**Liberalism’s Religion and Laborde’s Integrity**

Of the many virtues of *Liberalism’s Religion* one is its sustained investigation of the nature of religion that liberals are so deeply concerned to protect. Abjuring the rather fruitless search for necessary and/or sufficient criteria for something to be religious, Laborde suggests instead an interpretive account where we look to what’s religious for the specific purposes of non-establishment and accommodation. Sensitive to the charge that liberalism has traditionally favoured a Protestant view of religion as inner commitment, the interpretive view encompasses a wider view of religious experience, including its expression as sets of practices embodied in various forms of social life. Of course, an account of religious exemptions must go further; in particular, it must be able to convince non-believers why they should accede to apparent special privileges for religious adherents. In Chapter 2 of the book, Laborde discusses and rejects two accounts which address this challenge (as well as Ronald Dworkin’s view that exemptions are not, in general, justified). Christopher Eisgruber and Lawrence Sager[[1]](#endnote-1) seek to show how religious commitment is relevantly analogous to other categories of interest which plausibly merit special protection. However, argues Laborde, they oscillate between different accounts of these interests - vulnerability to discrimination and depth of commitment – both of which in addition have attendant problems. This suggests that the interpretive value of religion should be clearly specified and cogently defended. Laborde also rejects Charles Taylor’s and Jocelyn Maclure’s[[2]](#endnote-2) identification of religion with duties of conscience since, in line with the Protestant critique, this unduly narrows the class of commitments apt for special protection. This suggests once again that the interpretive view of religion must appropriately encompass the varieties of religious practice.

Armed with these desiderata, Laborde sets out her own account of liberal exemptions in Chapter 6. In the face of the neutrality challenge to exemptions, it is not sufficient to delineate an interest in religion that is powerful and weighty, or simply that many people hold. The interest must properly inform the project of liberal justification and thus be a categorically *higher-order* interest. The interest which Laborde alights on is integrity, an ideal of congruence between thought and action, or a person’s fidelity to her core convictions about how she ought to conduct her life. Individuals who enjoy integrity live lives whose deeds and actions are in congruence with their convictions and commitments. Integrity is related to agency (because our commitments are expressed in action), to identity and autonomy (because our commitments are and should be ours to determine) and to self-respect (because betrayal of our commitments is a source of shame and self-reproach). Since these are core liberal values and concern the manner in which a person holds her conception of the good, the notion of integrity is appropriately non-sectarian. As a component of a Rawlsian thin theory of the good, integrity describes the category of ethically salient commitments that are apt for exemptions.

Laborde distinguishes two types of integrity protecting commitments, or IPCs. *Obligation IPCs* arise from the duties which characterise religious observance, but also the cultural and communal practices which are experienced as obligatory by exemptions claimants. *Identity IPCs*, by contrast, reflect the expansive interpretative view of religion as a lived identity and set of practices. They focus on the meaning and value of religious and allied cultural commitments, and do not have quite the ethical salience of Obligation IPCs. However, Identity IPCs are important nonetheless for Laborde because they head off the charge that her account of exemptions exhibits a Protestant bias towards the inner imperatives of individual conscience. In my response to Laborde’s work, I shall first make some comments about integrity and the normative considerations which surround it - pertinent I hope for anyone who wants to employ that concept in defence of accommodation, an idea I very much support – before going on to examine the novel category of Identity IPCs, and then Laborde’s views on reasonable disagreement. Finally, I consider the two more general accounts of exemptions Laborde offers into which the notion of integrity is inserted.

Faced with the question of which interpretation of the values, practices and traditions which supply, so to speak, the raw material for integrity one can either look how those values, practices and traditions have tended to be interpreted by churches and other religious authorities, or instead focus on a religious believer’s individual judgement. Laborde opts for the latter, more subjective view and there are two advantages in doing so. First, such an approach focusses attention on the individual believer in a way which expresses the core value of integrity rather than the collective good of some religion. Second, it avoids giving too much credibility to orthodox, even conservative views, and in liberal spirit gives believers latitude in how they interpret the doctrines to which they’re committed. Religious claimants’ convictions must, however, pass a test of ‘thick sincerity’ in order to make a prima facie case for an exemption. The ‘thick’ is reference, I believe, to the depth of commitment and the moral importance of the values, practices and traditions at issue; they are strong evaluations in Charles Taylor’s sense. Integrity can’t be founded on trivial commitments, or invented traditions such as Pastafarianism. At the same time, though, this approach is not without its costs. First, note that Laborde’s account is doubly subjectivised because religious adherents must, first, have freedom to report both what their beliefs and convictions amount to *and*, second, what practices and obligations they entail - the latter important given that the hard cases of religious freedom concern the manifestation of beliefs. In some ways this approach is advantageous. For example, it seems to me fair to accept Nadia Eweida’s view that she had to wear a visible cross at work rather than to insist that this is not a requirement of Christianity for most Christians. On the other hand, it is not difficult to imagine cases where a religious individual insists on quite unorthodox or idiosyncratic practices at odds with how their religion is interpreted by the majority of believers; indeed they may be quite sincere in doing so. Second, in a footnote, Laborde dispenses too with the cogency and cohesion criteria for religious convictions adopted by Courts in the UK.[[3]](#endnote-3) Again, one can see the motive for doing so; it gives believers testimonial liberty in declaring before others what they are required to do and to be. True, the reasons behind accommodation (and indeed forms of religious establishment) must remain *accessible* to the non-religious, as Laborde argues at length in Chapter 4. However, accessible reasons need not be cogent or cohesive ones so this remaims a rather liberal individualist view of religious accommodation. One might, to the contrary, adopt a more communicative conception where the religious adherents are required to make good faith efforts to explain the cogency of their beliefs and the coherence of the worldview which animates them.

The appeal to integrity, as an accessible interest, nonetheless resolves one substantial problem which anyone defending religious exemptions faces; that such a project suffers from a structural bias towards the religious, unacceptable in a plural society governed by a neutral state. But the cost of doing so is the flip side of the worry about sectarianism. The ‘proliferation problem’ is that too wide a variety of beliefs and commitments now qualify for special helpings of liberty. Of course, grey areas and hard cases are an inevitable feature of conceptual thinking and don’t by themselves imply theoretical error. In Laborde’s case, however, the category of Identity IPCs which dispenses with the requirement that the practices at issue are obligatory, do exacerbate somewhat the mission creep of integrity. Suppose, for example, a father claims that to be a good parent, he needs to leave work early one day a week in order to spend some quality time with his children, and he asks for paid leave to do that. The father might concede that other parents do not feel this way, and he may not be able cogently or coherently to explain why spending time with his children is so important to him. In subsuming his case under the banner of Identity IPCs, we dispense even with the requirement that the father feels duty-bound to take time off work; it is enough that he feels the pull of valuable familial relations, this being the relevant strong evaluation.

The other test that Laborde proposes for her integrity conception of exemptions is ‘thin acceptability’. If thick sincerity screens out trivial commitments, thin acceptability rules out abhorrent ones. No church could claim exemptions from the law against murder, to use Laborde’s example, in order to engage in the practice of infant sacrifice. This is a very plausible test because morally abhorrent practices should surely have no weight in our practical deliberations. Between the abhorrent and the acceptable is the troublesome category of morally ambivalent claims; Laborde cites for example the *Lee v. Ashers*’ case from Northern Ireland where a bakery refused to decorate a cake with the message ‘Support Gay Marriage’ for a gay customer; a stance upheld by the UK Supreme Court in a recent judgement.[[4]](#endnote-4) It’s worth noting, though, that thin acceptability is a test external to the experience of integrity. In line with her generally subjectivist stance, Laborde endorses Bernard Williams’s view that individuals with abhorrent convictions can still live lives of integrity, even it would be better if they abandoned their views.[[5]](#endnote-5) The judgement is a fine one, but to me this is counter-intuitive. I don’t think the lifelong Mafioso or unrepentant Nazi live lives of integrity; there is no value lost if they recanted their views. Here I wondered what is the cost of an internal test where integrity only enjoys its status if the commitments it’s organised around are morally acceptable?

Morally ambivalent exemptions claims invite deliberation about the meaning of liberal justice; the implicit model appealed to here is one of reflective equilibrium. Laborde contends that there are different reasonable views of liberal justice. Reasonableness must have its boundaries, however, beyond the large domain of reasonable disagreement ‘about what it means to treat people as free and equal’[[6]](#endnote-6), stand certain limits. Implicit in the appeal to reasonableness is a category of the unreasonable. As we’ve just seen, Laborde makes this explicit in her ruling out morally abhorrent practices as candidates for exemptions. But how about unreasonable views of justice? That might seem an oxymoron; and while Laborde’s framework is liberal egalitarianism I’m sure she would accept there other reasonable views of justice, such as republicanism, in view of her previous work on the topic, or feminism or perhaps libertarianism. But while I’m not sure there’s such a thing as an unreasonable view of justice, there is one value which, it seems to me, it would be reasonable to disagree with, and that is the value of integrity itself. The argument for this is one that Laborde herself considers in Chapter 6, where she ponders Richard Arneson’s[[7]](#endnote-7) view that there’s no reason to defer to the dictates of a person’s conscience if she is mistaken about the good, especially when, as is the case with many exemptions, they shift costs on to third parties.[[8]](#endnote-8) In Arneson’s view, each of us should enjoy the liberty to pursue our own commitments, however misguided they appear to others, but we do not have a legitimate claim that other people be involuntarily burdened by our doing so. With an implicit gesture to the proliferation problem, Arneson wonders why, if religious adherents can legitimately claim an exemption to ingest psychedelic drugs if this is part of their religious practice, environmental activists whose ingestion of the same drugs would heighten their communion with nature, or surfers whose doing the same would transform their sport into a ‘sublime and moving experience’, would not be permitted that liberty.[[9]](#endnote-9) The conclusion of this reductio, for Arneson, is that neither the religious believers, nor the activists or surfers, should enjoy the exemption. (With regards to the former the US Supreme Court famously took just this line in Oregon v. Smith in 1990). Arneson’s is a quintessentially liberal egalitarian view: no group of people should enjoy greater liberty than anyone else. Laborde rejects it, though admits that she too is troubled about true of cost externalisation. So the difference between Laborde and Arneson is that for the former exemptions are sometimes unjustified in view of the costs they impose on others, while for the latter they’re never justified. Arneson’s view on burden-shifting, we might note, is shared by other critics of exemptions, including Brian Leiter[[10]](#endnote-10), and to some degree Peter Jones.[[11]](#endnote-11) The point here is that, while Laborde is free to say that the no exemptions view is unreasonable, it seems difficult to see how she can make that move while still defining the reasonable in Rawlsian terms through the values of freedom and equality. The no exemptions view allows people liberty of conscience to pursue their convictions, but, in a context where each citizen’s interests count equally it disbars cost subsidisation as a violation of each person’s prima facie right to an equal share of social resources.

I now want to return to the distinction between Obligation IPCs and Identity IPCs. As noted, Laborde employs this in large part because the practice-based view does not see the religious life as one organised principally around duties and obligations. In their place, we find rituals, traditions, webs of meaning. In the Lyng case, discussed by her and also Eisgruber and Sager[[12]](#endnote-12) in their book on religious liberty, a Native American tribe’s objections to the construction of a road on their land were dismissed due to a lack of awareness of the role of sacred ritual in their collective life. However, the question is whether the category of Identity IPCs, being inclusive, introduces the proliferation problem once again. Can we head off the threat of proliferation by delineating clear criteria for Identity IPCs? Well, that depends on what those criteria are. One possibility is to appeal to the notion of meaning. In her ecumenical defence of religious liberty, Martha Nussbaum[[13]](#endnote-13) claims that conscience involves a search for ‘ultimate meaning’. In the Lyng case, it’s plausible to maintain that public authorities overlooked the sacred *meaning* a piece of land had for the tribe. But there are multiple sources of meaning, even ultimate meaning, in our lives, a great many of which don’t merit special accommodation. Perhaps meaningfulness is what’s at issue for the father who wanted paid time off work to spend with his children. (Admittedly, parenting is the subject of some legal accommodation). Another view of Identity IPCs is that they protect *valued identities*, of which religion is certainly one. Again, there are plenty of secular collective identities much valued by their members. When the Conservative governments of the 1980s and 90s shut down most of the coal mines in Britain, they destroyed meaning-giving communities in South Wales and Yorkshire where mining was central to the local economy. That seems to me a substantial loss which enters into the calculation of that policy’s overall fairness. Sometimes – this is the third interpretation – Laborde writes as if the commitments of both Obligation *and* Identity IPCs are ones that their adherents ‘experience as obligatory’.[[14]](#endnote-14) That seems perilously close to the duties that religious believers believe they owe to God, or to each other. I do not mean, in these observations, to attack Laborde’s use of integrity in general, or the specific category of Identity IPCs. Rather, I’m trying to illustrate the fine line between the sectarian and proliferation critiques of religious accommodation. I think, in fact, the notion of Identity IPCs quite helpfully connects the defence of religious accommodation to the defence of minority cultural accommodation since cultural communities too are sources of meaning and valued identities.

Finally, I want to turn to the distinction between the disproportionate burden view and the majority bias view which comes in the latter part of Chapter 6. My question is how this distinction relates, if it does relate, to the distinction between the freedom of conscience approach to exemptions, and the non-discrimination approach? The latter two are represented by Article 9 and Article 14 of the European Convention on Human Rights, and they have quite different logics. Freedom of religion is a non-comparative principle: it asks how far a person’s conscience (or integrity) is burdened by not being permitted to pursue her religion or belief. Non-discrimination is a comparative principle: it enquires into the fairness of one person’s lack of opportunity to manifest her religion or belief, compared to others who do have that opportunity. Though they have different logics, the two principles are also complementary and can overlap. We can ask how far a Sikh man’s conscience is burdened by a law which bans his riding a motorbike without a crash helmet and we can compare Sikh men to Jewish men who can wear a motorbike crash helmet over their yarmulke. In some cases, there is no obvious comparator group (perhaps Lyng is a case in point), making the non-discrimination approach harder to employ. On the other hand, the freedom of conscience approach is more susceptible to cases of special pleading and perhaps exemption proliferation that I mentioned. Now the obvious mapping would say that the disproportionate burden approach is an instance of the freedom of conscience approach while the majority bias approach would fit with the non-discrimination approach. The first mapping looks correct. Laborde says that ‘disproportionate burden is not a comparative principle’.[[15]](#endnote-15) But the second mapping is less obvious. ‘Exemptions on grounds of majority bias’, she writes, ‘are justified because laws and regulations are enacted against a baseline of precedence of a historically dominant religion’.[[16]](#endnote-16) Majority bias is ‘a broadly egalitarian principle’[[17]](#endnote-17) because it identifies comparative inequalities between the opportunities afforded to a minority religion and the majority one. One reason this does not map neatly on to the non-discrimination account is that members of majority religions will not qualify for exemptions on the majority bias account. Laborde says that they will ‘rarely qualify’[[18]](#endnote-18), but I do not see how they can qualify at all if majority bias is interpreted as a levelling up so that religious adherents are not denied opportunities which the historically dominant religion enjoy. They *are* the historically dominant religion. But members of the majority religion *can* make a claim under the non-discrimination principle because they are free to use different comparators. Consider again Nadia Eweida who worked as a check in clerk for British Airways and who won her case at the ECtHR in 2013. She wanted to wear a cross around a chain at work, in contravention of BA’s uniform policy, and she was free to say, for example, that non-religious jewellery was permitted by BA. As a matter of fact, Eweida made her case to the ECtHR under both Article 9 and Article 14. The ECtHR’s rule is that Article 14 claimants have to show that they are discriminated against in the exercise of one of their other ECHR rights; in Eweida’s case it was Article 9 on freedom of religion. Her Article 14 claim was therefore that she was not permitted to manifest her religion or belief to the same degree as others were. Since those others would likely include adherents of *minority* religions too (for example, a Jewish, Sikh or Hindu woman unadorned by religious dress could work as check in clerk for BA and practise her religion) Eweida’s case cannot be one of majority bias. Laborde says that the majority bias principle is ‘particularly well suited to rectifying identity-related inequalities’.[[19]](#endnote-19) I agree, but would point out that inequalities don’t always disadvantage the minority. In a relatively non-religious society like the UK, it depends a bit on who you think the majority is. A Christian Sabbatarian who wishes not to work Sundays belongs to the historically dominant religion but is in a minority at work if most of her colleagues, whether Christian or not, have no problem with Sunday working.

My criticisms in this short response have not been fundamental ones. My aim instead has been to illustrate some of the issues which anyone concerned to defend exemptions must consider and attempt to resolve, and to say a little about the questions which Laborde’s resolution leaves hanging. There is a great deal to admire in in *Liberalism’s Religion*, not least its quiet refusal to deliver answers in vexatious instances of accommodation, and its insistence on a careful balancing of the relevant normative considerations and contextual judgement. Important too is the way the category of the religious reveals itself as various embodied forms of life and sets of practices. Liberal political philosophers would do well to follow Laborde’s lead and think a bit more deeply about religion, liberal or otherwise.

1. **NOTES**

 Eisgruber, Christopher L. and Lawrence G. Sager, *Religious Freedom and the Constitution*. Camb., Mass.: Harvard University Press, 2007. [↑](#endnote-ref-1)
2. Taylor, Charles and Jocelyn Maclure *Secularism and Freedom of Conscience*. Camb., Mass.: Harvard University Press, 2011. [↑](#endnote-ref-2)
3. Laborde, Cécile, *Liberalism’s Religion*. Cambridge, Mass.: Harvard University Press, 2007, p.313 n.38. Henceforward all page references are to *Liberalism’s Religion* unless otherwise noted. [↑](#endnote-ref-3)
4. p.211. [↑](#endnote-ref-4)
5. p.208. [↑](#endnote-ref-5)
6. p.210. [↑](#endnote-ref-6)
7. Arneson, Richard ‘Against Freedom of Conscience’ *San Diego Law Review* 47 (2010), 1-26. [↑](#endnote-ref-7)
8. Laborde, op cit, p.212 [↑](#endnote-ref-8)
9. Arneson, op. cit, p.16 [↑](#endnote-ref-9)
10. Leiter, Brian *Why Tolerate Religion?* Princeton: Princeton University Press, 2012 [↑](#endnote-ref-10)
11. Jones, Peter ‘Accommodating Religion and Shifting Burdens’ *Criminal Law and Philosophy* 10/3 (2016), 515-36. [↑](#endnote-ref-11)
12. Eisgruber and Sager, op cit. [↑](#endnote-ref-12)
13. Nussbaum, Martha *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality*. New York: Basic Books, 2008. [↑](#endnote-ref-13)
14. Laborde, op cit, p.223 [↑](#endnote-ref-14)
15. pp.228-9 [↑](#endnote-ref-15)
16. p.229 [↑](#endnote-ref-16)
17. P.232 [↑](#endnote-ref-17)
18. P.236 [↑](#endnote-ref-18)
19. p.232 [↑](#endnote-ref-19)