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Religious Conscientious Objections and Insulation from Evidence

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Biography

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Abstract

Religion is often singled out for special legal treatment in Western societies - which raises an important question: what, if anything, is special about religious conscience beliefs that warrants such special legal treatment? In this paper, I will offer an answer to this specialness question by investigating the relationship between religious conscientious objections and their insulation from relevant evidence. I will begin my analysis by looking at Brian Leiter's arguments that religious beliefs are insulated from evidence and not worthy of special legal treatment as a result. I will argue that he fails to show that religious conscience beliefs are both in principle responsive to empirical evidence and in practice typically more insulated from this evidence than secular conscience beliefs. If I am right about this, then Leiter fails to answer the "central puzzle" of his recent book and fails to sufficiently distinguish the religious conscience from the secular conscience. Second, I will look at whether or not it is plausible to understand the religious conscience as insulated from other forms of evidence. Following the research of social-psychologist Jonathan Haidt, I will argue that, typically, both forms of conscience seem to be similarly insulated from moral argumentation. I will also show that, while it seems as though the religious conscience usually draws from a larger set of moral values when compared to the secular conscience, this should make no legal difference overall. To conclude, I will explain that the arguments in this paper can be understood as evidence in support of an egalitarian response to religion's specialness.

Keywords

Religion, Religious Belief(s), Conscience, Conscientious Objection(s), Legal Exemption(s), Evidence

Introduction

Religion is often singled out for special legal treatment in Western societies. For example, 47 states in the U.S. currently offer nonmedical exemptions to persons who object to mandatory vaccine laws for religious reasons. 29 of these states offer legal exemptions solely to religious conscientious objectors while the other 18 states extend these exemptions to nonreligious conscientious objectors as well. So, if both an Atheist and a Christian conscientiously object to a mandatory vaccine law in New York, a legal exemption can be granted to the Christian but not the Atheist under New York's current legal framework.¹ This raises an important question: *what, if anything, is special about religious conscience beliefs that warrants such special legal treatment?*

1. For a chart depicting the kinds of vaccination exemptions (e.g., medical, religious, and/or philosophical) in each state, please see: http://nvc.org/CMSTemplates/NVIC/pdf/state-vaccine-exemptions_blue.pdf

In this paper, I will offer an answer to this specialness question by investigating the relationship between religious conscientious objections and their insulation from relevant evidence. I will begin my analysis by looking at Brian Leiter's arguments that religious beliefs are "insulated from evidence" insofar as they "do not answer ultimately to evidence and reasons," and as a result, are not worthy of special legal treatment (Leiter 2014, 34). I will argue that he fails to show that religious conscience beliefs are both in principle responsive to empirical evidence and in practice typically more insulated from this evidence than secular conscience beliefs. If I am right about this, then Leiter fails to answer the "central puzzle" of *Why Tolerate Religion?* and fails to sufficiently distinguish the religious conscience from the secular conscience. Second, I will look at whether or not it is plausible to understand the religious conscience as insulated from other forms of evidence. Following the research of social-psychologist Jonathan Haidt, I will argue that, typically, both forms of conscience seem to be similarly insulated from moral argumentation. I will also show that, while it seems as though the religious conscience usually draws from a larger set of moral values when compared to the secular conscience, this should make no legal difference overall.

Leiter and Evidence

By "insulation from evidence," Leiter thinks that religious beliefs "do not answer ultimately to evidence and reasons" – and he takes this feature as the primary delineator of religious conscience beliefs from other conscience beliefs (Leiter 2014, 34). Exactly how might religious states of mind fail to answer to evidence and reasons? There seem to be two ways. On the one hand, insulation from evidence could be understood as "a property of beliefs which, by virtue of their content, cannot be validated or invalidated by empirical evidence" (Boucher and Laborde 2014, 496). Understood in this way, the objects of insulation are the religious conscience *beliefs* themselves, not necessarily the religious *believer*. On the other hand, "insulation from evidence" could be understood as an individual epistemic attitude or state of mind that believes despite the existence of discrediting evidence. Understood in this way, the object of insulation is the religious *believer*, not the religious conscience *beliefs*.

Unfortunately, Leiter is not initially clear about which view he holds. At one point, he claims that "insulation from evidence...will be understood as a claim about the religious doctrine rather than about the typical epistemic attitudes of believers" (Leiter 2014, 34–35). At first, it seems as though Leiter thinks religious conscience beliefs are *in principle* insulated from evidence. But at another point, he claims that

“the distinctively religious state of mind is that of *faith* – that is, believing something *notwithstanding the evidence and reasons* that fail to support it or even contradict it” (Leiter 2014, 39). Here, he seems to adopt the other view: religious conscience beliefs are just *in practice* more insulated from evidence when compared to their nonreligious counterparts. Thankfully, Leiter clarifies his position in a later piece: “My considered view, in fact, is that it is Believer Insulation that is crucial to the second of the three characteristics of religion, though, of course, in some cases Believer Insulation will not be a problem if the beliefs in question are marked by Belief Insulation” (Leiter 2016, 548). Given his clarifications, we can conclude that Leiter, in fact, holds the “Believer Insulation” position (i.e., *in practice* insulation) – not the “Belief Insulation” position (i.e., *in principle* insulation).

François Boucher and Cécile Laborde argue that Leiter faces a dilemma about this allegedly demarcating feature no matter which view he holds. They contend that if Leiter accepts Believer Insulation, then “he cannot distinguish religion from fanatical adherence to any set of beliefs” (Boucher and Laborde 2014, 497). The same seems true when we narrow our range from ‘religion’ to ‘religious conscience’: under the first horn, the religious believer refuses to let available evidence stand against their religious *conscience* beliefs, and as such, it would be difficult to differentiate them from any other sort of fanatical adherence to some set of *value* beliefs. If Leiter accepts Belief Insulation – and believes that “religious beliefs...neither *claim support from empirical evidence of the sciences* nor *purports to be constrained by empirical evidence*” (Leiter 2014, 47) – then Boucher and Laborde contend that “he cannot distinguish secular from religious conscientious commitments” (Boucher and Laborde 2014, 497). If the dilemma holds, then it doesn’t matter which view Leiter holds: his “insulation from evidence” feature fails to demarcate the religious conscience from its secular counterpart in either case.

The second horn to the dilemma exists insofar as Boucher and Laborde take both kinds of conscience to be, in principle, insulated from *empirical* evidence. To see why they think this, they have us consider two different moral imperatives adopted by a religious group and by a secular group – arguing that both are categorical and “arguably insulated from empirical evidence and standards of justification found in natural science” (Boucher and Laborde 2014, 502). They initially consider examples of religious conscience beliefs, e.g., the Buddhist who doesn’t eat meat because it “spreads fear among living creatures and goes against the virtue of compassion” and the Quaker whose pacifism is grounded in the claim that “all wars and outward fighting proceed from men’s lust” (Boucher and Laborde 2014, 502). Then, they explain that

the secular analogs to these religious conscience beliefs – namely, that “violence and the use of weapons to kill other human beings is always wrong” and “that life has intrinsic value” – also “ground an ethical commitment...while being just as impossible to prove with empirical evidence and the tools of modern science” (Boucher and Laborde 2014, 502). Can we justifiably believe that both forms of conscience are, in principle, insulated from empirical evidence?

To answer this “in principle” question, we should make reference to the nature of conscience itself. Richard Sorabji has argued that the conscience produces value beliefs about which past, present, or future actions or attitudes would be wrong or not wrong for us to adopt or not adopt by *applying certain values to our particular context* (Sorabji 2014, 21 –16). This means that the evidential or justificatory basis on which conscience beliefs stand are our *moral values*. We adopt values, and those values – at least in some way – explain why we hold the conscience beliefs we do, serve to justify the conscience beliefs that we hold, and act as the evidence that our conscience beliefs appeal to. Of course, these values can – and often do – run the risk of reflecting merely local conventions, customs, or superstitions, and therefore require constant reflection and awareness of other values (Sorabji 2014, 220).²

If this is true, then why might Leiter think that a greater, in practice insulation from empirical evidence is the distinguishing feature of the religious conscience? I suspect that a methodological mistake by Leiter is partly to blame here. In his analysis, Leiter broadly compares religious beliefs to conscience beliefs instead of narrowly comparing religious and nonreligious conscience beliefs in particular. More specifically, Leiter’s method for answering the original specialness question was to uncover the general “features of religious belief that...distinguish religious beliefs from other kinds of belief” in order to see whether those features warrant toleration (Leiter 2014, 27). So, when Leiter argues that ‘religious beliefs’ are insulated from empirical evidence, he seems to have a wider range of religious beliefs in mind, which include ontological and epistemological beliefs as well as conscience beliefs. In fact, when addressing this feature, Leiter relies exclusively on examples highlighting the insulation from empirical evidence that uniquely ontological or epistemological religious beliefs seem to enjoy – e.g., arguments for the existence of God, testimonial evidence supporting the belief in

2. We should note that the justificatory process involved with conscience beliefs is not altogether uncommon, for gauging the evidence for moral beliefs in Ethics more broadly often involves examining the support they get from things like moral principles or values, moral theories, and considered moral judgments or intuitions.

the resurrection of Jesus Christ, etc. Not once does he cite an example of a uniquely religious conscience belief that might be insulated from empirical evidence. So, it seems as though at least part of the reason that Leiter included this feature was in response to thinking about ontological and epistemological religious beliefs as opposed to religious conscience beliefs specifically.

Nevertheless, does Leiter think that religious conscience beliefs are, in practice, insulated from empirical evidence in the way that their ontological and epistemological counterparts are alleged to be? When broadly comparing 'religion' and 'morality,' we get close to Leiter's answer to this question:

Is moral belief necessarily insulated from reasons and evidence? [F] or cognitivist realists like Richard Boyd and Peter Railton...moral judgments are not insulated from reasons and evidence as they are understood in the sciences; indeed, just the opposite. So on this view, morality is not at all like religion; it answers to reasons and evidence – and answers successfully! Noncognitivist antirealists, by contrast, conceive of moral judgments not as expressing beliefs...but as expressing mental states that are not truth-apt, such as feelings. On this picture, then, moral judgments are by their nature insulated from reasons and evidence; just as feeling cheerful or sad is not answerable to reasons or evidence, so too with moral judgment. Religious judgments are still different, on this account, since some religious judgments *do express beliefs* and so, in principle, could be answerable to reasons and evidence, but are nonetheless taken to be insulated from them. So on either of the two main contenders for a credible metaphysics and semantics of morality, morality is still different from religion. (Leiter 2014, 50–51)

A few points about this paragraph are in order. First, Leiter actually presents a false-dichotomy here since it is possible – indeed, some say plausible – to hold non-naturalist versions of metaethical cognitivism.³ Second, since Leiter's discussion about moral or religious beliefs focuses on their insulation from *empirical* evidence, his views

3. This objection was raised by Boucher and Laborde as well: "This argument is fallacious since it presents us with a false dichotomy and misrepresents both realism and non-cognitivism. First, Leiter relies on a false dichotomy. Several strands of moral realism view moral propositions as referring to non-natural moral facts such that the truth and falsity of moral judgements cannot be established by appealing to empirical evidence and scientific methods." (Boucher and Laborde 2014, 503)

on their insulation from other forms of evidence – e.g., *conceptual* evidence – remain an open question. Third, this paragraph nicely illustrates Leiter’s initial ambiguity about whether he holds Believer or Belief insulation: when discussing metaethical cognitivism, he seems to hold Belief Insulation and when discussing metaethical noncognitivism, he seems to hold Believer Insulation. Lastly, this paragraph also illustrates the confusion that results from Leiter’s methodological mistake. Leiter understands the “central puzzle” of *Why Tolerate Religion?* to be “why the state should have to tolerate exemptions from generally applicable laws when they conflict with religious obligations but not with any other equally serious obligations of conscience” (Leiter 2014, 3). But as we noted above, his method for answering this puzzle oddly focuses on ‘religion’ more broadly – not religious conscience specifically.

Given Leiter’s claims up to this point, it doesn’t seem like he takes much of a stand on whether or not religious conscience beliefs are, in practice, insulated from empirical evidence even though he repeatedly claims that religious beliefs, in general, are. Again, it seems like his methodological mistake prevents making this distinction. Leiter must believe that religious conscience beliefs respond to the same kinds of evidences – and in roughly the same way – as other kinds of religious beliefs if he believes that religious conscience beliefs are, in practice, largely insulated from empirical evidence. Unfortunately, Leiter gives us no reason to believe that religious conscience beliefs respond to the same kind of evidence as their ontological or epistemological counterparts allegedly do. He only thinks that religious beliefs are, in general, insulated from empirical evidence in practice – which may or may not include religious conscience beliefs.

In fact, when contrasting ‘morality’ and ‘religion’, Leiter actually seems to give us reasons to believe that the opposite is true: namely, that religious beliefs – understood as ontological or epistemological religious beliefs – and moral beliefs – which would include religious conscience beliefs – may differ with respect to evidence.

Consider this: if one is a metaethical cognitivist as Leiter describes it above – and believes that moral judgments are, in principle, truth-apt and responsive to empirical evidence – then moral beliefs (which include conscience beliefs) would be distinct from religious ontological and epistemological beliefs when those religious beliefs are, in principle, insulated from empirical evidence. Interestingly, a straightforward reading of Leiter in the above paragraph seems to suggest that he holds this kind of Belief Insulation position: after all, moral beliefs are “not at all like religion” insofar as the former “answers to reasons and evidence” and the latter do not (Leiter 2014, 50–51). Under this sort of scenario, the *conscience* part of the religious conscience would be in

principle open to empirical evidence, but the *religious* part of the religious conscience would not. While we know that Leiter actually holds the Believer Insulation position (Leiter 2016, 548), it is not similarly clear whether he is a metaethical cognitivist as described above.⁴ So, a straightforward reading indicates that Leiter takes moral and religious beliefs to differ with respect to evidence. But an adjusted reading makes it unclear whether or not Leiter thinks that religious conscience beliefs are insulated from empirical evidence in the way that their ontological and epistemological counterparts are alleged to be.

Now, if one is a metaethical noncognitivist – and believes that moral judgments are, in principle, *not* truth-apt and responsive to empirical evidence – then Leiter argues that moral beliefs (including conscience beliefs) are still distinct from religious beliefs. His defense here is to argue that, contrary to noncognitivist moral judgments, at least some religious beliefs are nevertheless, in principle, truth-apt and answerable to empirical reasons and evidence. Again, he seems to mean the ontological and epistemological kind, for these are the only kind of religious belief cited for example when discussing the insulation feature. Under his second scenario, the *conscience* part of the religious conscience would not be in principle open to empirical evidence, but the *religious* part of the religious conscience would. As was the case before, we know that Leiter holds the Believer Insulation position (Leiter 2016, 548), but we don't know whether he is a metaethical noncognitivist. So, under this scenario, it remains unclear whether Leiter thinks that religious conscience beliefs are insulated from empirical evidence in the way that their ontological and epistemological counterparts are alleged to be as well.

Even though Leiter repeatedly claims that religious beliefs are, in general, insulated from empirical evidence, he nevertheless fails to clearly show that religious conscience beliefs are, in practice similarly insulated from empirical evidence. It seems like we can only assume that they are if we also assume that Leiter is a metaethical cognitivist of some kind, and that religious ontological and epistemological beliefs are, in principle, truth-apt and answerable to empirical evidence. If Leiter were to adopt a form of metaethical cognitivism, then the specific moral judgments produced by either kind of conscience would amount to moral beliefs that are, in principle if not always in practice,

4. Though he does clearly express his views about non-naturalist versions of moral realism in a footnote: "Nonnaturalist versions of moral realism are, in my opinion, mere artifacts of academic philosophy, which, through specialization, encourages the dialectical ingenuity that results in every position in logical space finding a defender, no matter how bizarre" (Leiter 2014, 152).

truth-apt and responsive to evidence.⁵ In such a case, Leiter would *still* need to show that religious conscience beliefs are somehow more insulated from empirical evidence than their nonreligious counterparts – and more insulated such that differential legal treatment would be justified. Not only so, but whether these conscience beliefs would be in principle responsive to empirical evidence is also an open question, for its possible that these beliefs could only be, in principle, responsive to other forms of evidence. In the absence of an argument from Leiter showing that religious conscience beliefs are both in principle responsive to empirical evidence *and* in practice typically more insulated from this evidence in a legally differentiating way when compared to their nonreligious counterparts, we should suspend judgment on any conclusion he draws about their respective legal treatment.

Perhaps the greatest implication of my critique is that, by failing to show that the religious conscience is both, in principle responsive to empirical evidence and, in practice typically more insulated from this evidence than secular conscience in a way that justifies differential legal treatment, Leiter has failed to answer the “central puzzle” of *Why Tolerate Religion?* His conclusion that the state has no principled reason to grant exemptions from generally applicable laws to “religious obligations but not [to] any other equally serious obligations of conscience” rests on the assumption that religious conscience beliefs are differentiated by their insulation from empirical evidence (Leiter 2014, 3). As Michael McConnell notes, “it is the ‘insulation from evidence’ that most clearly distinguishes religion in Leiter’s definition, and does almost all the work in his analysis” (McConnell 2013, 786) – and if I’m right that Leiter has failed to distinguish the religious conscience through this feature, then his analysis is largely undermined and never gets off the ground – leaving the original specialness question still open.

5. The idea here is that religious beliefs typically involve moral judgments, and as a result, Leiter’s approach to moral judgments as either cognitive or noncognitive would apply to religious moral judgments as well. Leiter surprisingly thinks that “[t]his is correct, but also irrelevant. For what is crucial is that all religions involve non-moral judgments about the way the world is that cannot be interpreted in non-cognitive terms: e.g., that Christ rose from the dead after his resurrection, that one or more supernatural beings exist, that everything that lives is the reincarnation of a prior living being, and so on. These claims are cognitive, and systematically false or, at best, unwarranted. They are also distinctive of religion but not of moralities.” (Leiter, 2016, 550) Perhaps Leiter sees this point as “irrelevant” only because he doesn’t fully appreciate the implications of his methodological mistake.

Other Forms of Evidence

Now, it's worth noting that Boucher and Laborde also fail to offer an argument for their metaethical assumptions, namely, that both forms of conscience are, in principle, insulated from empirical evidence. Additionally, it's not clear whether they think that the religious conscience is somehow differently insulated from nonreligious conscience with respect to other evidences. Independent of these scholars, however, can we justifiably believe that the religious conscience is somehow differently insulated with respect to other forms of evidence – and ultimately in a way that justifies special legal treatment? In what follows, I'll argue that: (1) typically, both forms of conscience seem to be similarly insulated from moral argumentation; and (2) the secular conscience typically seems to be, at least in some sense, comparably more insulated from moral values. I think a reasonable case can be made for (1) and (2) via Jonathan Haidt's work in moral psychology and that, even when (1) and (2) are plausible, treating religious conscience with special legal solicitude is not.

Moral Argumentation

In *The Righteous Mind*, Haidt's first principle of moral psychology states that "[moral] intuitions come first [and] strategic reasoning second" (Haidt 2012, XX). Haidt writes:

Moral intuitions arise automatically and almost instantaneously, long before moral reasoning has a chance to get started, and those first intuitions tend to drive our later reasoning. If you think that moral reasoning is something we do to figure out the truth, you'll be constantly frustrated by how foolish, biased, and illogical people become when they disagree with you. But if you think about moral reasoning as a skill we humans evolved to further our social agendas – to justify our own actions and to defend the teams we belong to – then things will make a lot more sense. Keep your eye on the intuitions, and don't take people's moral arguments at face value. They're mostly post hoc constructions made up on the fly, crafted to advance one or more strategic objectives. (Haidt 2012, XX – XXI)

By intuitions, Haidt means the "dozens or hundreds of rapid, effortless moral judgments and decisions that we all make every day" (Haidt 2012, 53). And by moral judgments, Haidt is referring to a rapid cognitive process distinguished from reasoning (Haidt 2012, 53) that is "akin to the judgments animals make as they move through

the world, feeling themselves drawn toward or away from various things” (Haidt 2012, 72). While Haidt seems to initially indicate that our moral judgments are, in principle, insulated from moral argumentation, he does concede that it’s still “possible for people simply to reason their way to a moral conclusion that contradicts their initial intuitive judgment, although [he] believe this process is rare” (Haidt 2012, 80). He thinks that friends can challenge us, giving us reasons and arguments that sometimes “trigger new intuitions, thereby making it possible for us to change our minds” (Haidt 2012, 55).⁶ Thus, Haidt maintains that while our moral judgments seem to be, at least in principle, open to this sort of evidence, in practice he thinks they are largely insulated.⁷

This first principle of moral psychology is important for establishing (1) in that Haidt is presumably talking about *all* moral judgments – religious or otherwise. If (1) is true, then we may actually have good reason to treat religious and secular conscience beliefs equally before the law since they would be practically indistinguishable concerning their insulation from this sort of evidence. Both kinds of conscience beliefs are intuitive moral judgments produced by applying values to our actions or attitudes that are not *themselves* initially justified by some moral argument or line of reasoning. Both kinds of conscience adopt some moral values, apply these values to our particular actions or attitudes, and produce an intuitive moral judgment. And the intuitive moral judgments produced by both kinds of conscience are described as being in principle open to moral arguments even though, in practice, they are typically insulated from this evidence.⁸ At

6. “It’s not everyday,” Haidt says, “that we change our mind about a moral issue without any prompting from anyone else” (Haidt 2012, 56). We should note, however, that even though others may give us moral arguments that we might find persuasive, we ultimately seem to *answer to the intuition* that their moral arguments create in us.

7. To better understand how this influence from others and our own reasoning might work in changing our minds about moral conclusions, see figure 2.4 depicting Haidt’s *Social Intuitionist Model* (Haidt 2012, 55).

8. Haidt notes that one of the most common criticisms of his social intuitions model from philosophers is that conceptual evidence actually seems to change or at least influence our moral beliefs more frequently in practice than Haidt seems to grant. He writes: “These critics present no evidence, but, in fairness, I have no evidence either as to the actual frequency in daily life with which people reason their way to counterintuitive conclusions (link 5) or change their minds during private reflection about moral matters (like 6). Of course people change their minds on moral issues, but I suspect that in most cases the cause of change was a new intuitively compelling experience (link 1), such as seeing a sonogram of a fetus, or an intuitively compelling argument made by another person (link 3). I also suspect that philosophers are able to override their initial intuitions more easily than can ordinary folk, based on findings by Kuhn (1991).” (Haidt 2012, 385)

this point, then, there are no grounds for affording religious conscience special legal solicitude if it is nearly indistinguishable from secular conscience with regard to its insulation from moral argumentation.

Moral Values

Concerning (2), does Haidt's research help us develop a plausible case that the secular conscience is typically more insulated from moral values – and perhaps in a way that justifies special legal solicitude for religious conscience? Here, we can turn to Haidt's second principle of moral psychology, which states that "there's more to morality than harm and fairness" (Haidt 2012, XXI).

By this principle, Haidt only means to make a descriptive claim about what sorts of "moral foundations"⁹ and related values¹⁰ that people from across different cultures draw from as an anthropological fact. He writes:

The moral domain is unusually *narrow* in WEIRD [i.e. – western, educated, industrial, rich, and democratic] cultures, where it is largely limited to the ethic of autonomy (i.e., moral concerns about individuals harming, oppressing, or cheating other individuals). It is *broader* – including the ethics of community and divinity – in most other societies, and within religious and conservative moral matrices within WEIRD societies. (Haidt 2012, 129; emphasis added)

So, Haidt's research indicates the following: that nonreligious and non-conservative individuals within a WEIRD culture typically draw from comparatively *fewer* moral foundations and related values than their religious and conservative WEIRD counterparts when explaining or justifying moral judgments. The more nonreligious and liberal WEIRD individuals, according to Haidt, typically draw from just *three* moral

9. Haidt describes these moral foundations as "sets of modules that work together" to meet adaptive challenges (Haidt 2012, 147). He describes modules as "little switches in the brains of all animals" that are "switched on by patterns that were important for survival in a particular ecological niche and when they detect that pattern, they send out a signal that (eventually) changes the animal's behavior in a way that is (usually) adaptive" (Haidt 2012, 144).

10. Haidt explains that each moral foundation has characteristic emotions – e.g., compassion is a characteristic emotion of the Care/Harm foundation – and relevant virtues and values – e.g., obedience and deference are the virtues and values of the Authority/Subversion foundation (Haidt 2012, 146).

foundations and their related values – what he calls the Care/Harm foundation,¹¹ the Fairness/Cheating foundation,¹² and the Liberty/Oppression foundation.¹³ Conversely, more religious and conservative WEIRD individuals tend to draw from *three additional* moral foundations – the Loyalty/Betrayal foundation¹⁴, the Authority/Subversion foundation,¹⁵ and the Sanctity/Degradation foundation.¹⁶ Hence, this is why Haidt suggests that there is, at least descriptively, “more to morality than harm and fairness:” after all, liberals typically appeal to only three moral foundations whereas conservatives tend to appeal to all six.¹⁷

However, for our present purposes, what’s important to highlight is that nonreligious WEIRD individuals seem to typically draw on three moral foundations and their related values whereas religious WEIRD individuals typically draw on all six moral foundations and their related values. Haidt’s second principle implies that there is a descriptive difference with our moral beliefs that trends along secular and religious lines: religious moral beliefs typically draw from a larger evidential base (i.e., a larger set of moral values) when compared to their secular counterparts (i.e., a smaller set of moral values). If this is true, then (2) seems plausible: the religious conscience would

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11. This foundation “makes us sensitive to signs of suffering and need; it makes us despise cruelty and want to care for those who are suffering” (Haidt 2012, 178).
 12. This foundation “makes us sensitive to indications that another person is likely to be a good (or bad) partner for collaboration and reciprocal altruism. It makes us want to shun or punish cheaters” (Haidt 2012, 178).
 13. This foundation “makes people notice and resent any sign of attempted domination. It triggers an urge to band together and resist or overthrow bullies and tyrants” (Haidt 2012, 215).
 14. This foundation “makes us sensitive to signs that another person is (or is not) a team player. It makes us trust and reward such people, and it makes us want to hurt, ostracize, or even kill those who betray us or our group” (Haidt 2012, 178–79).
 15. This foundation “makes us sensitive to signs of rank or status, and to signs that other people are (or are not) behaving properly, given their position” (Haidt 2012, 179).
 16. This foundation “makes it possible for people to invest objects with irrational and extreme values – both positive and negative – which are important for binding groups together” (Haidt 2012, 179).
 17. “Liberals have a three-foundation morality, whereas conservatives use all six. Liberal moral matrices rest on the Care/harm, Liberty/oppression, and Fairness/cheating foundations although liberals are often willing to trade away fairness (as proportionality) when it conflicts with compassion or with their desire to fight oppression. Conservative morality rests on all six foundations, although conservatives are more willing than liberals to sacrifice Care and let some people get hurt in order to achieve their many other moral objectives” (Haidt 2012, 214).

typically apply a broader range of values and must therefore work with a greater range of evidence in order to produce beliefs about what would be wrong or not wrong for one to do or not do. Using Haidt's language, the religious and secular individual would obviously both possess moral beliefs (including conscience beliefs), but their intuitive moral judgments would be produced by a different set of moral foundations and related values getting "triggered" by and applied to particular events. Thus, the more religious person must typically process the intuitive moral judgments produced by six moral foundations and related values, while the more secular person must typically process the intuitive moral judgments produced by only three moral foundations and related values.¹⁸

If (2) is plausible, then there seem to be only two reasons why we might grant special legal treatment to the religious conscience: either because there is something special about the different moral value(s) that the religious conscience applies or else because there is something special about the religious conscience having to apply a greater number of values. Under the first scenario, there would have to be something special about the value(s) uniquely applied by the religious conscience – something that the value(s) applied by the secular conscience lack(s) – that would warrant preferential legal treatment. Under the second scenario, there would have to be something special about having to navigate and apply a greater number of values – something the secular conscience does not have to do – that would warrant preferential legal treatment.

I think we can simply dismiss the second reason as drawing a distinction without a moral difference. After all, navigating a greater number of moral values en route to formulating one's conscience belief just doesn't seem to amount to a principled reason for granting totally different legal protections to the religious conscientious objector. Regarding the first reason, however, I want to make a few points. First, we should note that Haidt's research concerns *trends* with respect to these moral foundations and values: the religious conscience seems to *typically* draw from a larger set of moral values or foundations, while the secular conscience seems to *typically* draw from a smaller set of moral values or foundations. This means that it is possible for both forms of conscience to not only *sometimes* draw from an atypical moral foundation and related value, but to *sometimes* draw from an atypical moral foundation and related

18. This helps us, for example, understand why we see such a vast difference between the political left and right over the use of concepts such as 'sanctity' and 'purity'. Those on the right are driven by intuitions triggered by the sanctity foundation and those on the left lack these intuitions. For more on this, see Chapter 8 "The Conservative Advantage" (Haidt 2012, 180–216).

value with an atypical weightiness as well.¹⁹ So, it seems then, that granting special protections to religious conscience on the grounds that it *typically* draws from a certain set of arbitrarily designated, special values would inevitably lead to unwarranted exclusivity and underinclusivity. While it is true that laws draw somewhat arbitrary lines all the time that are over and underinclusive, drawing a line between moral values in this way might be *especially* arbitrary – which leads to my next point.

Second, qualitatively comparing some moral values to other moral values – if possible – seems difficult to do. You might think that moral values are incommensurable, and so any sort of comparative question would be, in principle, impossible to navigate. You could also think that it is in principle possible to show that some moral values are better to adopt than others – and that some value beliefs are more justified than others. If possible in principle, however, it nevertheless seems difficult in practice to justifiably conclude that some moral values are somehow better or more special than other values such that they are worthy of special legal treatment – especially in the context of evaluating the values that underlie conscientious objections. This would amount to, for example, exempting a religious conscientious objector to conscription but not a similarly situated secular objector *solely on the basis* that the value underlying the religious conscience belief is somehow better or more worthy of entirely different legal protections.²⁰ Lastly, we should also worry about whether courts are the appropriate arbiters of these comparative questions between moral values. Not only are these questions difficult to navigate, but answering them might effectively cause the state to take a definitive stance on some conception(s) of the good life or to endorse some sectarian value(s) over some nonsectarian value(s). Disallowing courts to be the arbiters of questions comparing moral values in this way may actually protect against the “totalization of morality” on the part of the government (Chapman 2013,

19. For example, Haidt notes that Unitarian (religious, liberal) preachers made greater use of Care and Fairness words in their sermons, while Baptist (religious, conservative) preachers made greater use of Loyalty, Authority, and Sanctity words in their sermons (Haidt 2012, 188). This indicates that there are outlier religious consciences – e.g., Unitarian consciences – that typically and weightily draw on the first three moral foundations and related values.

20. To use Boucher and Laborde’s example, this would amount to granting an exemption to the Quaker whose pacifism is grounded in one kind of value and claim – i.e., that “all wars and outward fighting proceed from men’s lust” (Boucher and Laborde 2014, 502) – but not the secularist whose conscientious objection is grounded in a different sort of value and claim – i.e., that “violence and the use of weapons to kill other human beings is always wrong” (Boucher and Laborde 2014, 502).

38) as well as encourage the sort of “skepticism and humility that we owe one another as compatriots in a pluralistic society” (Sepinwall 2015, 1929).²¹

Conclusion

In this paper, I offered an answer to the question concerning religion’s specialness before the law by investigating the relationship between religious conscientious objections and their insulation from relevant evidence. I began my analysis by looking at Brian Leiter’s arguments that religious beliefs are insulated from evidence and are not worthy of special legal treatment as a result. I argued that he failed to show that the religious conscience is both in principle responsive to empirical evidence and in practice typically more insulated from this evidence than secular conscience. If I am right about this, then Leiter actually fails to answer the “central puzzle” of *Why Tolerate Religion?* and fails to sufficiently distinguish the religious conscience from the secular conscience. Second, I looked at whether or not it is plausible to understand the religious conscience as insulated from other forms of evidence. Following the research of social-psychologist Jonathan Haidt, I argued that, typically, both forms of conscience seem to be similarly insulated from moral argumentation. I also showed that, while it seems as though the religious conscience usually draws from a larger set of moral values when compared to the secular conscience, this should ultimately make no legal difference overall.

I want to lastly point out that the arguments in this paper can be understood as evidence in support of an egalitarian response to religion’s specialness. An egalitarian response to religion’s specialness would contend that both religious and nonreligious conscience claims should be treated equally before the law - however it is that we think they should, in fact, be treated. Thus, believing that we have good reasons to

21. I’m sympathetic to the views of Nadia Sawicki on this point. She argues that true respect for any claims of conscience demands a consistent, coherent, and repeatable mechanism for legal accommodation, even if that test is open-ended and results in uncertainty at the margins (Sawicki 2012, 1395). She thinks that the most promising legal mechanism for determining the permissibility of conscientious exemptions may be the kind of content-neutral balancing test often used in constitutional law – indeed, the kind that we see with RFRA (Sawicki 2012, 1396). While she grants that a balancing approach may be subject to criticism (e.g., that it risks being used as a proxy for judgments based on majoritarian values), she thinks that the alternative to establishing a content-neutral guiding principle is to “abandon the promise of freedom of conscience and concede that American society considers exercises of personal conscience to be valuable only to the extent that they align with widely accepted moral principles” (Sawicki 2012, 1396). This alternative, Sawicki argues “would undermine the foundational purpose of legal accommodation of conscientious belief, which is to protect individuals from oppressive majoritarian understanding of morality” (Sawicki 2012, 1396).

afford special legal treatment to both religion and conscience and believing that we have good reasons to adopt an egalitarian response are compatible. More specifically, the arguments here can support the second premise of a common argument in the specialness of religion literature:

1. If we should treat religious conscience beliefs with comparatively special legal treatment, then it is because there are features of religious conscience beliefs that distinguish them from other conscience beliefs that warrant such treatment.
2. But there are no features of religious conscience beliefs that distinguish them from other conscience beliefs that warrant comparatively special legal treatment.
3. Therefore, we should not treat religious conscience beliefs with comparatively special legal treatment.

References

- Boucher, François and Laborde, Cécile. 2014. "Why Tolerate Conscience?" *Criminal Law and Philosophy* 10 (3): 493–514.
- Chapman, Nathan. 2013. "Disentangling Conscience and Religion." *University of Illinois Law Review* 2013 (4): 1457 – 1502.
- Haidt, Jonathan. 2012. *The Righteous Mind: Why Good People Are Divided by Politics and Religion*. New York: Vintage Books.
- Leiter, Brian. 2014. *Why Tolerate Religion?* Princeton: Princeton University Press.
- Leiter, Brian. 2016. "Reply to Five Critics of *Why Tolerate Religion?*" *Criminal Law and Philosophy* 10 (3): 547–558.
- McConnell, Michael. 2013. "Why Protect Religious Freedom?" *The Yale Law Journal* 123 (3): 770–810.
- Sawicki, Nadia. 2012. "The Hollow Promise of Freedom of Conscience." *Cardozo Law Review* 33 (4): 1389– 1450.
- Sepinwall, Amy. 2015. "Conscience and Complicity: Assessing Pleas for Religious Exemptions in *Hobby Lobby's* Wake" *The University of Chicago Law Review* 82 (4): 1897–1980.

Sorabji, Richard. 2014. *Moral Conscience through the Ages: Fifth Century BCE to the Present*. Chicago: The University of Chicago Press.