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# *Religious Accommodation: An Egalitarian Defence*

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*This paper offers a distinctively egalitarian defence of religious accommodation in contrast to the rights-based approaches of contemporary legal thinking. It argues that we can employ the Rawlsian idea of a fair framework of co-operation to model the way that accommodation claimants reason with others (such as their employers) when they wish to be released from generally applicable rules. While participants in social institutions have 'framework obligations' to adhere to the rules those institutions involve, they also have 'democratic obligations' to re-consider and on occasion revise those rules which set back participants basic interest, including individuals' interest in manifesting their religion or belief. A number of objections to accommodation are considered, and it's argued that the personal responsibility objection is most serious. It's argued that responsibility can be interpreted through the notion of identification which in turn can be conceptualised through the ideal of integrity, and that the value of integrity in fact counts in favour of accommodation claims. The paper also offers replies to other objections to religious accommodation including the problem of proliferation, the problem of illiberal beliefs and the rewarding the doctrinaire objection.*

**Keywords:** Religious accommodation, fairness, framework of co-operation, Rawls, personal responsibility, integrity.

## 1. *Introduction*

Across Europe and North America, the problem of religious accommodation continues to be the subject of legal debate, political campaigns and seemingly intractable philosophical argument. Whether, and if so, when with ordinarily applicable laws and rules should accommodate citizens with strong religious or moral convictions raises challenging questions about the meaning, interpretation and justification of those laws and rules. The problem is often conceptualised in terms of rights

and liberties. In a US context, this stems from the free exercise clause of the First Amendment. In a European context, the legal debate around accommodation revolves around article 9 of the European Convention of Human Rights (ECHR) which protects freedom of religion or belief. Both these documents conceptualise religious liberty as a right of pre-eminent weight and authority. Over the years an enormous case law (and associated commentary by academic lawyers) has developed over the proper interpretation, application and enforcement of both Article 9 and the First Amendment.

In what follows, however, I shall depart from this liberty- and rights-based perspective to defend a distinctively egalitarian defence of religious accommodation in a stronger sense of ‘egalitarian’ than has been employed in the literature so far.<sup>1</sup> My argument for accommodation not only assumes that both appropriate non-religious as well as religious convictions should be accommodated, or that we should distribute the burdens of accommodation in a fair and equitable way. It departs from the judicial model of accommodation where courts and tribunals insert their judgments into disputes between claimants, to conceptualise those disputes horizontally as ones between contending parties who deliberate over the rules that govern their interactions. In making this argument, I borrow from Rawls the ideal of society as a fair system of co-operation between free and equal citizens, though I suggest that that basic idea applies also to particular institution within society. I also give serious consideration to the objections to accommodation, and I suggest that the most powerful objection to accommodation arises from the notion of personal responsibility; roughly put, the idea that if we are responsible for our deeply held religious and moral convictions then we cannot in justice claim any special accommodation for them. The other main claim I make in this paper is that reflection on the ideal of personal responsibility in fact motivates an argument that counts in favour of, and not against, accommodation.

The plan of the remainder of the paper is as follows. In the rest of this Section 1 make a couple of preliminary comments. Section 2 sets out the egalitarian argument for a framework of social co-operation in general terms. I distinguish there between individuals’ duties to pursue their religious and other convictions within a fair framework of co-operation and their democratic duties to reflect with their fellow individuals on the fairness of that framework. Section 3 explores the

<sup>1</sup> For example Cécile Laborde describes ‘egalitarian theories of religious freedom’ as those which do not see religion as uniquely special; that do not protect religious commitments qua their religiosity; and that accord equal civic status to all citizens. See Laborde (2014: 53–8) and (2017: Part I). See also Shorten (2010) for an egalitarian defence of exemptions based on an ideal of equal citizenship. My own defence of accommodation employs a notion of egalitarianism stronger than both Laborde’s and Shorten’s insofar as it emphasises an ideal of participants in social co-operation who enjoy equal status. For a critique of the idea that accommodation has much to do with equality, see Jones (2017).

objections to accommodation. I distinguish there between internal objections to the very idea of accommodation and the external costs which any particular accommodation imposes, and outline four internal objections of which the personal responsibility objection is one. Section 4 argues in response that personal responsibility can be conceptualised in terms of identification, while Section 5 argues that identification is captured by an ideal of integrity. Since integrity has impersonal moral value, it in fact supports accommodation. Section 6 employs the notions of integrity and a fair framework of co-operation to offer some replies to the other internal objections. Section 7 returns to the ideal of social co-operation to show how individuals' interests in personal integrity as well as other interests can be put to work in a practical framework for examining accommodation claims which also takes account of external costs, while the final Section briefly concludes.

The topic of this paper is accommodation, not legal exemptions. Though the two are sometimes conflated, the latter is a broader idea. For example, if a cafeteria offers kosher and halal meat then it accommodates the religious preferences of its Jewish and Muslim customers. Such an accommodation might well draw on a legal exemption. In the UK, for example, Jews and Muslims enjoy a specific exemption from the laws on animal welfare which normally require that animals such as cows and lambs are stunned before they are slaughtered.<sup>2</sup> But most cases of accommodation do not involve a formal legal exemption. This is because most (though not all) cases of accommodation occur in employment, which is not a coincidence since the world of work imposes on employees rules and regulations which come into conflict with their religious, and less commonly non-religious, convictions. This fact has in my view been under-appreciated, by political theorists, though perhaps not by academic lawyers (see for example Vickers 2016). This may be due to a relative neglect by liberal political theorists of the sphere of work, possibly due to the influence of the Rawlsian idea that individuals pursue their abstractly defined conception of the good life.

A second preliminary comment is that my interest here is in individual, not group-based accommodation claims. Of course, an accommodation may be enjoyed by a number of individuals who are all part of a group (such as Christian Sabbatarians for example), and so too an exemption, as the example of the animal slaughter exemption in the UK makes clear. But both those kinds of accommodation are distinct from when a group qua group exercises a liberty, as Bob Jones University did when it excluded would be black students or as the firm Hobby Lobby did when it sought an exemption from President Obama's Affordable Care Act.<sup>3</sup> Many of the moral issues in individual and group-based accommodation are the same; in particular, in both cases we need some

<sup>2</sup> The Welfare of Animals (Slaughter or Killing) Regulations 1995.

<sup>3</sup> *Bob Jones University v. United States* 461 U.S. 574 [1983]; *Burwell v. Hobby Lobby* 573 U. S. [2014].

compelling reason why one agent should enjoy a privilege not extended to others: this is the central puzzle of accommodation. But group cases involve further issues to do with the identity of the group which there is not the space to consider here, albeit what I say has some relevance to them.<sup>4</sup>

## 2. *Fair terms of co-operation*

Imagine a Christian employee approaching his manager and requesting a release from the Sunday work rota in order that he can attend church. He will need to present reasons to his manager for this special treatment, and if the manager turns down his request she will need to explain to the employee why his claim cannot be accepted. The two parties discuss the matter together interpersonally, and each offers reasons which s/he hopes the other will accept. If the employee's reasons prevail in their deliberations, then the work rota will be revised, with probable knock on affects for other employees who may need to take up some of the slack. Thus in deliberating with her employee the manager is (or should be) representing their interests too. By contrast, if the employee accepts the manager's arguments that release from Sunday working is an unjustifiable special privilege, then he will either need to knuckle down and work on Sunday, even though his conscience tells him he should be at church, or else resign his job.<sup>5</sup>

The framework for evaluating accommodation claims that I propose in this paper models this simple two person deliberation. It captures the sense in which parties to accommodation claims approach each other horizontally, in contrast to the vertical way in which court and tribunal judgements are inserted into a dispute between contending parties. And just as it is better if accommodation disputes can be resolved amicably by the parties concerned, so I think it is also better normatively to conceptualise the puzzle of accommodation in this horizontal, interpersonal way. Although accommodation disputes do involve parties who are superordinate over others—managers and employees, for instance, or teachers and schoolchildren—there is a fundamental sense in which contending parties are equals who must reason together. They do so in what, borrowing from Rawls, I shall call a framework of social co-operation (Rawls 1993: 15–22). This is the set of laws and rules which give individuals a particular pattern of freedoms, opportunities, duties and prohibitions, and which they have a general responsibility to maintain. The laws of a liberal polity are one example of a framework of social co-operation, but so too are the rules of a particular organisation such as a firm insofar as they require individuals to meet the role-related duties their job entails. For now, I shall describe the conception of a

<sup>4</sup> For an excellent analysis of group accommodation, see Shorten (2015). For a critique of the Supreme Court's decision in *Hobby Lobby*, see Cohen (2015).

<sup>5</sup> A third option is to revise his belief in the necessity of attending church.

framework of co-operation in abstract and ideal terms; I shall add more concrete detail to the conception later, in Section 7.

The notion of a framework of social co-operation regards individuals as both co-authors of and subject to an institutional structure which regulates their interactions. A *fair* framework of co-operation enables individuals to meet their aims and realise their interests better than any alternative framework (or no framework at all). The framework of co-operation is in an idealised sense, the common possession of the individuals to whom it applies. Not a charter which they inherit from on high, it expresses their equal status as members of an institution. If unfair, it is likely to breed feelings of resentment and alienation among the losing parties. If fair, it gives individuals a motivation to meet the duties it entails. I emphasise the idea that the framework of social co-operation is a regulatory ideal which is interpersonal and which structures and shapes the interactions of individuals in their particular roles as employees, students, club members and of course, as citizens in the polity. Individuals have a general obligation to do their fair share in keeping the framework of social co-operation in place, meeting the duties and accepting the limits it imposes. This includes the duty to adjust their aims so that they are realisable within the framework as it stands. Call the set of duties each individual has to help maintain the framework of social co-operation, her framework obligations. This is the aspect of the framework of social co-operation which is emphasised by Rawls.

However, the accumulation of laws and rules in actual societies in practice reflects the customs, traditions and historical pedigree of those societies in a way which often unfairly serves its majority's (or at least some citizens') interests at the expense of others. Moreover, particular frameworks are arrived at by flesh and blood human beings, with normal biases and prejudices and in contingent circumstances which vary from place to place. As a result, particular frameworks of social co-operation may be unfair, in various ways. Where this is so, the individuals who are burdened by that unfairness benefit do not have a framework obligation to meet all the duties the framework imposes, at least not those which impose unfair demands. Those who benefit from that unfairness also do not have the standing to demand compliance with those duties if, *ex hypothesi*, those duties impose unfair demands. In such circumstances, individuals need to revise their framework. This is something they do together in a more or less deliberative process which takes reasonable account of each person's interests. They review and when appropriate revise those laws and rules which structure their pervasive interactions, whether that is in a particular institution such as a workplace, or through citizens' deliberation on the law in society at large. I shall call this their democratic obligations.

Individuals' democratic obligations express an ideal of mutual accountability through which they stand before each other to address

how their framework of co-operation will fairly accommodate their claims. Framework and democratic obligations therefore co-exist in equilibrium. Framework obligations are only genuine if they maintain genuinely fair terms of social co-operation and democratic obligations underwrite that fairness. At the same time, if democratic obligations have been adequately discharged then it is reasonable to insist that individuals meet the duties of their framework obligations, whatever burdens are involved.

It is a misconception to assume the fairness of an ideal framework of social co-operation and then insist that individuals meet their framework obligations within that. It is equally a mistake to assume that the particular, historically contingent framework actually in place in any society imposes framework duties on citizens, absent their mutual evaluation of its fairness. Adjudicatory thinking lends some support to these misconceptions because legal judgements take current laws as the baseline from which judgements are made. The appropriate baseline from which the costs and benefits of any accommodation are evaluated, is not that set of legal rules and norms which prevails at any one time because it is the fairness of that baseline which is the very thing in question.<sup>6</sup> Rather, the content of the baseline needs to be informed by a normative account of what interests individuals possess, and their nature and relative strength. I shall say a little more about this as we proceed.

The notion of collective deliberative reflection on the framework of social co-operation might seem to imply the family of views known as public reason in liberal political philosophy. In the case of Rawls, the two views fit together since when citizens deliberate about basic justice (which for Rawls is essentially constitutive of the framework of social co-operation) in the political domain they must restrict themselves to public reasons. However, the notion of a democratic obligation is a broader one than that of public reason as it refers to the general ideal of interpersonal deliberation by individuals of equal moral standing. In particular, I do not want to stipulate, as Rawls and other public reason theorists do, that individuals can only propose views to each other which are grounded in shared political values rather than their particular comprehensive doctrines. One reason for avoiding that stipulative assumption is that, as Andrew March has convincingly argued, it underplays the various ways that religion *can* appropriately figure in public political debate (March 2013). Another reason is that philosophers sympathetic to religious claims such as Christopher Eberle, Paul Weithman and Kevin Vallier, have proposed an alternative convergence view of public reason where individuals may legitimately appeal to their own comprehensive religious doctrines (Weithman 2002, Eberle 2002, Vallier 2014). In what follows I take no stand on

<sup>6</sup> Jones (2016) and Leiter (2013) both assume a status quo baseline, but Jones (1994) takes into account that the baseline is punctuated by cultural norms.

the debate between convergence and the orthodox ‘consensus’ views of public reason. My account of deliberative reflection on frameworks of co-operation also departs from the mainstream view of public reason in that it does not (only) apply to coercive laws, as for example Rawls assumes in restricting public reasoning to reasoning about basic justice. As a number of authors have pointed out, this is also an over-restrictive assumption (see for example Bird 2013). There are cases of for example, non-coercive establishment which can be resolved through a public reason approach (Laborde 2013). The ideal of mutual deliberation on the framework of social co-operation applies as well to individuals’ reasoning in particular domains such as employment where the rules which structure their interaction are not coercively maintained.

Rawls employs his ideal of fair co-operation between free and equal citizens in the context of principles of justice that regulate the basic structure of society. Though I agree with this picture, I want to employ the same basic ideal to describe, in idealised terms, the interactions between members of more particular institutions in a liberal society such as workplaces, universities, churches and clubs and other associations. In all of these institutions individuals interact in a way which is (a) structured by rules, and (b) realises, or frustrates, the achievement of their individual and collective aims. The rules of particular institutions are not coercive in the way the law is, though they often have legal standing, such as an agreement between employer and employed. As (a) and (b) apply in other domains besides the basic structure, it seems reasonable to import the ideal of fair co-operation into these domains too. I am happy to concede that it is the coercive law which describes the basic structure which is of ultimate importance as far as justice is concerned. But accommodation, in contrast to formal exemptions, does not typically involve formal opt outs from the law, but rather the way that laws and non-legal rules are interpreted and applied. My suggestion is that we conceptualise the individuals involved in accommodation dispute as co-members of the relevant institution who reason together on the rules affecting them all. I’ll return to this idea in Section 7; but for now we turn to consider the problems of accommodation.

### 3. *Objections to accommodation*

Accommodation is a controversial ideal for a number of reasons. It is said to unfairly privilege religious over other comprehensive doctrines; reward the most rigid, doctrinaire believers over those prepared to moderate their aims at some personal cost; lend credibility to grossly illiberal views such as homophobic or racist ones; and deny the fact that religious believers are partially responsible for the situation in which they find themselves, in the way that other beneficiaries of accommodation such as the disabled are not. These are all *internal* objections to religious accommodation in the sense that they are criticisms of the very idea of religious accommodation, and not objections to any

particular accommodation. In what follows, I shall try to say a little in response to all these objections, though I focus on the last which is in my view the most serious. We can distinguish these internal objections from what I shall call external costs. The latter are the particular costs, either visited on third parties by a particular accommodation or imposed upon a claimant if her accommodation request is not granted. The distinction between internal objections and external costs offers a useful way of thinking about accommodation because if we can first resolve the internal objections first, we can then employ the framework of social co-operation to assess the costs of any particular accommodation.

Let's return to the case of the Christian Sabbatarian. As I noted, her employer might reasonably say to her that she should instead take a job where Sunday working is not required, or develop an understanding of her faith where Sunday working is no longer prohibited. This is not just a theoretical view. The European Court of Human Rights (ECtHR) until recently employed its 'specific situation rule' which in effect said that the freedom to leave one's employment accorded adequate protection to citizens of faith whose religious claims could not be accommodated at work.<sup>7</sup> Underlying that rule is a normative principle to the effect that individuals are responsible for their religious (and other) convictions. I shall call this *the individual responsibility objection* to accommodation. It has been advanced in different ways by a number of writers, notably Peter Jones (1994). Moreover, and no doubt partly explaining the specific situation rule, a principle of individual responsibility is assumed by Article 9(2) of the ECHR which canvasses a number of considerations (in my parlance, ways of categorising external costs) which count against an individual's Article 9(1) right to manifest her religion or belief. If we were not responsible for our religious and other convictions there would be no point in stipulating limits to how we manifest them.

The individual responsibility principle can be employed on two levels. Faced with a situation in which manifesting her beliefs comes into conflict with uniformly applicable rules, a person can either revise her beliefs or, more commonly, revise her behaviour, either by submitting herself to her employer's rules at some cost to her conscience or finding an employer which does not impose the troublesome rule. This division corresponds to two ways in which human beings are agents. As *epistemic* agents we interpret and evaluate the world we experience to form our moral, religious and other beliefs. Our beliefs do not come pre-formed and then imprint themselves upon us. As epistemic agents we are responsible for the formation of the beliefs we hold, however strongly we hold them. Holding individuals responsible as epistemic agents is consistent with their being socialised into the beliefs they regard as unshakeable convictions. The individual responsibility principle asserts only that they *could* hold alternative convictions, not that

<sup>7</sup> For an analysis of the ECtHR's use of this rule, see Sandberg (2011: 84–6).



they are likely to do so or that abandoning their beliefs would not carry a considerable cost. Individuals are also *practical* agents. We pursue aims and projects which are shaped and orientated by our beliefs. It is central to our self-conception as human beings that we are active and not just passive in the world; we shape aspects of our shared world, individually and together. As with epistemic agency, this is not to deny the difficulty of revising our ends, or the costliness of pursuing ends that do not match our underlying beliefs. It is sufficient for practical agents just that we could pursue different aims than those we presently pursue.

In some circumstances, then, it clearly is possible for citizens with strong convictions to revise their practices, and possibly also their underlying beliefs. Given the external costs that accommodation can impose on third parties, it may be fairest for the state to insist on cost internalisation for believers and/or seek to engineer propitious circumstances for revision of practices or beliefs. After all, a preparedness to moderate one's beliefs and/or behaviour in the light of others' reasonable claims is a central demand of liberalism and achieving a society where citizens exhibit this moderation is seen as one of its foremost aims. The contrary policy of accommodating laws and rules around citizens' convictions, however sincerely held, has the perverse consequence of rewarding the most doctrinaire believers, over those prepared to exercise their agency to revise their beliefs and/or behaviour, thus exhibiting a central virtue of liberalism. I shall call this the *privileging the doctrinaire objection* to religious accommodation. It questions the way in which accommodation appears to reward rigidity and orthodoxy over flexibility and compromise.

Indeed, this point about doctrinaire believers can be taken further. Suppose a Christian employee worked at a hotel and had a sincerely held belief in the sinfulness of same sex relationships. When a gay couple seek to book a double room at the hotel, she refuses to give them one. In a number of jurisdictions involving cases of this kind, courts have invariably found against Christian plaintiffs.<sup>8</sup> My interest, however, is in the structure of the reasoning involved in these judgements. If discrimination against same sex couples is wrong, then why should the beliefs which underlie it be accorded any weight at all in resolving the accommodation at issue? There is a difference between adjudicating in favour of a gay couple on the grounds that their interest in not being discriminated against *outweighs* a hotel proprietor's right to religious liberty—this accords the latter's discriminatory behaviour some initial normative weight—and holding to the contrary that such beliefs should not figure even as a *pro tanto* claim in any adjudication.

I shall call this the *prejudicial beliefs objection* to accommodation. At first blush, this objection may not seem a very significant one. All that's important in accommodation cases, one might argue, is that we

<sup>8</sup> For example *Bull v. Hall and Preddy* [2013] UKSC 73.

get the right answer. If we reach the same destination by taking account of prejudicial beliefs as a particular kind of external cost, it surely doesn't matter too much. I believe, however, that the prejudicial beliefs objection is important, albeit for the theoretical rather than practical reason that we should not give even *pro tanto* weight to illiberal beliefs in our reasoning about accommodation. That in turn is for two reasons. First, we are considering whether rules should be interpreted and applied to take account of people's religious convictions. In contrast to the superficially similar case of hateful and offensive speech, whether that is visited on or perpetrated by religious believers, this is not simply a question of practical manifestation. It also involves the very meaning of the rules which structure our interactions. The question is why illiberal beliefs should inform the interpretation and application of those rules in even a *pro tanto* sense. Second, accommodation of the prejudicial seems relevantly similar to the issue of whether members of illiberal and harmful groups such as the Ku Klux Klan or the Mafia have special obligations to each other. It seems to me tremendously counter-intuitive to maintain that KKK members have special duties to harass or lynch black Americans or that Mafiosi owe it to each other to engage in violent criminal activity *even if those duties are over-ridden by more compelling moral considerations*. There simply are no such duties even at a *pro tanto* level. By analogy, I am suggesting, a gay couple do not have even a *prima facie* duty to accede to the prejudicial beliefs of someone who harbours anti-gay animus.<sup>9</sup>

As I noted, Article 9(1) of the ECHR gives individuals a qualified right to manifest their religion or belief. The ECtHR has stated that the sorts of belief appropriate for accommodation under Article 9(1) must represent 'a coherent view on fundamental problems'.<sup>10</sup> In one UK employment case a judge accepted that the plaintiff's convictions about the need to mitigate human-made climate change was a philosophical belief of the morally right sort, and indeed the judge speculated that in the future doctrines as pacifism, vegetarianism, communism or free market capitalism might also qualify for protected status.<sup>11</sup> These are, after all, serious and important doctrines. In other recent discrimination cases in the UK, the belief that fox hunting is wrong, the spiritualist belief that it is possible to contact the dead using psychic powers, and a belief in the BBC's public service ethos were also accorded protected status (Gibson 2013: 581). The danger here is having no principled basis to draw the distinction between protected and unprotected beliefs and of opening the floodgates to a wide variety of disparate beliefs all of which would qualify for protected status. This is the *dan-*

<sup>9</sup> In saying this, I am not assuming that all Christian hoteliers who refused to allow same sex couples to share a room did harbour anti-gay prejudices. I am simply making the theoretical point that if they did, then those beliefs should not figure in our deliberation about how to resolve this kind of accommodation case.

<sup>10</sup> X v. Germany (1981) 24 D&R 137.

<sup>11</sup> Grainger plc v. Nicholson UKEAT/0219/09, paras 27–28.

*ger of proliferation* objection to accommodation. The objection is really the flipside to an objection sometimes made of accommodation that it unfairly privileges religious over non-religious belief. Some theorists, such as Michael McConnell and Andrew Koppelman, have responded to that objection by seeking to show how religion is uniquely special and deserving of protection (McConnell 2000, Koppelman 2006). Here I have taken a more encompassing approach: religion is special, but not uniquely so. But the basic question still remains of carving out some category of beliefs which merit special protection

Individual responsibility, privileging the doctrinaire, prejudicial beliefs and the danger of proliferation are four powerful objections to accommodation. Individual responsibility is in my view the most powerful of all as it goes to the very heart of what it is to hold a religious (or non-religious) beliefs, though nothing in what follows assumes that individual responsibility is the most important objection. At any rate, in the next two Sections I reflect on this objection further in order to show that the notion of agency which underlies individual responsibility can in fact be used to *defend* accommodation.

#### 4. *From responsibility to identification*

A promising way to defend the individual responsibility principle is through the idea of identification. The reason we should be sceptical of accommodation claims, on this view, is because we should bear the costs of the beliefs with which we identify. The notion of beliefs needs to be interpreted in the right way so that it refers to a person's convictions, commitments, projects and so on, especially those constitutive of her identity, and not her factual beliefs. The principle which says that individuals should bear the costs of these constitutive beliefs is quite general. For example, if a person identifies as a Muslim and believes he should travel to Mecca for the *Hajj*, then we would normally think he should bear the cost of the journey. Or again, if a person strongly identifies with being an actor but is unable to get much work in the theatre, we wouldn't ordinarily think that anyone else has a duty to subsidise that project. The principle of bearing the costs of the beliefs with which one identifies (for short, the identification principle) is compatible with the idea that individuals can hardly imagine themselves not having the relevant identity-conferring beliefs. The Muslim pilgrim, if he was brought up as a Muslim from birth, may not be able to conceive of himself having any other religious beliefs, and even our none too successful actor may be unable to imagine herself doing anything else. However, the identification principle is also compatible with considering one's beliefs to be revisable; after all, individuals do sometimes change even those beliefs they consider central to their identities, for example if they undergo a profound religious conversion. The identification principle holds simply that we are epistemically competent agents who form, maintain, act on, and occasionally revise our identity-conferring

beliefs; such beliefs are not alien impositions, but rather they emanate from ourselves (even if they refer to a transcendent world beyond ourselves). We do standardly regard ourselves as responsible for our beliefs, in the sense that we are accountable for them and can be fairly criticised for holding them. We can still appropriately criticise the illiberal beliefs of a person whose racist convictions, say, are held as unshakable convictions. The aim of such criticism may only be to explain why he should not be permitted to manifest his racist beliefs; if we can get him to shift his opinions in a liberal direction, that is a bonus.

The identification principle does not, however, settle the question of what appropriate normative standard to employ in assessing how far individuals should bear the costs of their constitutive beliefs. We could for example hold that because individuals are responsible for their identity-conferring beliefs, they should bear one hundred per cent of the costs involved. That seems the most intuitively plausible judgement in the case of the Muslim travelling for a *Hajj*, for example. But in other cases our intuitions are not so clear. Should a Muslim who wants to attend Friday prayer but cannot work Friday afternoons as a result, bear the full costs of his Muslim convictions, however strongly he identifies with them, even perhaps the cost of being unable to secure full time employment (Jones 1994, 2016)? To begin to answer this, we must examine further the idea of identification at work.

### 5. *From identification to integrity*

I now want to suggest that the notion of identification with one's beliefs is best captured by the ideal of integrity, and that since integrity has value it grounds a *prima facie* argument *against* burden shifting, notwithstanding the cost internalisation considerations above.

The notion of integrity has been used in different ways by different philosophers. A good way into the debate over the meaning of integrity are the three categories of integrity set out by Cheshire Calhoun (1995). On what Calhoun calls the 'clean hands' conception of integrity, it consists in a person's resistance to dirtying her hands, selling out and other temptations. The person with integrity on this view 'maintains the purity of her own agency' (Calhoun 1995: 235). On the 'integrated self' conception of integrity, by contrast, the ideal consists in achieving some order and coherence between one's various aims and convictions. The person with integrity on this interpretation of the idea is not caught between incompatible aims; she marshals them into a unified whole by which she lives her life. Finally, on the 'identity view' of integrity, it consists in fidelity to those projects and principles which are constitutive of one's core identity. The person with integrity, on this third conception of the idea, ensures that her moral principles are expressed in her action and behaviour. Though Calhoun has some criticisms of them, all three conceptions of integrity are, in my view, cogent interpretations of the same general idea. Moreover, it is quite possible

for a person to exhibit more than one type of integrity through the same behaviour. For example, an artist whose over-riding aim is to be true to her art, where every other possible aim is subsumed by that, might enjoy clean hands, and identity integrity and an integrated self. The fact that, other things being equal, we would admire such an artist is a clue to the fact that on all three conceptions integrity is something that has independent value, not merely subjective value for the agent herself. At the highest level of abstraction, integrity points to the value of taking one's ideals and convictions seriously, of caring about them as only moral agents can and ought to do. Insofar as we have an interest that other human beings, not just ourselves, are moral agents, integrity understood this way has agent-neutral value.

I shall return to the clean hands and integrated self conceptions of integrity later in this Section, but I begin by focussing on the identity view of integrity since, as its name suggests, this is closest in meaning to the notion of identification sketched earlier. The identity view says that the agent with integrity expresses her commitments in her actions; the latter spring from what she most cares about, so there is not a disjunction between her outward behaviour and her inner convictions. Individuals with identity integrity live up to their convictions, not only do they not sell out (a disvalue also captured by the clean hands view), they do not sell themselves short either; they stand up for what they believe in, even if there are obstacles to doing so or theirs is a minority view. Intuitively speaking, fidelity between one's ideals and convictions and one's behaviour expresses is valuable; it is a moral virtue worth striving for (at least if one's ideals and convictions are reasonable, a point to which I shall return).

Something very much like identity integrity seems implicit in Article 9(1) of the ECHR with its distinction between belief and manifestations of belief, the assumption being that beliefs are imbricated in our behaviour, as in religious ritual for example. It is not easy to specify precisely why identity integrity has agent-neutral value, but the explanation will have something to do with the tight connection within our everyday thinking between motives and behaviour; we want to act with the right kinds of motives, this seems an important part of our well-being.<sup>12</sup> Identity integrity is also extrinsically valuable in the sense that it is a necessary accompaniment to other values. The person whose thoughts and actions exhibit identity integrity enjoys a certain kind of autonomy, for example, since her actions and behaviour are under the governance of her values and ideals, not anyone else's. Identity integrity is bound up with the value of self-respect; persons respect themselves for living up to their values and ideals, despite the obstacles and challenges in doing so. To be sure, this is not all that self-

<sup>12</sup> Bou-Habib (2006) interprets integrity as the value of a person fulfilling her subjective duties (even if they are not genuine duties) which he views as part of well-being.

respect consist of, but it is part of self-respect, and again a value that identity integrity extrinsically shares.

Individuals with identity integrity value and identify with their ideals, convictions and principles. That is why they orient their behaviour by them. If they were not *their* ideals there would be no point bearing the costs which fidelity to them entails. Identification is therefore a necessary part of integrity on the identity (and probably also the clean hands) view. After all, we would be sceptical of a person's claim to identify with a principle if she abandoned it at the first opportunity. In fact, the notion of identity integrity seems to better capture what is at stake for religious and other believers than identification alone. Religious believers do not merely endorse their religious values and consider them to be constitutive of their identities; they *value* the fact that they endorse them. Religious values are ones they prize, as evidenced in the challenges and burdens they are willing to meet in order to live up to them. Living up to one's values involves more than simply identifying with them. For example, a person might identify with the political value of conservatism, but not regard conservatism as something she is required to live up to in her personal life, nor need she even value the fact she is a conservative. Living up to one's values involves actively seeking coherence between thought and action; one's actions express one's ideals and principles, at least much of the time, and one values that expressive dimension to one's life.

Conceptualising religious commitment through the lens of integrity, not just identification, is important, because once we do so our intuitions about cost internalisation shift. I have suggested that identity integrity has agent-neutral value. That is a central value at issue in religious accommodation cases. A policy of cost internalisation, justified on the grounds that religious and other believers are responsible for bearing the costs of their beliefs, will require them to act (or refrain from acting) in a way which is at variance with their ideals and principles, often deeply held ones. This does not settle the justice of accommodation in particular instances, but it does shift the burden of justification. On the simple identification view, religious believers need to explain why others should bear the costs of their beliefs. By contrast, protecting the value of identity integrity if is a powerful consideration which *favours* accommodation despite the burden shifting it may involve.

This conclusion is bolstered if we consider the clean hands view of integrity to which the identity view is closely related. The clean hands view emphasises the ever-present temptation to succumb to social pressures and external inducements. The person who exhibits clean hands integrity preserves her agentic capacity to set her own ends for her own reasons; she does not sell out on her ends, despite third party inducements to do precisely that. She values her agency and strives to protect it from third party interference. Insofar as agency is agent-neutrally

valuable so too is clean hands integrity. After all we admire people who keep their hands clean; the person with dirty hands is corrupt, to some degree. However, in the case of religious accommodation, this claim has to be interpreted with care. Individuals who claim an accommodation are seeking to release themselves from rules which the rest of us regard as legitimate; it is those rules from which they seek to keep their agency clean. The relevant form of agent-neutral value will therefore be quite a weak one. Yet to some degree, we admire individuals who do not succumb to social pressures in the name of their principles even if those social pressures stem from laws which the majority of us regard as reasonable.

The integrated self conception of integrity articulates the value of achieving some order between one's various aims and ideals. The person with integrated self integrity enjoys some coherence between her disparate ends and pursuits, so that they are reasonably part of a unified life; she does not struggle to meet irreconcilable demands. This kind of integrity is relevant too because a fair framework of social co-operation will enable citizens to express their religious and moral convictions, and at the same time be participants in full standing in the social and economic institutions of which they are members. Individuals with strong convictions do not typically want to be exempted from society's common institutional life which after all meets many other of their interests and answers basic status needs. A person wants to be a committed Christian *and* a good employee; a dedicated Muslim *and* a keen school student, and so on. Integrated self integrity is therefore another interest which is relevant to the construction of a framework of co-operation. It too has another-regarding dimension in that it is beneficial for workmates, associates, fellow students and so on if the religious among them are able to fulfil their institutional roles and responsibilities alongside others.

### 6. *Three objections reconsidered*

The previous two Sections have sought to show how reflection on personal responsibility, which began as an important objection to accommodation, in fact supports it, once responsibility is conceptualised through the notion of identification and the latter explained by the ideal of integrity in its three dimensions. With integrity to hand, and also the ideal of a framework of social co-operation from Section 2, we are now in a position to address the other three objections to accommodation that I introduced in Section 3.

One of these was the prejudicial beliefs objection which questioned how theoretically satisfactory it was to accord even pro tanto weight to an accommodation claimant's illiberal views. In reply to this, it can be said that integrity only has the value it does if the commitments it involves are reasonable ones. This applies to all three senses of integrity we have been considering. With integrated self integrity, would

not for example recognise any loss of a value if a person was unable to combine his twin commitments to be a drug dealer and an armed robber. As far as identity integrity is concerned, there is only value in living up to one's moral and religious convictions if those convictions are reasonable ones, for example compatible with others' rights and liberties. I use the term 'reasonable' rather than 'valuable' because identity integrity applies also to non-moral views and also to suggest a notion of reasonable pluralism as far as people's moral and religious convictions are concerned. An individual's commitments must be reasonable in the first place for identity integrity to be relevant; we should not take the commitments which inform identity integrity at face value and then assess their reasonableness by their consistency with other values. More accurately, we should say that the value of identity integrity implies that all the components of a person's moral and religious convictions are reasonable. Thus in the example from Section 3, if a Christian hotel employee's belief that same sex couple's merit lesser civic standing which is a valueless one to live up to; not her Christian doctrine as a whole.

Moreover, the ideal of interpersonal deliberation which is at the core of the fair framework view offers a further reply to the prejudicial beliefs objection. Individuals' democratic obligations to reflect upon the rules that govern their framework involve them addressing each other as democratic partners who recognise each other's standing in determining the rules which regulate their interactions. As such, they have a duty to respect each other's co-authority in determining their common rules, and that duty is inconsistent with treating individuals with whom one is deliberating as enjoying lesser standing in all those practices which the framework governs. A refusal to offer a room to a same sex couple, conveys discriminatory message to gay and lesbian citizens, a stance which is inconsistent with regarding those citizens as participants with equal authority in a common enterprise of interpersonal justification. The religious claimants might object that they affirm that the gay couple are equally worthy human beings; they simply cannot extend a service to them in cases where (so they believe) they would be complicit in positively appraising some practice antithetical to their deepest convictions. However, this reply puts too much weight on a standalone notion of regarding someone as an equal separate from how one treats them in practice. In the shared institutional realm, how we regard people is principally manifest in the treatment we accord them. We are free to avoid others' company in the private domain and choose our friends and intimates there, but qua deliberation on common rules we have prima facie duties not to undermine each other's basic standing.

The proliferation objection questioned the possibility of circumscribing a special category of religious and moral commitments which enjoyed protected status while others do not. The notion of identity in-



tegrity offers a reply to this objection if we stipulate that it is a person's identity-related (reasonable) convictions which are at stake in accommodation cases. That seems a plausible stipulation; after all, if you do not identify with, say, being a vegetarian then it is not very coherent to claim that there is some special value in living up to your vegetarian beliefs. Adding plausibility, the notion of identity-related commitments has been employed in other areas besides religious accommodation. In his defence of minority cultural rights, Alan Patten uses the notion identity-conferring commitments to motivate a principle of fair opportunity to pursue one's cultural aims (Patten 2014: 133–136). Patten points out that identity-conferring commitments have a less negotiable character than other kinds of goals and tend to play a pivotal role in enabling a person to pursue her other goals. This way of thinking offers a response to critics of accommodation such as Richard Arneson. Arneson imagines a group of surfers who wish to take psychedelic drugs in order to transform their weekend surfing into a 'sublime and moving experience' and he questions how far this is different from religious believers who ingest hallucinogens as in the *Smith v. Oregon* case (Arneson 2010).<sup>13</sup> It does not seem very plausible to say that the surfer frustrated by a law which proscribes drug-taking has failed to live up to her commitments in the same way that Al Smith argued that he was prevented from practising the elements of his Native American faith. I concede it is possible to imagine a drug-taking surfer whose commitments to those twin pursuits did form an analogous kind of identity-related commitment to Smith. But there are inevitably grey areas with any philosophical criterion and the proliferation objection only has traction if accommodation cases are peculiarly susceptible to counter-intuitive cases such as this one.

The rewarding the doctrinaire objection claimed that accommodation rewards those believers who are most rigid in their convictions and the least prepared to revise them in the light of others' legitimate claims. In a liberal society, by contrast, we should encourage individuals to reflect on their beliefs, not cultivate sectarian orthodoxies. However, while the latter is correct, it is not necessarily in conflict with accommodation. The assessment of accommodation claims proceeds from an impartial judgement on the nature and strength of relevant interests, identity integrity among them. Individuals have democratic obligations to present their views in ways that others can acknowledge and to make a genuine effort to understand others' perspectives as well. The strength of a genuine interest in some context may depart from the particular way it is presented by claimants, at least prior to mutual deliberation. The purpose of accommodation is to allow persons to live up to their reasonable identity-related commitments; this may be less than initially demanded by some claimants. More generally, the

<sup>13</sup> Employment Division, Department of Human Resources of Oregon v. Smith 494 U.S. 872 (1990).

structure of interpersonal justification encourages all sides to reflect on their beliefs, in order to present them to others in ways they can reasonably accept. In some cases at least, the message of civic inclusiveness that good faith deliberation involves might promote a willingness among the orthodox to moderate their demands on others insofar as more rigid demands may stem in part from feelings of disconnection and separation from common social, economic and political institutions. It is now time to say a little more about what this deliberation involves in practice.

### *7. Resolving accommodation*

I have set out above a framework for addressing claims to special accommodation for citizens with strong religious or moral convictions, and I have tried to show how accommodation as an ideal is not susceptible to some of the more common objections levelled against it. In this penultimate Section I outline, albeit in sketchy form, how this framework can be put to use in resolving actual accommodation cases. In doing so, I also say something about the costs which accommodation, or its absence, visits on contending parties, and how these costs might be fairly distributed.

The basic idea is that the ideal of fair terms of co-operation, as part of the larger notion of interpersonal justification, models how parties to any accommodation dispute should approach the issue at hand. Their deliberations are fair to the extent that they approach the ideal, and lacking in fairness to the extent that they depart from it. I earlier referred to individuals' framework obligations to adjust their aims so they are realisable within a given set of rules and their democratic obligations to reflect upon the fairness of the rules to which they are equally subject and to revise them where necessary. Both these sets of obligations assume a degree of responsibility, a person's responsibility for revising her aims so that they are achievable within a given framework and her responsibility to enter into good faith negotiations with others, respectively. Those negotiations will accord a high, but not absolute, value to integrity, especially identity integrity. As we noted, the participants in co-operative endeavours are citizens, but they do not for the most part discharge their framework and democratic obligations qua citizens. The notion of fair terms of co-operation is a regulatory ideal which covers other sets of rules than a state's laws; in particular it applies, or could be used to apply, to the associational domain which includes private firms as well as other employers, and educational institutions including schools and universities i.e. those domains where accommodation controversies occur. This claim needs to be interpreted with care. I am not arguing that individuals have framework and democratic obligations in every institution in which they co-operate. They do not have them in institutions not governed by codified rules, such as the family. And they need not have them in rule-bound institutions

where other values compete with fairness. For example, individuals are free to join hierarchical religious organisations the directives of which are justified first personally by religious values and third personally by the value of consent (I assume here that individuals have meaningful exit rights too). But the domains of work, and of education, are so pervasive and ubiquitous and have such a large role to play in realising, or frustrating, our interests that with very few exceptions (such as individuals who choose to join very hierarchic institutions), it seems reasonable to assert that they should approach the ideal of fair social co-operation.

To make more vivid how this ideal of accommodation could work in practice, let's return to the case of the Christian employee reluctant to work Sundays. The question for him and his employer, and his fellow employees insofar as their interests are affected, is whether his claim to be released from Sunday working should be specially accommodated. The first thing to say is that the baseline for assessing this should be a moralised one that accounts for the affected individuals' relevant interests. This contrasts with an empirical baseline where the position from which we assess whether rules should be re-interpreted or subject to exemptions simply are the prevailing legal arrangements, in this case the law which says that employers may permissibly require people to work on Sundays. It is not the case that the burden of justification falls on departures from that rule because the question at issue is whether that rule is fair in the first place and that question can only be addressed by assessing the relevant interests at stake. What are these interests? One of them is the Christian Sabbatarian's identity integrity interest in manifesting her religious convictions as well as her integrated self integrity interest in being a Christian *and* an employee in good standing and her clean hands integrity interest in not selling out her convictions. Leaving one's employment as a condition of maintaining one's religious convictions, if our Christian Sabbatarian looks for a job that does not involve Sunday working, visits upon her the cost of lost salary while she looks for work, possible retraining costs, as well as the identity, recognition, and collegial solidarity that her work gave her (notwithstanding that she may enjoy these in the future in another job). Against this, though, are the employer's and fellow employees' interests. What are those?

One of these, I think, is a general, expressive interest in having one rule for all, whether that is all employees in the case of a work organisation or all citizens in the case of a law. Uniform rules and laws signal that all count equally and are members in equal standing of the same institution, even if some employees enjoy greater responsibilities than others. This sort of expressive value counts against having separate cafeterias for managers and workers for example, or separate toilets. Of course, such 'separate but equal' policies are often discriminatory and that too counts against their implementation. But beside that,

common rules tend also to send an inclusive message that all parties are situated equally which is important for the perceived fairness of any enterprise. We can represent this as a cost, diffused among other employees, if one of their number is released from a normal requirement, such as Sunday working in the case we're considering.

The expressive value of one rule for all is a moralised interest, and there are other examples of moralised interests in accommodation claims. I have already mentioned the interests of gay and lesbian citizens in civic dignity which counts against, and in my view outweighs, the interests of Christians to be released from rules mandating their impartial treatment of individuals to whom they offer a service. Another example is the UK case of *Azmi v. Kirklees* where a Muslim teaching assistant was refused the right to wear a niqab which covered her face at work because of young children's interests in effective interaction with their teacher.<sup>14</sup> As the latter is connected to children's moral interests in education and development it outweighed Azmi's interest in wearing her niqab at work. But besides these moralised interests we must also take account of the ordinary costs visited on an employer and a person's fellow employees, and others, if accommodation claimants have their way. Thus to accommodate a request not to work Sundays, other employees will probably have to take up the slack and re-arrange their work rota, and perhaps even work more days than they otherwise would. For another example, consider the exemptions for Sikh men in the UK and elsewhere from laws making wearing crash helmets and hard hats mandatory. If this (let us suppose) results in more head injuries for Sikhs, then this means more cases for medical staff to deal with and fractionally greater costs for taxpayers in a socialised healthcare system such as the NHS in the UK. These too are legitimate interests which must be counted against the integrity interests of male Sikh citizens.

In resolving such difficult cases, I am urging that contending sides enter into a good faith negotiation where each party acknowledges that she has framework obligations to pursue her aims within an existing set of rules but also democratic obligations to discuss and where necessary revise those rules. By referring to democratic obligations I should be clear that I am not recommending an ideal of workplace democracy where all a workplace's rules are legitimate only if they are the object of widespread deliberative agreement. I assume only that problematic rules—those that set back participants' key interests—are collectively re-assessed by those subject to them, and that a mutually satisfactory interpersonal resolution is far preferable than recourse to courts and tribunals. As far as formal exemption from a state's laws are concerned, such as the Sikh exemption from the law mandating the wearing of crash helmets, then such resolution will occur in legislatures between elected representatives, as indeed was the case when the UK Parliament passed this exemption in 1976.<sup>15</sup>

<sup>14</sup> *Azmi v. Kirklees Metropolitan Borough Council* (2007) IRLR 434.

<sup>15</sup> Motor-Cycle Crash Helmets (Religious Exemption) Act 1976, Section 2A.

## 8. Conclusion

The personal responsibility objection to religious accommodation, I suggested, flowed from our intuitions about individuals' identification with their beliefs. The notion of identification, I argued, cuts both ways, pointing to how individuals should bear at least some of the costs of their convictions but at the same time how their interest in identity integrity could be set back by doing so. The notion of a fair framework of social co-operation offers a way of capturing the two sets of concerns at stake. Individuals have duties both to implement the framework despite the burdens it imposes (in part because they are accountable for their moral and religious convictions), but also democratic duties to revise the framework, including re-interpreting the meaning and implementation of universal rules when they set back others' interests in integrity. Thus the notion of a framework of social co-operation offers a potentially appealing way for citizens to resolve the accommodation disputes which bedevil them in a way that fairly meets their relevant interests.

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