important the practice for the identity of those who seek exemptions – these are the second point of the first set and the fourth point of the second set of the criteria. Borrowing the phrase from Brian Barry, I will call this issue the "centrality problem". Quong's approach necessitates that the religious or cultural practice that seeks for an exemption must be an essential element of the claimants' identity, and the more deeply rooted the practice in question is for the identity of the claimant, the stronger will be the justification of the exemption. The remaining points are centred around the problem of what kind of limits, costs, and burdens occur if we considering the granting of the exemption.

In the next section, I will examine the centrality problem. I will argue that this is the heart of the rule-and-exemption approach, the best way to understand this whole phenomenon is drawing attention to this factor. To prove this, I will use Paul Bou-Habib's argument, who bases his theory of religious accommodation to people's *perceived duties*. I will show that Bou-Habib's approach is a strong support to Quong's, and combining the two, we get a very feasible defense of cultural and religious accommodation. However, this is true only in the case, if we extend Bou-Habib's narrow concept integrity.

After that, I will analyze the other issue – the certain limits, costs and burdens that we should take into account concerning religious and cultural claims.

2. 4 The Centrality Criterion

A key point of Quong's argument is how important the activity in question to the claimant's identity and how important the place that it occupies amongst the cultural or religious

doctrines of the claimant. It looks obvious that there is a strong connection between the two: it is very likely that practices which are required by the basic tenets of one's religion or culture are the most influential to ones identity. These practices are important elements and tools which help to the practitioners to follow their own religious/cultural duties, or to put it another way: their own conception of the good. As Paul Kelly points out: "For a Sikh, a turban is not merely a hat that can be exchanged for any other kind of headgear; it is instead an expression of religious and cultural identity and therefore something that goes to the heart of the conditions of that person's self-respect" (Kelly 2002, 11).

The centrality factor has two main characteristics: a moral one, since it "goes to the heart of the conditions of somebody's self-respect", and a sociological (or anthropological) one, since it is a materialization of a person's deeply-held beliefs. In the end of this section, we will see how will the sociological dimension be the main method of courts to approach exemptions. But first, we have to prove that these practices are instrumental and they serve the higher-order interests of these persons. This is maybe the most important step because we have to tell apart religious/cultural acts from non-religious/non-cultural acts, otherwise we could not justify exemptions and Quong's approach would fail. But if the answer is satisfactory, then we can find a partial answer to the question, Why is religion/culture so special?

This dilemma is put forward by Barry and elaborated by Sonu Bedi. Barry writes:

> Motorcycle helmet laws bear harshly on those who get a thrill from riding bareheaded, and also mean that devout Sikhs have to find an alternative means of transport. Drug laws interfere with the pleasures of recreational drug users and prevent those from whom hallucinogenic mushrooms *form part of their religious ritual* from following it in that respect. Everyone finds some laws hard to keep: Porsche owners claim difficulty in keeping to speed limits; paedophiles have to sacrifice activities that may be *central to their lives*; and those whose cultural traditions dictate the genital mutilation of their daughters have to desist under penalty of law (Barry 1996, 540; my emphasis).

Barry here attacks the views that religious acts differ from non-religious acts, and if a practice occupies a central place in someone's life, then it provides a good justification for an

exemption. Barry gives the following argument why it does not matter that a practice is central to someone's culture:

> Let us begin, then, the assumption that the appeal to 'culture' constitutes some sort of justification itself. In order to appreciate its peculiarity, let us think for a moment about the way in which people usually defend their actions when challenged to do so. Suppose you are asked to justify some action that you have performed. Your response will normally be to explain why you did it by calling attention to features of the actions that made it the right thing to do in the circumstances. An outside observer may choose to say that you are appealing to your culture, in the rather banal sense that you have made use of your stock of ideas about what makes actions right or wrong, that you almost certainly share them with some other people, and that you were quite probably brought up with at least some of them. But this outside observation – by, perhaps, a visiting anthropologist – has no bearing on the logical structure of your defence of your action. What you are saying is that your action was right for such-and-such reasons. Since you have offered reasons, the person who challenged you to justify yourself can argue with you about whether they are good reasons or not. You can attempt to rebut his objections, of course, but what you cannot do without changing the subject is fall back on the claim that doing the action was part of your culture. There is nothing to prevent you from saying it, but when you do so you have ceased to engage in moral discourse and switched to the perspective of the anthropologist. How could anybody seriously imagine that citing the mere fact of a tradition or custom could ever function as a self-contained justificatory move? Even as an explanation, it runs into problems because it comes close to tautology (Barry 2001, 253).

To bolster this argument, Barry cites extreme examples: the Maori in the early nineteenth century, who massacred the Moriori people, because it was 'in accordance with their custom', Canadian sealers who kill seals the most brutal way possible saying that 'it is a vital part of their culture', and whalers from the Makah Indian tribe who are permitted to kill five whales a year 'as part of their cultural renaissance' (Barry 2001, 253-255). He continues the refutation of the centrality argument by attacking James Tully, who is the 'most vigorous defender of aboriginal claims'. Barry holds that in Tully's view something is being central to someone's culture equals that it is 'worthy' as well. He thinks that this view is very vivid in Tully's defense of the special fishing rights of the Aboriginal Musqueam nation when Tully is saying that 'fishing a specific body of coastal water is constitutive of the cultural identity of the

Aboriginal Musqueam nation' (Tully 1995, 172; quoted in Barry 2001, 256). Barry asserts that this is absurd:

> If the ban on fishing was really needed to conserve fish-stocks, the Musqueam may have won only a limited reprieve. Suppose that in a few years time there simply are no more fish. Will this result in the inability of the Musqueam to recognize one another as the bearers of a common culture? Or will their normative structures disintegrate, so that they descend into a 'war of all against all'? Perhaps so, but it seems unlikely (Barry 2001, 256).

While Barry's examples and reasoning are exaggerations - Tully even goes as far as defining them as caricatures (Tully 2002), I think they are very thought-provoking ones. It illuminates us what happens when referring to culture "goes all the way down". But he is wrong concerning the most important points. For a practice to be central to someone's identity is a *necessary* but not *sufficient* criterion for granting exemptions – it must be *reasonable* as well, not only *central*. Barry fails to differentiate unreasonable practices from reasonable ones, so he fails to tell apart practices which cannot be rationally accepted by everyone from ones which can. The claim of the paedophile can be rejected on the grounds that it is not a reasonable conception of the good (i.e. it neglects that persons are free and equal citizens and it refuses to take other people's interests into account), while a religious person's claim is the opposite of this. Seeing these cases as similar is a big mistake.

Moreover it seems to be the case that Barry thinks our practices are only defensible (or debatable) from the first person perspective. I do something for such-and-such reasons. But he thinks that if somebody else says from me that I do something for such-and-such reasons will be an outside point of view (the anthropologist's), the moral discourse shifts to an anthropological one. I think this is fundamentally mistaken: as Parfit points out (Parfit forthcoming, chap. 1-3) our desires do not give us reasons, so the religious person's desires to follow his/her traditional practices cannot be the source of his true reasons, but his/her having this strong preference can be objectively a source of our respect towards his conduct based on

this strong attitude. Barry's view does not enable us to recognize the importance of religious (or other duty-based) conduct in the other person's life. And this recognition is far from being a tautology, or the point of view of the anthropologist. Consider the following example: Peter is a football fanatic. He loves to play and watch this game, he attends every match of his favourite team, and when he cannot, he records the match on DVD. In Barry's view Peter can argue that his activity is valuable only appealing to reasons related to football itself, and he cannot argue that football is central to his identity, because it would not provide us reasons why should we respect his activity as a fan. Will I shift to the position of the anthropologist when I say we have reason to respect Peter's activity because this is of primary importance to his well-being? Should I be engaged in a subjective argument about the point of football? Surely not. We can recognize the value of his activity without saying anything about the content of it. Maybe there is shift, when we state this: from Peter's view his desire of playing/watching football is teleological, since he looks at it as an end in itself, while from our point of view his desire is instrumental since from our perspective the answer why he watches football is because it supports his well-being.[7] But this does not change the fact that *it provides us a reason for recognition*.

Bedi also attacks the centrality view in his paper – he holds that the only feasible way to justify Sikhs' exemption not to wear helmets if we assume that their religious/cultural practices are not voluntary, or 'primordial' in his words (Bedi 2007). He says the opposite of what I quoted from Paul Kelly: he disputes that wearing of turban is a necessary practice for being a Sikh (Bedi 2007, 239). The Khalsa, the baptism-like ritual of Sikhs consists of the five main rituals, the five K's. These are *kes* (uncut hair), *kangha* (a wooden comb), *kara* (a bracelet), *kirpan* (a sword or knife), and *kachh* (an underwear) (Bedi 2007, 239). Wearing turbans is not a basic tenet of Sikhism, this ritual became a practice for some of the Sikhs

[7] For the distinction between teleological and instrumental desires see: Parfit forthcoming, chap. 2.

only after 1699, when the tenth and last guru, Guru Gobind Singh, instituted this practice together with the Khalsa (Bedi 2007, 239). As Bedi argues:

> One Sikh scholar goes so far as to proclaim that the turban is not a Sikh symbol but only the symbol of the Khalsa order. … If there is a question as to whether the turban is a bona fide symbol of every Sikh, exempting wearers of turbans from facially neutral laws leads us to reify and deem compulsory that which may very well be just a preference and is therefore open to contestation and debate (Bedi 2007, 239).

Bedi's argument is the following: wearing a turban is not a central practice of being a Sikh, it is only a mere preference that undermines the claim for exemption. Bedi's observation points to an important factor – many scholars make the mistake defining a group as totally homogenous, although there can be sub-groups within a group, moreover, it is possible that group leaders hold different views on the basic tenets of the group than average members, and so on. It seems to be the case that his assumption is the following: if something is not the part of the basic tenets of the group, then it falls to the category of mere preferences which cannot be differentiated from other not religious or culturally motivated preferences. Hence the Sikhs' wearing of the turban becomes a simple fashion issue.

But his objection just begs the real question, because Sikhs who find wearing a turban essential to their identity do not regard it as a mere preference. If there is a sub-group which hold a practice necessary for the salvation of its members, then they will not find the argument persuasive which tells them that they wrongly believe that their practice is duty-based. It is a very weird logic that we should explain religious tenets not taking to account those people who practice them. Not mentioning that this assumption is counterintuitive as well: if turbans are only a mere preference for Sikhs, it is highly unlikely that they would take

the trouble to go and demonstrate or lobby against hard hat regulations, as they do in many countries. If it is only a fashion-related preference, what is the whole fuss about?[8]

Bedi, however, encounters six other arguments which conclude that the exemption of Sikh motorbikers are not justifiable, and which 'cannot adequately answer why religion is special' (Bedi 2007). These six arguments are: the value of diversity, equal respect, tradition, non-instrumentality, cost and normativity (Bedi 2007, 241), and Bedi firmly believes that none of them can distinguish a Sikh biker's claim for an exemption, from a non-Sikh hat wearer biker's.

The diversity view promotes autonomy that can provide the diversity of practices, while equal respect requires us to respect individuals' decisions (Bedi 2007, 241-242). The non-instrumentality and tradition arguments say that religions and cultural traditions do not serve extrinsic interests and have a long history, respectively (Bedi 2007, 242-243). I agree with Bedi that these arguments are not appropriate justifications, since one can apply these arguments to non-religious groups as well. But the last two arguments are much stronger than the first ones: “This [the cost] argument maintains that the Sikh endures a greater cost in having to follow the helmet law. The hat-wearer may be disappointed at the prospect of having to take her hat off, but the Sikh will suffer more” (Bedi 2007, 243). But what does this suffering consist of? Bedi gives the following answer:

> Not being able to wear the turban may mean estrangement from the Sikh's community, a sense of guilt from not following an alleged duty to God or severe distress from violating a divine command. More significantly, the Sikh appeals to a comprehensive belief system that dictates many components of his life. Being forced to follow the helmet law has implications for other aspects of the Sikh's life. If one practice is undone, all may collapse or be put in jeopardy (Bedi 2007, 243).

While Bedi identifies here the crux of the problem, he draws the wrong conclusion of it:

[8] We should note, however, that it is not obvious who is entitled to judge how central is a practice to its bearers. Courts, of course have to make these judgments from time to time, but governments usually do not want to make such judgments like Bedi, i.e. to decide which are the basic tenets of Sikhism and which are not.

> Suppose I bet my entire savings that I can wear a hat, instead of the legally required helmet, and ride my motorcycle around town. … The police stop me and ask why I am not wearing the helmet. I tell them what is at stake – how much I would suffer, if I were not given an exemption. I would lose my savings and perhaps suffer much humiliation. Still, this would be a laughable argument. The police would no doubt chuckle, telling me that it was stupid to bet my money in such a way (Bedi 2007, 243).

Since Bedi defines turban wearing of Sikhs as a mere preference (since it is not a basic tenet), then it is something similar to the gambling case above. But this example is simply flawed because he does not make a distinction between the certain kind of costs, though, it has crucial relevance in this case. Bedi, as a careless law-breaker would suffer a great financial damage and perhaps embarrassing humiliation too. But how can we compare these costs with the Sikh biker's who will suffer immaterial damages? How can somebody compare the loss of one's livelihood with the loss of someone's belief in his salvation? These losses are incommensurable, not to mention that Bedi's example is a mockery: he compares deeply held spiritual beliefs to foolish financial bets.[9]

Therefore it is not surprising too, that he draws the wrong conclusion concerning the normativity argument as well. He cites Bhikhu Parekh as the supporter of the argument that 'we derive our values' from our cultural communities (Bedi 2007, 244). Bedi also considers this account useless because voluntary associations such as the Boy Scouts or Rotary also works under the direction of strong ethical norms (Bedi 2007, 244). Bedi concludes that exemptions make sense only if we take them as unchosen.

But he misses the point concerning this example too: it is very unlikely that a member of the Boy Scouts would take such identity constituting norms which are in strong connection with dress codes. If a boy scout could not wear his cap on a motorbike, he would not feel that he is not the same person anymore - unlike the Sikh biker.

[9] Bedi's paper argues that we falsely assume that religion is somehow special. In section 2.6, with the help of Bou-Habib's duty-based theory, I will argue that he is wrong: our practices related with our duties make our acts special because they are necessary to keep our integrity intact.

For Bedi, it would have been more beneficial to concentrate on parallel, real world cases instead of creating artificial examples. If he were focus on his two observations, namely that the Sikh biker derives his values from his culture/religion and he would suffer a great, immaterial loss, then we easily arrive to the case of conscientious objection. In the next section, I will argue that we can capture this phenomenon better if we consider the Sikh's case as conscientious objection.

2. 5 Conscientious Objection

Joseph Raz defines conscientious objection as "a breach of law for the reason that the agent is morally prohibited to obey it, either because of its general character, (e.g. as with absolute pacifists and conscription) or because it extends to certain cases which should not be covered by it (e. g. conscription and selective objectors and murder and euthanasia)" (Raz 1979, 263). None of the above mentioned examples, either Barry's or Bedi's fall into this category.[10] People who like riding motorcycles bareheaded, or Porsche owners who like driving fast, or recreational drug users do not feel that riding bikes bareheaded, or driving very fast, or having drugs are their duty. They want to do these things simply because they feel a motivation or a drive to do these actions for pure welfare satisfaction. But Sikh motorcyclists' action is not about welfare satisfaction, it is connected with what Derek Parfit calls *deontic*

[10] We can, however, make a difference among the several types of conscientious objections. First, someone can conscientiously object that the state forces him engaging in one specific activity – this is the standard case of the pacifist who does not want to take up arms, but he is not against medical work in the army. A subversion of this category when someone conscientiously objects the fact of state force itself: the case of Jehovah's Witnesses and the Amish are good examples – the members of the former group do not want to make up for military service by substitutive service, while the members of the latter group do not want to pay any fees of social services. The second category is when the problem is not state force, but its different effect: an example to this can be if a state do not let Sikhs, for example, wear their turbans in the army, although military service is compulsory in the country. The third category is when state action restricts the options of a group: a fine example is the already mentioned crash helmet law – Sikhs are not forced to use motorbikes but the compulsory helmet regulation makes this impossible for them. In this thesis, my attention focuses on the mix of the second and third category.

beliefs, which appeal to their evaluation at which acts are wrong (Parfit forthcoming, 178). Sikh motorbikers who do not want to wear a crash helmet want to avoid an action which they hold *morally wrong* – it is just like conscientious objection. As Raz observes, if somebody thinks that his breaching of law is morally justified, then this does not mean that his action is done for moral reasons. So, it may be the case that even the paedophile thinks that his action is morally permissible and justifiable, but, on the other hand, this will not be a morally motivated act – they would not think that their activity is done because they have a duty to do this. The case of conscientious objection goes beyond this: those who participate in conscientious objection think that abiding by the law would be morally wrong. And this is what makes the Sikh case different from members of voluntary groups: boy scouts would not think that their wearing of their hat instead of the helmet is morally required, while Sikhs do. The task is then to find a good explanation which can prove that we can tell apart duty-based actions from other actions, and these duty-based actions are eligible for granting exemptions.

2. 6 Cultural Accommodation Based on Perceived Duties

In his essay, *A Theory of Religious Accommodation* (Bou-Habib 2006), Paul Bou-Habib offers a subtle and convincing approach of religious and cultural accommodation, which satisfies the above mentioned criterion. The main strength of his argument is that he detaches the case of religious and cultural difference from luck egalitarianism and emphasizes the importance of the *integrity* of the person as such.

According to Bou-Habib, integrity is the constitutive part of human well-being. He sketches the following framework (Bou-Habib 2006, 111):

> P1. All persons have a right to an equal opportunity for well-being;
> P2. In order for all persons to enjoy an equal opportunity for well-being all must have a right to religious accommodation;
> C: All persons have a right to religious accommodation.

His concern does not touch upon P1, because he assumes that it is generally accepted. We will see later why this point is defensible. He offers three justifications of P2 (he prefers one of these justification), that can lead us to the conclusion (C) (Bou-Habib 2006, 111). First, he examines the assumption that religion is the basic good. If that was the case, religious accommodation would be inevitable since religious conduct would have an intrinsic value. But that would depend on the truth of a particular system of belief (Bou-Habib 2006, 112). In other words, he wants to avoid theological debates, or "partisan" arguments in his definition (Bou-Habib 2006, 125n6).[11]

If somebody wants to outline a non-partisan approach, he/she should define religious conduct not as a basic but as a derivative good (Bou-Habib 2006, 113) - an obvious approach could be that religion is an "intense preference", that is, religious conduct serves the *subjective well-being* of a person (Bou-Habib 2006, 114). But this raises a difficulty: according to Bou-Habib it would both fail on the *hedonic test* and Dworkin's *envy test*, because religious people would consider their religious lives which goes better than other people's non-religious lives independent of the difficulties and burdens that their religious conduct cause (Bou-Habib 2006, 116).

This is why Bou-Habib supports another derivative-good argument, which uses an *objective* account of well-being, namely that religion is a necessary part of religious persons' *integrity* (Bou-Habib 2006, 117).

Bou-Habib's concept of integrity consists of four elements. The first one is that integrity is a technical term that "refer[s] to what is maintained when a person acts in accordance with his perceived duties" (Bou-Habib 2006, 117). He adds: "If a person believes he has a certain duty

[11] We can add that avoiding subjective, partisan arguments helps to set aside debates about perfectionism.

and fulfils it, his integrity, in my sense, remains intact; if he is unable to fulfill it, then he suffers a loss of integrity" (Bou-Habib 2006, 117).

Secondly, he defines duties as conduct required to perform even if they did not yield "happiness from performing them" (Bou-Habib 2006, 117).

The third part of his integrity concept is that it is enough for people to act in accordance with their *perceived duties* regardless of what are their *true duties*. His final point is that his conception of integrity is a narrow one comparing to other conceptions of integrity (Bou-Habib 2006, 117-118).

He summarizes his integrity argument for religious accommodation as the following:

> We shall assume, as we have done throughout, that all persons have a right to an equal opportunity for well-being. In order for all persons to enjoy an equal opportunity for well-being, I submit, each must be able to enjoy the basic good of integrity. Since some, indeed many, individuals see their religious conduct as something they must perform out of duty, in order for them to enjoy the good of integrity, it is necessary that they be able to perform their religious conduct freely. Since their being able to perform their religious conduct freely is derivatively necessary in order for them to enjoy an equal opportunity for well-being, they have a right to religious accommodation (Bou-Habib 2006, 119).

In the following part of the thesis, I will point out that his approach has some advantages compared to the subjectivist views, but his strategy to narrow down the concept of integrity makes his project vulnerable to some objections, nevertheless, it does not lose its appeal. This vulnerability reveals itself in the implications of his approach, when he tries to gauge the costs of religious/cultural accommodation (Bou-Habib 2006, 123). I will argue that if he had not narrowed down the concept of integrity, his approach would have been more appropriate concerning costs and competing interests, because in this case, a certain amount of autonomy would have come into the picture, which is totally lacking from his work. I will argue that it is not unimportant how we acquire our duties and our choices depend on having relevant choices.

2. 6. 1 Objectivism and Subjectivism

As I mentioned above, Bou-Habib rejects the subjectivist view of religion as an intense preference. Although it has the advantage being nonpartisan, in his view it does not follow from this approach that multicultural accommodation should be promoted, because the hedonic test and the envy test show religious accommodation is in fact unnecessary for equality of subjective well being (Bou-Habib 2006, 115).

At first glance, however, it seems contradictory, or at least very odd that his objective view of well-being contains a subjective element, namely the third part of his concept of integrity (the point of perceived duties). Just take a look at his story which illustrates this third point:

> ... imagine someone who refuses to purchase a certain commodity because she believes her duty is to refrain from encouraging the "sweatshop" environment in which it is produced. Now, as some economists have argued, she may be mistaken about what her duty truly is in this matter. It may in fact be better for the workers in question to remain in a "sweatshop" environment if their only alternative is to have no job at all. According to my conception of integrity, however, our conscientious consumer's integrity will not depend on whether the economists are right or wrong about this issue (unless, of course, this affects the consumer's own convictions about what her duties are). Our conscientious consumer retains her integrity, at least in this area of conduct, so long as she acts in compliance with her own considered judgment about which commodities she ought or ought not to consume. (Bou-Habib 2006, 118)

Why is Bou-Habib's argument able to reject a subjective view of well-being like the intense preference approach, but is at the same time capable of using a very strong subjectivist element? It is here that what we observed concerning Barry's view on the third person's perspective (or, in his words, the perspective of the anthropologist) becomes relevant. The conscientious consumer's desires not to buy sweatshop products cannot be the source of his true reasons, but his having this strong preference can be objectively a source of our respect towards his conduct based on this strong attitude. In contrast to Barry's and Bedi's approach, this integrity/duty based view enables us to recognize the importance of religious conduct in the other person's life.

Requirements of equal subjective well-being are satisfied under laws that impose (may be serious) costs on religious conduct, because religious persons would bear these costs to maintain the possibility of carrying on their religion, hence they would still find their life a better life than another life. The perceived duty view, by contrast, sheds light to the fact that most people have duties and we should accept and respect these deep attachments. In Bou-Habib's words:

> Most people perceive themselves as having duties that they must abide by – perhaps not religious duties, but certainly duties of one kind or another. Most people feel they have duties to their relatives and friends, or to the environment, or to animals, and so on. Being under a duty is a familiar part of our experience as agents with moral lives. Because of this, I believe the claim 'because my integrity requires it' – once we have clarified what we mean by 'integrity' – appeals to a value that most people can, in fact, appreciate including non-religious people. Indeed, it is a strength and not a weakness of the integrity argument that it places claims to religious accommodation under a heading that is familiar to religious and non-religious persons alike – in fact, to all persons that are familiar with the experience of wishing to fulfill a duty. Furthermore, the integrity argument gives non-religious persons a way of understanding 'what's so special about religion' – or at least, 'what's so special about a religious person's being able to practice his religion' – namely, that this enables him to instantiate in his life something they themselves value as moral agents: their integrity. (Bou-Habib 2006, 119; italics in the original)

So he is able to apply an objectivist view (which says that religion is a derivative good), while at the same time being able to support claims for religious and cultural accommodation which are only valuable for those persons who seek the aims of the claims in question.[12] I would like to point out, however, that his narrowed down conception of integrity entails a problem, namely that it is not unimportant how we acquire our duties. This is a problem, since the fulfillment of duties based on adaptive preferences cannot lead to integrity, no matter how strongly the person in question pursues these adaptive preferences. I think this problem does not undermine his approach as a whole, but we should move closer to the first

[12] I would like to thank Andres Moles for a helpful discussion on this problem.

integrity concept that he does not want to adopt. This first concept, however, necessitates a certain amount of autonomy that a person must possess.

2. 6. 2 Integrity and Following the Crowd

Bou-Habib chooses an *internal* critique of the intense preference approach: he says that even if we accepted that the intense preference view is correct, this would not justify a right to religious accommodation. He mentions, however, that there is an *external* critique of this approach, which asserts that the subjectivist conception of well-being is itself implausible (Bou-Habib 2006, 114). This criticism asserts that the subjectivist conception of well-being cannot cope with the problem of *adaptive preferences* (Bou-Habib 2006, 125n11). In this section, I will point out that while Bou-Habib narrows down the concept of integrity, the adaptive preferences problem which was external in the case of the intense preference approach, became an internal difficulty in his perceived duty approach. For it is important that agents whose integrity respect by us do have a certain amount of *autonomy* and this can be a factor when we gauge the costs in cases when cultural/religious accommodation conflicts with other considerations. Bou-Habib's idea of integrity very much relies on Cheshire Calhoun's work *Standing for Something* (Calhoun 1995).

Calhoun gives the following three different conceptions of integrity (which he attributes to Bernard Williams, Harry Frankfurt, Gabriele Taylor, Lynne McFall, and Jeffrey Bluestein) (Bou-Habib 2006, 118):

> 1. *The integrated-self account*: integrity involves the integration of "parts" of oneself – desires, evaluations, commitments – into a whole.
> 2. *The identity account*: integrity means fidelity to those projects and principles which are constitutive of one's core identity.
> 3. *The clean-hands account*: integrity means maintaining the purity of one's own agency, especially in dirty-hands situation.

Bou-Habib's conception of integrity differs from all of these concepts, in a way that it leaves out the questionable features of these concepts, but at the same time preserves the core that they all consider as of main importance: “acting in accordance with perceived duty” (Bou-Habib 2006, 118).

In the case of the first point, according to him, this narrowing down looks like the following:

> First, as with the integrated-self account, my account of integrity stresses the value of self-integration; however, unlike that account, my emphasis is not on the integration of the different parts of the person's psychology, but on the integration of a person's actions and his beliefs about duty. This is, I believe, an advantage, for, as Calhoun points out, it is not apparent why we should find the absence of internal inconsistency, or ambivalence – i.e. the absence of conflict between different parts of a person's psychology – necessarily valuable as the first account suggest (Bou-Habib 2006, 118).

At this point, Bou-Habib's approach leaves out something that Calhoun supports, and hence it loses something which is of primary importance concerning religious/cultural accommodation. The first point, the integrated-self account relies on Harry Frankfurt's work on freedom and responsibility (Calhoun 1995, 236). In Frankfurt's view, the main feature of integrity is not to be a “wanton” (Calhoun 1995, 236). Being a wanton is someone who lacks capacity or fails to make up her mind about which of her desires she wants to be volitionally effective: “As a result, wantons act on whichever desire happens to be psychologically strongest at the moment” (Calhoun 1995, 236). Obviously wantons lack integrity, but this is not the whole story. Not being a wanton does not mean that somebody has integrity: weakness of will and self-deception can undermine the individual's ability to act on her actual or professed endorsements (Calhoun 1995, 236). The upshot of weak will and self-deception is that the agent will be unable to integrate herself with “what she endorses or claims to endorse” (Calhoun 1995, 236). But wantonness can spoil the agent's second-order desires as well. Calhoun cites Gabriele Taylor to illustrate that it is very important *how* one comes to endorse a first-order desire: “If a person adopts values only because her group does, without

having any reasons of her own for thinking that these are the right values, then her second-order volitions will not really be her own" (Calhoun 1995, 237). So *crowd followers* also lack integrity. This is a crucial concern for Bou-Habib's approach.

If a crowd follower lacks integrity, then we do not have to treat his religious conduct as something special and unique as Bou-Habib's approach seeks to justify, it is nothing more than a practice which has only an illusion of *free will* and *choice*. Bou-Habib completely dismisses the examination of this problem. He only observes that according to Calhoun it is not obvious why one should think that the absence of internal inconsistency leads to the lack of integrity, but he fails to recognize that even Calhoun herself finds crowd following a big problem. She says:

> In sum, the integrated-self picture of integrity, though outlining some important, necessary conditions of integrity (for example, *not being a mere crowd follower*), reduces integrity to volitional unity. As a result, it obscures the fact that persons can have reason to resist resolving conflicting commitments and ambivalence about their own desires, and thus that resisting wholeheartidness may sustain integrity rather than be symptomatic of its absence' (Calhoun 1995, 241, my italics).

When Bou-Habib takes into account the implications of his view of integrity, he fails to recognize the strength and the implications of this problem. He only encounters the problem that religious accommodation can undermine other people's equal opportunity for well-being (Bou-Habib 2006, 123). But he forgets to realize that religious conduct can undermine the well-being of the person in question who acts upon the religious conduct. Concerning this problem, we can look back for a moment at what Barry says about cultural narrow-mindedness. The statement "my integrity requires it" cannot "go all the way down". If somebody's claim is to respect his perceived duty, it is of primary importance that these duties must be his duties, not someone else's. Even if somebody is indoctrinated to a reasonable religious/cultural tenet, then the claim for accommodation cannot be defended, since in this case we defend the social practice, not the person's integrity – and the main point

of accommodation is the *defense of the person, not the conservation of a cultural/religious practice*. According to Bou-Habib's narrow sense of integrity, it would be required to follow the practice, no matter the way how the person has acquired it. But on the Calhounian/Frankfurtian account, when this is the case, then it is a crowd following, and as such what lacks in this case is exactly integrity (Calhoun 1995, 236).

Does this mean that we have to entirely reject Bou-Habib's argument? I think we should not, but how can we jettison this problematic point? I think his account of perceived duties can work if we supplement his narrow concept of integrity with a certain amount of *autonomy*, which, in my view, the Frankfurtian approach necessitates. For if an agent can deliberately choose his/her religious conduct, then (s)he is not a sheer crowd follower, and his/her integrity remains unharmed.

2. 6. 3 Real Choice, Voluntariness, and Instrumental Autonomy

The obvious question of why autonomy is that important can be raised here. We can answer that it is that important because the nature of the issue makes it important. Cultural and religious membership can be *demanding*. These groups expect their members to forgo certain activities and conducts in order to fulfill their duties towards the group. This is why Bou-Habib can claim that we should respect these strong attachments: we should respect in the third person that there are people who sacrifice a lot to be able to achieve their conception of the good. But if such is the case, then it is of primary relevance which are the terms and conditions of cultural and religious membership. If we want to avoid crowd following, or morally objectionable situations (situations in which certain groups can exploit their members), then we have to provide for the group members the possibility of informed, deliberated judgments and available exit options – these are the factors that make a group a

voluntary association (Barry 2001, 148-149). The problem stems from the fact that certain traditional cultural/religious groups want exactly to inhibit autonomy and easy exit options - this is what Will Kymlicka calls “internal restrictions” (Kymlicka 2002, 341). We can suspect that the more strongly the group seek internal restrictions, the less the group members have autonomy to decide themselves what are their *real options*. It is not accidental that Bou-Habib's scale of the costs of accommodation (Bou-Habib 2006, 123-124), which start from the least costly accommodation such as compensating Orthodox Jews for their inability to work on Saturdays, and ends in unreasonably high costs such as infant sacrifice. It is very likely that in the costly end of the scale we find those cases when the group wants to oppress its own members. What is relevant here is that a broader notion of integrity can single out these too costly cases and the cost scale that Bou-Habib brings into his theory to use as a “safety belt” can become an internal side-constraint: these costly demands can be rejected on the ground that these practices undermine the person's ability to self-integration. The objection can be made that while it may be true that the broader notion of integrity can single out too costly cases/conducts, it does not have any relevance since the costs matter only, because crowd following which causes small costs is not important. But I think it is important, because in this case we have an objectivist view, which can say that in some instances the case is not that somebody happens to find herself in a situation in which her integrity (acting upon her perceived duties) requires too costly consequences, but her preference formation is seriously damaged, no matter which are the consequences of her preference satisfaction.

But this self integration is impossible without a certain amount of autonomy, which is a necessary premise of voluntariness. To illuminate this, we can invoke Thomas Scanlon's *Value Choice theory* (Scanlon 1988, 178).

Scanlon uses the word of choice instead of voluntariness, because "this term applies not only to something that an agent does – as in 'She made a choice' - but also to what an agent is presented with - as in 'She was faced with this choice.' It thus encompasses both an action and a situation within which such an action determines what will happen: a set of alternatives, their relative desirability, the information available to the agent, and so on" (Scanlon 1988, 177). Hence his Value Choice theory based on the idea "that it is often a good thing for a person to have what will happen depend upon how he or she responds when presented with the alternatives under the right conditions" (Scanlon 1988, 178). Scanlon differentiates three kind of values which can influence our choices: *predictive* (such as ordering a menu in a restaurant), *demonstrative* (such as a person's buying a gift for his spouse by himself), and *symbolic* (such as what career to follow) values (Scanlon 1988, 178-180).

In Scanlon's view, these personal values take on moral significance:

> ... by being the basis for a claim against social institutions (or against other individuals). In my view, to show that a social institution is legitimate one must show that it can be justified to each person affected by it on grounds which that person could not reasonably reject. One thing which people may reasonably demand, however, is the ability to shape their lives and obligations through the exercise of choice under reasonably favorable conditions. Moral principles or social institutions which deny such opportunities when they could easily be provided, or which force one to accept the consequences of choice under extremely unfavorable conditions which could be improved without great cost to others, are likely to be reasonably rejectable for that reason (1988, 184-185).

It is obvious that practices such as genital mutilation or infant sacrifice are influenced by social conditions and pressures which are themselves unreasonable, or cause unreasonably high costs. At this point, voluntariness obtains a twofold character: it is *personal*, since it is important that I am the one, who makes the choice, but on the other hand my choice depends on the *social conditions* within which my choice can be made. Hence, voluntariness and autonomy require *deliberation* and *real options*.

Does this mean that we should keep ourselves to a strong sense of autonomy? Not necessarily. Richard Arneson and Ian Shapiro attacks a religious practice, namely the right of Amish parents to withhold their children from schooling after the age of fourteen (the statutory requirement of compulsory education is sixteen years in Wisconsin), on the grounds of *instrumental autonomy* (Arneson and Shapiro 1996). Theorists such as Amy Gutmann or Joel Feinberg hold that children have the right to an "open future", which means the necessity of maximizing their options and the development of critical reasoning (Arneson and Shapiro 1996, 158). Arneson and Shapiro, by contrast think that this open future conception of autonomy is contested in contemporary societies, but the instrumental sense of autonomy is not vulnerable to critics: choosing after well-informed critical deliberation (autonomously) "increases the probability of choice, secular or traditionalist, that is better for the chooser" (Arneson and Shapiro 1996, 170). In their model of autonomy, "autonomous choice is not itself an element of the good life; it is merely a device for discovering the good life" (Arneson and Shapiro 1996, 170).

In my opinion, this instrumental autonomy can be the necessary requirement for being able to preserve integrity in the Frankfurtian sense, and being able to make choices under reasonably acceptable conditions. This investigation can be the necessary support for Quong's criterion that the claim for accommodation "must be a legitimate cultural or religious practice, that is, the practice must stem from beliefs that can be reasonably considered as central to the practicioner's sense of the self'. But this is not the end of the story. Quong, just like Bou-Habib understands that the rule-and-exemption approach can work only if we try to balance the certain costs that can occur concerning the specific cases. Quong's first and third points from his first three criteria, and the first, second, and third points from his second four criteria, encounter the costs which are the results of conflicting interests between the upholding of the rule and the provision of the claim. Bou-Habib also acknowledges that the

protection of integrity must be weighed against other considerations (Bou-Habib 2006, 123-124). In the next section, I will examine this side of the issue, namely the considerations and balancing of costs.

3. Where is the Limit? Costs, Burdens, and Consequences

Here we arrive to the point that the rule-and-exemption approach is sound and religious/cultural accommodation per se can be justified in order to provide citizens an equal moral standing in society. But the question cannot be escaped: what are the limits of multicultural accommodation? In this section, I argue that Quong's approach does a good job from this perspective as well, since it is open to consideration of costs that can be occurred in these cases.

The first and most important consideration here must be that no basic rights can be violated. This is something which is generally shared by proponents and opponents of multiculturalism alike. There is no excuse for infant sacrifice, genital mutilation, or false imprisonment. So our main point is that no basic right should be harmed (and this is a key point not just of Quong's, but also of Bou-Habib's work too). As I have mentioned already,[13] identity claims must be *reasonable* as well. Those claims which are unreasonable and rejects that other people are free and equal, and they must have the same opportunity to realize their conceptions of the good are not eligible for being considered as legitimate. As Quong points out, if one's religious duty is to steel somebody's laptop, for example, this claim cannot be covered by the right of freedom of religion, since "rights are only intended to permit or protect choices made within a limited domain, and that domain is set by the boundaries of political justice", which means that …"the alternatives open to you in exercising your rights are always constrained by the general principles of justice derived from the ideal of persons as free and equal" (Quong 2004*b*, 331).

The crux of accommodation is, however, the characteristic of opportunity sets. The issue of accommodation arises from this source: certain minorities find the given opportunity sets

[13] See page 21.

unacceptable. Let us consider the case of working days. In some Western countries, it causes a problem for Muslims, or Jews for example. Devout Muslims cannot work on Fridays, while Jews cannot work on Saturdays. It is obvious that the Western calendar having its roots in Christianity affects these groups disadvantageously. If the calendar were neutral concerning religions, the obvious answer would be that members of these groups should bear the costs of their decision of following the tenets of their groups. But this is not the case, and this existing opportunity set is biased against them, so there is a prima facie claim for an exemption. If we keep ourselves to Quong's view of fair equality of opportunity, or what David Miller calls the "equal respect of persons" (Miller 2002, 48), then it is not indifferent how do the given opportunity sets look like and how is the social background that determines these opportunity sets. Miller points out that liberals must enable every person the opportunity to realize their goals and ambitions, hence the allocation of opportunities which is distributed by the state (not the market) cannot disadvantage certain groups (Miller 2002, 46).

To be able to locate the costs, we should separate two levels of these practices. The first is the practice itself, the second is the consequence of the clash between the practice and the regulation. Peter Jones calls these the *burdens* and *consequences of belief* (Jones 2006, 614), while David Miller defines them as *direct* and *indirect constraints* (Miller 2002, 48). The burdens and direct constraints are practices determined by the group (e.g. eat only kosher/halal meat) and consequences and indirect constraints are special situations that arise as results of these practices (e. g. confrontations with animal welfare regulations). Roughly speaking the consequences of belief and indirect constraints are the things that we have to accommodate. Miller and Jones suggest that if the consequences/indirect constraints of these practices are too costly because of biased/inappropriate opportunity sets, then the exemption is justifiable (Miller 2002, 56-57; Jones 2006, 616-617).

But this is not the end of the story. We saw that the logic of rule-and-exemption approach consist in that both the rule and the exemption is defensible. Quong rightly points out (this is the first of his second four points) that the cases of exemptions are frequently related to public goals. So, to be able to accommodate these cultural/religious practices, we should balance the weight of these legitimate public goals and the importance of exemptions. But how should we do this balancing? First, since we are talking about accommodation, where it is possible, we can try to solve problems without granting exemptions. Simon Caney aptly attracts our intention to the fact that those who get the exemption can *make this up* somehow (Caney 2002, 88). Just like in the case of conscientious objection, pacifists can make it up by substitutive service. Those who cannot trade on Saturday can trade only on Sunday but not during the whole weekend. This idea fits with Quong's that exemptions should not create new inequalities. I mentioned in the beginning that sometimes supporters of accommodation fight for new rules, not for exemptions. Sometimes this could be good solution: as Caney points out, the replacement of the existing law is better than exemptions: the new rule "one must not trade on (at least) one day in the week" can yield the wished result (Caney 2002, 89).

We should state, however, that not every rule is flexible like this case, and there can be unfortunate cases, when replacement of the law is not possible. If a devout Muslim school teacher cannot work on Friday, and the school cannot arrange that his working week would have the same working hours as the other teachers, then the exemption might be too costly. For it would be unacceptable to ask students to go to school on Saturdays, or to force the school to pay the same amount of salary for less work. The criterion of compossibilty plays a role here: if, in the case of this Muslim teacher, the school can find free periods where he can teach, then he can make it up not teaching on Fridays (Caney 2002, 86).[14]

[14] But if a person, for the sake of this argument, is a member of a vampire sect being able to work only during nights, moreover his dream job is to be a school teacher, then our teacher-want-to-be vampire has to bite the bullet and forgo teaching, no matter how central this ambition is to his identity. (I would like to thank Andres Moles for calling my attention to this problem).

Nevertheless, we can carry on the examination of the problem of costs and burdens from the point of view of conscientious objection. Raz observes that a rule can serve the interest of the person who is the subject of the duty, or can serve the interests of identifiable persons, or can serve the interest of the public as a whole (Raz 1979, 283). The support of conscientious objection is the strongest, according to him, in the first case - concerning paternalistic laws (Raz 1979, 283). When the breach of law harms identifiable individuals, the case of conscientious objection is the least appealing, while when the breach of law harms the public interest conscientious objection is also affordable (Raz 1979, 285-286). The situation concerning identifiable individuals is obvious: one cannot impose the costs of his/her belief on somebody else. Raz argues that when public goals are at stake, we have to be aware that the nature of public goods/provisions is that they do not depend on the contribution of one specific individual, even knowing that these rules aim to reduce the work of law-enforcement agencies (Raz 1979, 286).

We can check his argument with the help of the following examples. The Sikhs wearing turbans instead of helmets represents both the first and the third case: it is a paternalistic law (trying to save a specific individual) that serves a public goal at the same time: to reduce the number of fatal accidents on the roads. Since the Sikh person in question risks only his physical safety not somebody else's, it is feasible that we are to prefer his conscientious beliefs and integrity and leave this decision to his discretion. Since he is only one person, it is very unlikely that his action not wearing a helmet undermines the purpose of the regulation. The objection can be made that here a group is entitled to breach the law not just an individual. It is not indifferent how we appear in the eyes of our fellow-citizens, so it can be viewed simply as a bad message if a group is entitled to go against a publicly accepted goal. Against this objection, we can make use of what we have said about people's integrity and the centrality problem. Since it is not a subjectivist view, it can serve as a public reason for

granting an exemption. People can be sure that Sikhs do not want to breach this law for pure welfare satisfaction, but because they feel this is their duty. Actually, it is more like a sacrifice than a pleasure – they expose themselves to greater danger because they want to keep their integrity intact, not because they think nothing can be compared to 'riding bikes bareheaded'. Because the specific practice has sociological character (as we stated concerning the centrality criterion), namely that it circumscribes a specific group exactly, and people can identify at first glance that they face with an exceptional case which does not promote law-breaking.

Let us take an example, for the second case, namely, when the breach of the law affects an identifiable individual. The religious group Jehovah's Witnesses refuse blood transfusion, including for their children as well. Here Raz's approach disallows this practice on the grounds that it is rooted in their conscientious beliefs. We can say the same about religious slaughter if we provide animals the same agency as human beings. We see from our investigation that Bou-Habib's and Raz's approaches yield the same results; hence probably it was not a mistake combining the two.

Exemptions, however, sometimes bring about not only symbolic costs (such as unequal freedom), but material costs as well. Obviously, the responsibility and liability of the claimants is not of secondary importance. But the question is, then, who should bear the costs of accommodation. Should it be the person who seeks for an exemption, or should be the public, or should the costs be shared between them?[15] The task of this analysis goes beyond the scope of this thesis, and solutions can differ case from case, but what it is obvious that the

[15] Being honest, I have no good answers to these questions, but we have to notice that it is possible, using Andrew Williams's categories, to *internalize* or *externalize* these costs (Williams 2006, 501-502). In Williams's example, if somebody voluntarily chooses to participate in a dangerous activity, and after that he needs medical treatment, then internalizers would promote special taxes or compulsory insurance on the activity, while externalizers would promote general taxation to finance these medical costs (Williams 2006, 502). This question, however, is far from being abstract: see the lawsuit *Singh v. British Rail Engineering Ltd*, [1986] I.C.R. 22. - the point of the case was that Mr. Singh, a turban wearing Sikh, was fired because he refused to remove his turban and his employer did not want to bear the financial costs of Mr. Singh's belief (Jones 2006, 618n16).

factors of responsibility and proportionality cannot be omitted, moreover the process of identifying costs must be necessarily *deliberative*.

I have stressed the importance of deliberation several times in the thesis, since we face controversial cases concerning exemptions, and if we want a full picture, this factor cannot be set aside. If public goals are at stake (and they are), every citizen must have a say.[16] The analysis of the broad topic of deliberation in the case of exemptions, however, has to be the purpose of another paper.

[16] I hold Quong's and Bou-Habib's approaches that are appropriate to provide good public reasons for the public deliberation process, which is a further advantage of them.

Conclusion

In this thesis, I have examined the case of universal laws and cultural exemptions. One conclusion of the position defended here is that these exemptions are justifiable not only on the grounds of tolerance, but on the grounds of justice as well. To reach this conclusion, in the first chapter, I analyzed the structure of the rule-and-exemption approach. I found that it did not go beyond justificatory neutrality and its structure is logical.

After that I rejected the standard luck egalitarian approach of multicultural accommodation. This influential strand of liberalism misses the point, because it lays too much stress on the chance/choice dichotomy. I have argued that we should set aside this distinction and rather focus on the equal moral standing of citizens. To be able to do this, I invoked Jonathan Quong's argument which is built on the notion of Rawlsian fair equality of opportunity. Quong's work is able to avoid the shortcomings of luck egalitarianism and, at same time, provides a more systematic understanding of the cases of rules-plus-exemptions. I have pointed out, however, that his approach would be much stronger if we combine his argument with Paul Bou-Habib's theory of religious accommodation. For Quong's approach very much depends on our justification of the strong connection between the religious/cultural practice and the self-respect of its possessor. This is why the centrality criterion is of crucial importance - it is the core of multicultural accommodation, because it provides a link between the sociological character (the practice) and the normative character (the place of the practice that it occupies in the life of its possessor) of this phenomenon. Moreover, this logically connects the two approaches. I have pointed out that if we go in this direction abandoning luck egalitarian (luck multiculturalist) arguments, we find the comparison of these multicultural claims and conscientious objection appropriate. The combination of

Quong's and Bou-Habib's approaches fits very well to this assumption, since they yield similar conclusions considering the specific exemptions.

I have stressed, however, that Bou-Habib's narrow view of integrity must be expanded, since his approach is vulnerable to adaptive preferences – I have stressed the importance that it is not indifferent *how we acquire our duties*. This expansion necessitates a certain amount of autonomy, but only the narrow, instrumental view of autonomy. In the last chapter, I analyzed the limits and costs of multicultural accommodation.

The debate over cultural/religious accommodation is far from over. Much more work is needed concerning the connection of multicultural claims and the democratic process (Squires 2002, 130). One of the main directions where the findings of this thesis could be further developed is definitely this one.

A last thought about the method. The cases of accommodation are so diversified and complex that only the systematic examination of the nature of these phenomena can yield the appropriate conclusions. I believe that the investigation of these goes into this direction. I would like to stress the importance of this factor: I hold the systematic inquiry of this thesis as an advantage, not as a disadvantage. Joseph Carens argues that we should forget and set aside the method trying to abstract from the particular and we should rather "embrace it [the particular], but in a way that is fair to all the different particularities" (Carens 2000, 12). Since the arguments I defended here are very close to his theory of justice as evenhandedness, I do not consider the process of going from the particular to the abstract and universal as a dead end. I believe this thesis is good evidence of this.

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