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Foundations of Religious Liberty: 
Toleration or Respect?

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* John P. Wilson Professor of Law and Director of the Center for Law, Philosophy, and Human Values, University of Chicago. The paper owes its existence to a presentation by Martha Nussbaum at the Law and Philosophy Workshop at the University of Chicago Law School in fall 2008, and to a question posed on that occasion by Jim Staihar, our Law and Philosophy Fellow at the law school during 2008–2009. My thinking about the issue was also aided by Simon Blackburn’s presentation of his views at a different session of the Workshop. My thanks to them all and to the students and discussants, for the stimulus of their ideas. The present version of the paper benefitted from comments by audiences at the MacMillan Center Initiative on Religion, Politics & Society at Yale University; the Law & Philosophy Workshop at the University of Michigan, Ann Arbor; the conference on “Respect, Global Justice, and Human Rights” at the University of Pavia in Italy; a session of the Society for Applied Philosophy at the Eastern Division meeting of the American Philosophical Association in New York; the Analytic Legal Philosophy conference at New York University; and the University of San Diego School of Law conference on “Freedom of Conscience.” I should mention especially helpful suggestions or comments from Robert Audi, Emanuela Ceva, N.A.T. Coleman, David Enoch, Rainer Forst, Kent Greenawalt, Scott Hershovitz, Andrew Koppelman, Martha Nussbaum, Peter Railton, Samuel Rickless, Connie Rosati, Scott Shapiro, Jeremy Waldron, and Michael White. Finally, I should acknowledge the influence of Nietzsche on my thinking about these issues in two respects: first, in emphasizing that the falsity of a belief does not decide the question of its value, and second, in impressing upon me that the deleterious effects of religion should not obscure its salutary ones—though Nietzsche had in mind different ones from those I emphasized.
I. INTRODUCTION

Most Western constitutions, including the American, single out religious beliefs and practices for special kinds of legal solicitude and protection. In this essay, I want to ask a question about the moral foundations of such a legal practice. Should we think of what I will refer to generically as “the law of religious liberty” as grounded in the moral attitude of respect for religion or on the moral attitude of tolerance of religion? My question will not be which of these moral ideals best explains the existing law of religious liberty in the United States, or elsewhere, though legal doctrine is a relevant data point for the inquiry. Instead, I want to ask which of these moral attitudes makes the most sense given what religion is. Of course, our legal practices offer some evidence about “what makes the most sense” because they are, quite obviously, not detached from our moral attitudes. But the law is but one data point among others, and if it were to turn out that aspects of existing legal doctrine in the United States should yield before the best account of the moral foundations of religious liberty that is a conclusion I am happy to endorse.

I begin by explicating the relevant moral attitudes of “respect” and “toleration.” With regard to the former, I start with a well-known treatment of the idea of respect in the Anglophone literature by the moral

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1. The capacious “law of religious liberty” will thus encompass special legal protections for religious practices, exemptions from generally applicable laws for some religious practices, and limitations on state endorsements or “establishments” of religion and religious practices. The moral argument for antiestablishment provisions may, of course, differ from that in support of “free exercise” provisions.

2. Laws are some evidence of the moral sensibilities of individuals, and because moral attitudes are nothing more than certain kinds of psychosocial artifacts, the best we can do in normative moral theory is consider various bits of evidence about what these artifacts are and see if, and how, they hang together. I will not defend this general meta-ethical position here, though for some discussion, see Brian Leiter, Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy 203–55 (2007).
philosopher Stephen Darwall.\textsuperscript{3} With respect to the latter concept, toleration, I shall draw on my own earlier discussion,\textsuperscript{4} though now emphasizing the features of toleration that set it apart from one kind of respect. In deciding whether respect or toleration can plausibly serve as the moral foundation for the law of religious liberty, we will need to say something about the nature of religion. American courts have dodged the question of what “religion” is for obvious political reasons, but too many scholars have also fallen back on the Wittgensteinian habit of not even attempting an analysis of religion on the grounds that it is a family resemblance concept.\textsuperscript{5} Perhaps that will prove the best that we can do, but we should at least first try to do better before giving up. I shall propose a fairly precise analysis of what makes a belief and a concomitant set of practices “religious,” again drawing on my earlier work. That will then bring us to the central question: should our laws reflect “respect” for religion” or only “toleration”? Martha Nussbaum has recently argued for “respect” as the moral foundation of religious liberty, though, as I will suggest, her account is ambiguous between the two senses of respect that emerge from Darwall’s work.\textsuperscript{6} In particular, I shall claim that in one sense of respect

\begin{itemize}
  \item[3.] Stephen L. Darwall, Two Kinds of Respect, 88 ETHICS 36 (1977) [hereinafter Darwall, Two Kinds of Respect]. Darwall has since revised his views. See, e.g., Stephen Darwall, Respect and the Second-Person Standpoint, Address Before the Central Division of the American Philosophical Association (Apr. 24, 2004), in PROC. & ADDRESSES AM. PHIL. ASS’N, NOV. 2004, at 43, 43–59. Because I find the metaphysics of second-person reasons a bit mysterious, I am going to concentrate on the earlier version of Darwall’s view, which at least makes a certain intuitive sense.
  \item[5.] Wittgenstein’s paradigm example was that of “games,” though a Canadian philosopher, Bernard Suits, has offered an extremely clever analysis even of “games,” one which is a considerable advance over the empty gesturing at “family resemblance.” See BERNARD SUITS, THE GRASSHOPPER: GAMES, LIFE AND UTOPIA (1978). Here is the crux of the analysis:
  
  \begin{itemize}
    \item[T]o play a game is to engage in activity directed towards bringing about a specific state of affairs [prelusory goal], using only means permitted by rules [lusory means], where the rules prohibit more efficient in favour of less efficient means [constitutive rules], and where such rules are accepted just because they make possible such activity [lusory attitude].
  \end{itemize}
  \textit{Id.} at 34. The point in the text is not that Wittgenstein is always wrong—to the contrary. But we are not entitled to conclude there is no analysis available until we try to produce one.
  
  \item[6.] MARTHA C. NUSSBAUM, LIBERTY OF CONSCIENCE: IN DEFENSE OF AMERICA’S TRADITION OF RELIGIOUS EQUALITY (2008). Nussbaum’s framework is an essentially Rawlsian one, so “equal respect for conscience” is supposed to be embodied in the basic structure of society, not necessarily in interpersonal relations. I am not sure that point affects the analysis that follows.
\end{itemize}
(hereafter “minimal” respect), it is compatible with nothing more than
toleration of religion, and that in a different sense (hereafter “affirmative”
respect, which Nussbaum appears to want to invoke), it could not form
the moral basis of a legal regime because religion is not the kind of
belief system that could warrant that attitude.

II. RESPECT AND TOLERATION

“I really respect her intellect” and “You should show some respect for
his feelings” both employ the same word, but express two different
concepts of respect: the former I will call the “affirmative” concept of
respect, the latter the “minimal” concept. Nussbaum has defended an
account of the moral foundations of the law of religious liberty as based
on a principle of “equal respect for conscience,”7 which she takes to be
different from “mere” toleration of religion.8 I shall argue that the minimal
correct of respect does not, at least with regard to religion, move us far
beyond the moral ideal of toleration and that only if religion warrants the
“affirmative” concept of respect would we have reason to think our law
of religious liberty should answer to a more demanding moral standard.9
In the section of the paper that follows, I argue that there is no case for
application of the “affirmative” concept.

The minimal concept of respect—as expressed in “You should show
some respect for his feelings”—maps on to what Darwall dubbed many
years ago “Recognition Respect.” This kind of respect, in Darwall’s
formulations, involves “giving appropriate consideration or recognition
to some feature of its object in deliberating about what to do,”10 for
example, “by being willing to constrain one’s behavior in ways required
by” those features.11 In short, “[r]ecognition respect for persons . . . is
identical with recognition respect for the moral requirements that are
placed on one by the existence of other persons.”12

Darwall’s Recognition Respect is a minimal form of respect in two
regards: first, it is agnostic about any other dimension of value that
might attach to the particular manifestations of the features of the object

7. Id. at 332.
8. Id. at 24.
9. Is there some middle conceptual ground between the two? Perhaps, as
Benjamin Whiting has impressed upon me, it is something like what Leslie Green calls
“understanding.” Leslie Green, On Being Tolerated, in THE LEGACY OF H.L.A. HART
277, 291–96 (Matthew H. Kramer et al. eds., 2008). How such an attitude could be
made concrete in a legal regime is unclear, as Whiting has argued in unpublished work.
10. Darwall, supra note 3, at 38.
11. Id. at 45.
12. Id.
to which the respect is owed; and second, it is silent on the nature of the “moral” constraints on behavior that are demanded by the respect. The first kind of minimalness is central to demarcating Darwall’s Recognition Respect from its more affirmative cousin, what Darwall calls “Appraisal Respect”—about which more momentarily. The second kind of minimalness is what makes it hard to distinguish Recognition Respect from toleration, as I shall argue below.

If the claim that “[y]ou should show some respect for his feelings” invokes the minimal concept of respect, the statement, “I really respect her intellect” depends on a more affirmative concept, what Darwall dubs Appraisal Respect. In Darwall’s terminology, “[s]uch respect . . . consists in an attitude of positive appraisal of that person either as a person or as engaged in some particular pursuit”;¹³ as a result it “is like esteem or a high regard for someone,” and it is compatible with having no “particular conception of just what behavior from oneself would be required or made appropriate by that person’s having the features meriting such respect.”¹⁴ When you “respect her intellect,” you admire and appraise highly the caliber of her mind, whereas when you “respect his feelings,” you act in such a way as to show an appropriate moral regard for how your actions might affect them.

Notice, again, that the minimal concept of respect—Darwall’s Recognition Respect—makes no substantive moral demand on the kind of action that is appropriate: it requires only that one honor whatever “moral requirements . . . are placed on one by the existence of other persons.”¹⁵ The substantive content of these moral requirements is open; indeed, it seems that Recognition Respect is morally otiose: “only an exhortation to perform the (other) duties that we already owe,” as Leslie Green puts it.¹⁶

Yet Appraisal Respect also makes no substantive moral demand on action but for a different reason: it demands only “esteem” or high appraisal of certain features of persons, not that one act towards them in a certain way. Yet Appraisal Respect can also result in moral demands

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¹³ Id. at 38.
¹⁴ Id. at 39. Darwall introduces a further, obviously Kantian element to the account according to which “the excellences must be thought to depend in some way or other on features of character.” Id. at 42.
¹⁵ Id. at 45.
¹⁶ Leslie Green, Two Worries About Respect for Persons, 120 ETHICS 212, 213 (2010).
on action when the highly appraised features are ones with moral value or that one has a moral obligation to support or protect. One ought to “respect” genius, and the more genius there is in the world, the greater the well-being of persons, or so one might think. So a certain kind of consequentialist might think that Appraisal Respect for someone’s genius generates prima facie obligations towards that person.

Toleration as a moral attitude operates somewhat differently, and we need to start, again, by distinguishing it from superficially similar attitudes. The key to the attitude of toleration is disapproval of another group’s belief or practice, yet “putting up” with that belief or practice nonetheless. Thus, in the first instance, toleration is not at issue in cases where one group is simply indifferent to another. I do not “tolerate” my neighbors who are nonwhite or who are gay because I am indifferent as to the race or sexual orientation of those in my community. Toleration, as an ideal, can only matter when one group actively concerns itself with what the other is doing, believing, or “being.” Obviously, in many cases, the attitude of “indifference” is actually morally preferable to that of toleration: better that people should be indifferent as to their neighbors’ sexual orientation than that they should disapprove of it, but “tolerate” it nonetheless.

Many practices, however, that seem to mimic toleration are not grounded in the view that there are moral reasons to tolerate differing points of view and practices, that permitting such views and practices to flourish is itself a kind of good or moral right, notwithstanding our disapproval. Much that has the appearance of principled toleration is nothing more than pragmatic or, we might say, “Hobbesian” compromise: one group would gladly stamp out the others’ beliefs and practices but has reconciled itself to the practical reality that they cannot get away with it, at least not without the intolerable cost of the proverbial “war of all against all.” To an outsider, this may look like toleration—one group seems to “put up” with the other—but it does not embody what I will refer to as “principled”

17. I take the claim in the text to mark the core case of toleration, though there are ordinary usages of the term that are a bit different. For example, strong dislike need not be the same as disapproval: some people strongly dislike the smell of some French cheeses (though it would be odd to say they disapprove of the cheese!), but they will tolerate others consuming them. It is not that they disapprove of the smell, they just really do not like it, but the fact that they “put up with it” might count as toleration. Or a different case: my neighbors have built a fence that encroaches a bit across the property line. I could ask them to remove the fence but think it not worth the bother: I would rather just tolerate the encroachment. I am inclined to think that the sense of toleration emphasized in the text is the one that matters especially in the case of religion. Thanks to Robert Audi and Peter Railton for helpful thoughts on this topic.
toleration because the reasons for putting up are purely instrumental and egoistic, according no weight to moral considerations. One group “puts up” with the other only because it would not be in that group’s interest to incur the costs required to eradicate the other group’s beliefs and practices.

It is not only Hobbesians who mimic commitment to a principle of toleration. On one reading of Locke, his central nonsectarian argument for religious toleration is that the coercive mechanisms of the state are ill-suited to effect a real change in belief about religious or other matters.\textsuperscript{18} Genuine beliefs, sincerely held, cannot be inculcated at gunpoint, as it were, because they respond to evidence and norms of rational justification, not threats.\textsuperscript{19} In consequence, says the Lockean, we better get used to toleration in practice—not because there is some principled or moral reason to permit the heretics to flourish but because the state lacks the right tools to cure them of their heresy, to inculcate in them the so-called correct beliefs.

Locke, it is fair to say, did not fully appreciate the extent to which states and—in capitalist societies—private entities can employ sophisticated means to effectively coerce belief, means that are both more subtle and more effective than he imagined. That history offers up so many examples of societies in which the tyranny of the few over the many is accepted by the many as a quite desirable state of affairs is compelling evidence that states can successfully inculcate beliefs, even dangerously false beliefs. Locke’s “instrumental” argument for a practice of toleration should provide little comfort to the defender of toleration given Locke’s (understandable) failure to appreciate the full complexity of the psychology and sociology of belief inculcation.

Not only Hobbesians and Lockeans, however, mimic principled toleration. A variation on the Lockean instrumental argument for toleration is apparent in a popular theme in American political thinking—one that receives a well-known articulation in Frederick Schauer’s defense of


\textsuperscript{19} Locke puts a distinctively Protestant “spin” on this epistemological point because he believes that salvation can only come through a free, uncoerced embrace of religious doctrine. On that Protestant view, there would be no point in nontoleration because it would not accomplish any meaningful religious objective given the prerequisites for salvation.
free speech—according to which government cannot be trusted to discharge the task of intolerance “correctly,” that is, in the right instances. Speech can harm, in all kinds of ways, notes Schauer, and the various rationales for putting up with these harms—from Mill’s “marketplace of ideas” to Meiklejohn’s conception of free speech as essential to democratic self-government—almost all fall prey to objections of one kind or another. But, says Schauer, there is still a reason to demand that the state “tolerate” many different kinds of speech—even harmful speech—and that is because there is no reason to think the state will make the right choices about which speech ought to be regulated. Schauer calls this “the argument from governmental incompetence” and says,

Freedom of speech is based in large part on a distrust of the ability of government to make the necessary distinctions, a distrust of governmental determinations of truth and falsity, an appreciation of the fallibility of political leaders, and a somewhat deeper distrust of governmental power in a more general sense.

It is not, then, as in the Lockean argument, that government lacks the right means for bringing about intolerant ends; it is rather that government is not competent, that is, cannot be relied upon, to deploy its means in the right cases. Perhaps this kind of instrumental argument for state toleration is more plausible, but its justificatory structure makes it no different from that of the Lockean’s: it does not tell us why we, morally, ought not to crush differing beliefs or practices; it tells us only that we, through the instrumentality of the state, are unlikely to do it right.

Where a genuine “principle of toleration” gets its purchase is in the cases where one group—the “dominant” group—actively disapproves of what another group—the “disfavored” group—believes or does; where that dominant group has the means at its disposal to effectively and reliably change or end the disfavored group’s beliefs or practices; and yet still the dominant group acknowledges that there are moral or epistemic reasons—reasons pertaining to knowledge or truth—to permit the disfavored group to keep on believing and doing what it does. That is moral or principled toleration, and it is this attitude I want to compare with one of respect.

21. Schauer, supra note 20, at 86.
22. Id.
23. “Pure” or “principled” because the reasons for toleration are not based on self-interest, at least not directly.
Recognition Respect demands only, to quote Darwall again, that one honor whatever “moral requirements . . . are placed on one by the existence of other persons.” 24 But surely among the “moral requirements” one has to abide by are those demanded by principled toleration. 25 Has one discharged all one’s moral obligations of respect towards the religious beliefs and practices of a person if one tolerates them? Only an argument that morality demands more by way of our attitudes and practices towards religion would support a negative answer.

Martha Nussbaum, in her recent lengthy defense of religious liberty—more precisely, liberty of conscience—thinks that “tolerance” of religion is “too grudging and weak” an attitude. 26 We need, she thinks, a “special respect for the faculty in human beings with which they search for life’s ultimate meaning,” namely, their “faculty” of conscience. 27 We should follow Roger Williams in “rever[ing] . . . the sincere quest for meaning” 28 because “everyone has inside something infinitely precious, something that demands respect from us all, and something in regard to which we are all basically equal.” 29 But how can we distinguish respect here from toleration, the attitude Nussbaum deems “too grudging and weak”? We are all probably more or less equal in our capacity for self-deception, for example, but that demands nothing more than toleration: as long as your self-deception does not harm someone else, we ought to let it alone. So, too, it might seem with “conscience” and the “sincere quest for meaning”: that ought to be tolerated, even when your “sincere quest for meaning” leads you to feel disgust for homosexuality as violating the dignity of the family. 30 Humans are roughly equal in many faculties, but it seems odd to think that deficient exercises of those faculties should elicit a moral attitude beyond that of tolerance. 31 That is the dilemma that afflicts

24. Darwall, supra note 3, at 45.
25. This is the argument in Leiter, supra note 4, at 1.
27. Id. at 19.
28. Id. at 52.
29. Id.
30. Whether one can act on that attitude consistent with the Harm Principle is a separate question.
31. Hitler, let us remember, was a man of conscience too, so committed, on principle, to the extermination of European Jewry that even when it would have been prudent to use the Jews as slave labor to free up German manpower for the war, he persisted, to the bitter end, in exterminating them. Does Hitler’s failed exercise of conscience warrant any respect? It does not even warrant toleration!
something like Nussbaum’s view of liberty of conscience: yes, the faculty of conscience, which we all possess—however insufficiently we exercise it—might be thought to elicit a kind of minimal Recognition Respect from others. But why is that minimal notion of respect not fully discharged by the moral attitude of toleration?

We cannot, however, address the question of what kind of respect religious conscience warrants without addressing what religion is. It is to this question we now turn.

III. WHAT IS “RELIGION”?

I want to here revisit an account of religious belief and conscience developed in an earlier essay. That account drew on suggestive—but, I argued, ultimately incomplete—proposals in the work of the legal philosopher Timothy Macklem and the legal scholar John Witte Jr. Following their leads, I propose that two features single out “religious” states of mind from others. The first pertains to the normativity of (at least some) religious commands; the second pertains to the relationship between religious belief and evidence. On the proposed account, for all religions, there are at least some beliefs central to the religion that:

(1) issue in categorical demands on action, that is, demands that must be satisfied, no matter what an individual’s antecedent desires and no matter what incentives or disincentives the world offers up; and,

32. It afflicts not only her view, of course: Nussbaum here follows Kant, and related rhetoric is embedded in the Universal Declaration of Human Rights. Such rights undoubtedly maximize human well-being, but it is less clear whether the concept of “respect” can be cogently motivated as their moral foundation. As with Darwall’s Recognition Respect, talk of respect seems to be morally otiose.
33. Leiter, supra note 4.
34. See generally TIMOTHY MACKLEM, INDEPENDENCE OF MIND (2006).
36. The claim is not that all beliefs commonly denominated “religious” issue in such commands but that it is characteristic of religion that at least some of the commands in which it issues are categorical in character. It may be more accurate, though, to say that religious belief issues in as-if categorical demands on action because it is familiar enough that religions can impose other worldly incentives to produce action in this world that seems “as if” it were a response to a categorical reason, when it is really a response to an instrumental reason for achieving an other worldly objective. As Adrienne Martin aptly put it to me in correspondence: “[A]n instrumental reason motivates as strongly as the incentive on which it is contingent,” and other worldly incentives can, of course, provide a very powerful instrumental reason! Indeed, as I note later on, to the extent that a metaphysics of ultimate reality is also a distinguishing feature of religion, it may
(2) do not answer ultimately—or at the limit—to evidence and reasons because evidence and reasons are understood in other domains concerned with knowledge of the world. Religious beliefs, in virtue of being based on “faith,” are insulated from ordinary standards of evidence and rational justification, the ones we employ in both common sense and in science.37

I shall refer to this first feature as the categoricity of religious commands and the second as religious belief’s insulation from evidence.38 Although I will often use the language of “belief” in what follows, it would be more accurate to say that what is really at issue here are the characteristic epistemic and normative attitudes of religious believers: it is they who experience certain commands as categorical and they who hold at least some of the religion’s beliefs regardless of the evidence.39

The categoricity of religious commands accounts for both one of the most admirable and one of the most frightening aspects of religious commitment, namely, the willingness of religiously motivated believers to act in accordance with religious precepts, notwithstanding the costs.

37. Religious beliefs presumably do answer to evidence in instrumental contexts, that is, when there are questions about what means would be effective to the realization of the categorical commands of the religion. So, too, one suspects that the interpretation of categorical commands is causally influenced by the experiences of the interpreters: so, for example, “liberation theology” arose as a strand of Catholicism in the context of the horrific poverty and vicious oppression that characterized United States client states in Latin America after World War II. But this phenomenon trades on an ambiguity between “evidence” as justification for the proposition it supports and “evidence” as the experiences that explain why particular propositions are embraced. An adequate sociohistorical explanation of liberation theology must, of course, make reference to the climate of social and economic oppression in which it arose, but the beliefs constitutive of that religious outlook were not, themselves, presented as justified by those experiences. Thanks to Sheila Sokolowski for raising this issue.

38. I treat beliefs as central to religion precisely because it is hard to see how mindless or habitual religious practices could claim whatever respect, affirmative or minimal, is due matters of conscience. It is because of the underlying beliefs that we think the actions required by those beliefs deserve special moral and perhaps legal solicitude. No one thinks mindless or habitual behavior per se has a claim on special legal or moral consideration.

39. There may, of course, be some matters that fall within the purview of religions, for example, the “meaning of life,” that are insulated from evidence only in the sense that no scientific evidence would seem to bear on them. Such beliefs are not my concern here, mainly because they are not distinctive to religion. See the discussion, infra, regarding moral judgments for further elaboration.
Thus we find the devoutly religious among those who were at the forefront of domestic resistance to Nazi oppression in the 1930s and the injustice of apartheid in South Africa from the 1960s onward and in America in the 1950s and 1960s. We also, of course, find the devoutly religious among those who bomb abortion clinics and fly airplanes into buildings. These religiously inspired individuals risk—and often suffer—death, injury, and prison in order to comply with their religious conscience. It is painfully familiar, of course, that in all these cases adherents of the very same religion contested whether the actions of these believers were sanctioned, let alone commanded, by the religious doctrine. The important fact here, however, is that religious commands—whether rightly or wrongly understood—are taken categorically by their adherents.

Is religion really alone in this regard? One respect in which Marxism may have been rightly called a “religion” is precisely that in some of the historical contexts just noted, the only other groups as categorically committed to resistance as the religiously inspired were communists, who led resistance to Nazism, as well as apartheid in both South Africa and the United States, long before other groups joined the battle. More generally, of course, one might think that all commands of morality are categorical in just this way. Does that mean, then, that religion is not special after all because it shares the property of categoricity of its commands with Marxism and with one common understanding of morality?

We can easily distinguish the case of moral commands. To be sure, there are theoretical understandings of morality—Kant’s most famously, though not only his—according to which the demands of morality are indeed categorical. What is interesting and important about religion is that it is one of the few systems of belief that gives effect to this categoricity. Pure Kantian moral agents are few and far between (I think I can count them on one hand and probably have fingers left over!), but those who genuinely conduct their lives in accord with the categoricity of the moral demands they recognize are overwhelmingly religious.

But not all of them are, of course, and this is where the case of Marxists and other similar “believers” becomes relevant. Here, though, we need to attend to the second purportedly distinctive feature of religious belief,

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42. Religious leaders, to take but one example, were also at the forefront of defense of apartheid in the United States in the 1950s and ’60s.
43. We shall, however, return to a further complication about the moral case below.
namely, its insulation from evidence and reasons. Whatever the historical and philosophical verdict on the evidence and reasons supporting Marxism, one very clear difference is that Marxism took itself to be answering to—not insulated from—standards of evidence and reasons in the sciences, in a way that religion has not.44 Marx, as is well-known, conceived of his theory as a “scientific” account of historical change, and thus it had to answer to the same standards of evidence and justification as any other scientific theory.45 Nothing similar, of course, is true of any of the major religious traditions: all countenance at least some central beliefs that are not ultimately answerable to evidence and reasons as these are understood elsewhere—in common sense and in science. This is why Professor Macklem was correct to emphasize 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.

Even here, of course, we need to be careful. There are, for example, “intellectualist” traditions in religious thought—Paley’s “natural theology” or neo-Thomist arguments come to mind—according to which religious beliefs—belief in a Creator or, as in America recently, belief in “an Intelligent Designer”—are, in fact, supported by the kinds of evidence adduced in the sciences, once that evidence is rightly interpreted. It is doubtful whether these intellectualist traditions capture the character of popular religious belief, but even if they did, there remain important senses in which they are still “insulated from evidence.” First, of course, it is dubious, to the put matter gently, that these positions are really serious about following the evidence where it leads, as opposed to manipulating it to fit preordained ends. Second, and relatedly, in the case of the sciences, beliefs based on evidence are also revisable in light of the evidence, but in the intellectualist traditions in religious thought just noted, there is no suggestion that the fundamental beliefs will be

44. I think this is true notwithstanding the unhappy strand of Marxist thought that took seriously the Hegelian idea that “dialectical reason” was a special kind of reason, as opposed to a metaphysical dogma. For even the idea of dialectical reason took seriously the idea of evidence and rational justification, and in fact, Hegel’s entire philosophical career was an exercise in providing evidence for the purportedly dialectical structure of ideological, and thus historical, evolution. That the Hegelian influence on Marxism produced a false picture of evidence and reasons does not alter the fact that Marxism took itself to have an obligation to answer to standards of rational justification.

revisable in light of new evidence. Religious beliefs are purportedly supported by evidence, but they are still insulated from revision in light of evidence.46

Yet there is a different kind of case—pertaining not to the underinclusiveness of the characterization but rather its overinclusiveness—that might raise doubts about whether categoricity of commands and insulation from evidence are distinctive features of religious belief and practice. Think, for example, of the Maoist personality cult that gripped China during the “cultural revolution” in the 1960s.47 Here masses of individuals acted on commands from Chairman Mao that they took to be, in effect, “categorical” and that they carried out without regard to evidence, including evidence of the substantial harms inflicted on individuals and, ultimately, society as a whole—though arguably evidence of these latter harms was less apparent at the time. Does this make the Maoist personality cult a religion? Perhaps we should so describe it, yet this seems to run roughshod over distinctions it seems worth drawing. Pre-theoretically, after all, we might think totalitarian personality cults are distinct from religions, even if in some historical and cultural contexts their nature and effects are the same. But what marks the difference, given that it is not the categorical character of their commands or the insulation of their core beliefs from evidence? One plausible idea is that religious beliefs not only involve categorical commands and insulation from evidence, but also:

(3) Religious beliefs involve, explicitly or implicitly, a metaphysics of ultimate reality.

But what is it to endorse a “metaphysics of ultimate reality”? A metaphysics of an ultimate reality seems to be distinguished, in part, by the relationship in which it stands to the empirical evidence of the sciences: namely, that such a view about the “essence” or “ultimate nature” of things neither claims support from empirical evidence, nor purports to be constrained by empirical evidence—its claims “transcend” the empirical evidence, hence its “metaphysical” character. In this regard, though, (3) seems to be only a variation on the idea that religious belief is insulated from evidence—“insulated” not only in the sense that it does

46. It might be said, as Kenneth Hoorna pointed out to me, that religious beliefs are “in principle” revisable: if God thundered from the sky that Heaven and Hell do not exist, it might be supposed that this would, in fact, change the minds of some number of religious believers. But “in principle” responsiveness to a kind of evidence that is never in the offing seems indistinguishable in practice from insulation from evidence, simpliciter.

47. See, e.g., TAI SUNG AN, MAO TSE-TUNG’S CULTURAL REVOLUTION (1972).
not answer to empirical evidence but also in the sense that it does not even aspire to answer to such evidence.

The latter point may capture the metaphysical character of the beliefs, but it is still silent on the sense in which they concern ultimate reality. “Ultimate” in this context has less to do, I think, with metaphysical gradations of what is essential—whatever that would mean—than it does with questions of value: the “ultimate” reality is the aspect of reality that is most important for valuable/worthwhile/desirable human lives, whether that concerns the transcendent well-being of the “soul” or the moral value of life in this, the material world. The categoricity of commands distinctive of religious beliefs are, in turn, related to this metaphysics of ultimate reality in the sense that they specify what must be done in order for believers to stand in the right kinds of relations to “ultimate reality,” that is, to the reality that makes their lives worthwhile and meaningful.48

Will the addition of a third distinctive characteristic of religious belief rule out personality cults of the Maoist variety? There is some reason to think so. First, the Maoist-style personality cults may ordinarily be de facto insulated from evidence, but they are less often de jure insulated: that is, they purport to answer to facts and evidence, in a way that “metaphysical” claims about “ultimate” reality do not even purport to do so.49 Second, the personality cults, focused as they are on the personality of the leader, have an only indirect connection to the nature of ultimate reality, one contingent on the extent to which the “leader” is interested in those kinds of questions. To the extent a personality cult is de jure insulated from evidence and the “dear leader’s” commands are directly related to his view of ultimate reality, then to that extent we may need to revise the pre-theoretical intuition—if we share it—that personality cults are different from religious beliefs.

Although a metaphysics of ultimate reality may be the third essential feature that distinguishes religious belief from the beliefs held by participants in personality cults, for purposes of our topic only the first two features matter. This is because the second feature, insulation from evidence, especially de jure insulation from evidence, already captures

48. In this sense, the as-if categorical reasons may really be instrumental ones. See supra note 36.
49. So, for example, Mao thought forcing educated professionals to labor in the fields was an instrumentally rational approach to promoting the egalitarian values on which the communist revolution was based.
what is significant: namely, the metaphysical character of religious beliefs about “ultimate reality.” By contrast, so many different systems of belief involve views about “ultimate reality”—and such views almost all qualify for toleration under the rubric of “conscience,” subject, of course, to the usual side-constraints—that the fact that religious beliefs also involve such views will not generate any special reason for toleration that does not attach in virtue of the first two distinctive features of religious belief.

This leaves us, then, with a final possible, and perhaps the most worrisome, case of overinclusiveess in the proposed account of religion, namely morality itself. For is not morality characterized both by categoricity of its commands and its insulation from reasons and evidence, as reasons and evidence are understood in the sciences? Now as noted earlier, categoricity is not necessarily a feature of morality, though it is, to be sure, central on many theoretical understandings, and religion, as we also observed earlier, may make categoricity socially effective in a way that it would not otherwise be. But what of “insulation from reasons and evidence”? What we say about morality on this score will depend, ultimately, on what we take to be the relevant metaphysics and semantics of morality. For cognitivist realists like Richard Boyd and Peter Railton, for example, 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, which might be true or false, but rather as expressing mental states that are not truth-apt, that is, are by their nature insulated from reasons and evidence. Religious judgments are still different, on this account because some religious judgments do


51. If one takes views like John McDowell’s to be instances of cognitivist realism, then the issue is trickier, but I do not think views like McDowell’s are viable accounts of the objectivity of morality, for reasons discussed in Brian Leiter, Objectivity, Morality, and Adjudication, in Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy, supra note 2, at 225, 225–55. Of course, there is the more general problem that, with the professionalization of philosophy, someone comes along to defend every possible position in logical space, no matter how ludicrous. Naturalism cognitivist realism and noncognitivism strike me as the two most serious contenders, both at present and historically, and so I focus on them here.

52. Moral judgments, to be sure, may still be influenced by evidence, insofar as the attitudes expressed presuppose factual claims that answer to evidence.
express beliefs and so, in principle, could be answerable to reasons and
evidence, but are held to be insulated from them. So on either of the main
contenders for a credible metaphysics and semantics of morality, morality is
still different from religion.

If, then, the categoricity of its commands and its insulation from
evidence—not just de facto but also de jure—are the distinctive features
of religious belief—not, to be clear, the features that make religious
beliefs important and meaningful to people, but rather the features that
distinguish religious beliefs from other equally important and meaningful
beliefs—should we respect religious belief, in the “affirmative” sense
noted earlier, or merely tolerate it?

IV. CAN WE RESPECT RELIGIOUS CONSCIENCE?

So can we justify respect for religious conscience in some sense
stronger than the minimal kind of Recognition Respect discharged by
toleration? I want to turn, again, to a contemporary philosopher who has
grappled with a version of our issue, namely, Simon Blackburn.53
Blackburn tells the story of being invited to dinner at a colleague’s home
and then being asked to participate in a religious observance prior to
dinner. Blackburn declined, though his colleague said participating was
merely a matter of showing “respect.” His host seems to have viewed
this as a matter of simple Recognition Respect, but Blackburn interpreted it,
perhaps rightly, as something more:

I would not be expected to respect the beliefs of flat-Earthers or those of the
people who believed that the Hale-Bopp comet was a recycling facility for dead
Californians and killed themselves in order to join it. Had my host stood up and
asked me to toast the Hale-Bopp hopefuls, or to break bread or some such in
token of fellowship with them, I would have been just as embarrassed and
indeed angry. I lament and regret the holding of such beliefs, and I deplore the
features of humanity that make them so common. I wish people were different.54

Blackburn’s reaction brings out starkly that Recognition Respect—
which requires us to treat others as morality requires in virtue of some
morally relevant attribute of theirs—does not entail that we view them as

53. Simon Blackburn, Religion and Respect, in PHILOSOPHERS WITHOUT GODS:
Blackburn’s account, it bears emphasizing, concerns an interpersonal context calling for
respect or toleration, rather than the context of institutional practices towards individuals.

54. Id. at 179.
Appraisal Respect might require. Blackburn, himself, remarks that respect “is a tricky term” because it “seems to span a spectrum from simply not interfering, passing by on the other side, through admiration, right up to reverence and deference.” He dubs as “respect creep” the phenomenon by which “the request for minimal toleration turns into a demand for more substantial respect, such as fellow-feeling, or esteem, and finally deference and reverence,” which is what his dinner host expected and which Blackburn declined to offer.

But given the ambiguity of “respect”—marked by the continuum from “toleration” to “esteem” and “reverence”—what is it that should incline one to one end of the spectrum or the other? Here Blackburn’s own account of his resistance to offering the Recognition Respect his host asked for is a bit unclear. We can distinguish three considerations:

1. Religious belief is false belief. The falsity of religious belief is clearly part of the reason Blackburn is resistant to offering it respect, but surely falsity is not enough. After all, if his host had asked that Blackburn raise his glass in a toast to “my beautiful and intelligent children,” surely Blackburn would have raised his glass even if the offspring were homely and dull witted. We are, all of us, in the grips of a multitude of false beliefs—I believe you are enjoying this paper, you believe your colleagues think well of you, she thinks her research breaks new ground, he believes he is a clever conversationalist—but these usually do not elicit disrespect, contempt, or ridicule from our peers. Indeed, one might well admire, for example, my confidence and her enthusiasm for her research. So the falsity of belief is plainly not enough to explain why there is a special problem about respect for religion.

2. Religious belief is perniciously false belief. This consideration, I suspect, comes closer to the mark for someone like Blackburn: it is not just that his host has false beliefs—though Blackburn’s rhetoric could suggest that is the issue—but that he has false beliefs whose falsity is pernicious. False beliefs can be pernicious in various ways, for example, in how they affect the believer’s behavior or to the extent they are part of an institutional web of false beliefs whose consequences are pernicious—licensing, harassment of and discrimination against gay men and women, attacks on science education in the schools, and opposition to valuable scientific research in a variety of areas. If Blackburn’s host had said, “And now let us bow our heads in honor of my personal hero, Adolf Hitler, a great and honest man who led the fight

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55. Id. at 180.
56. Id.
against the poisonous influence of world Jewry,” one might easily understand Blackburn’s refusal of Recognition, let alone Appraisal, Respect: his host has a perniciously false belief. And if Blackburn were attending dinner with his host in North Carolina, one of his academic homes, in 1959, and the host had asked everyone to raise a glass “in salute to the brave leaders of the White Citizens’ Council who strive to keep the Negro in the position to which his intellectual and moral character suits him,” we can easily—at least today—understand why Blackburn would refuse because the beliefs expressed are not only perniciously false but part of an institutional structure that caused immeasurable harm to human beings.

But these are not the dinners Blackburn attended. So our real question is whether there is any reason to think that a Jewish prayer before Friday evening dinner—what was at issue in Blackburn’s case—is a case of comparably pernicious false belief in either sense. More generally, is there any reason to think religious belief per se is comparably pernicious?

(3) Religious belief is culpably false belief, that is, it is unwarranted and one ought to know it is unwarranted. This is probably the real concern for Blackburn, and it certainly distinguishes the case of religious belief from some of our other false beliefs, such as those involving our children or ourselves. Why should culpably false beliefs elicit respect, rather than indulgence or toleration? That is surely the point of Blackburn’s scenarios such as being asked to “respect” those who believe the Hale-Bopp comet is a recycling facility for dead Californians. These beliefs are false, and ridiculously so, and no one in his or her right mind should accept them.

But are religious beliefs—say, belief in the resurrection of Jesus Christ, or in the existence of an omniscient, omnipotent, nonmaterial being—such beliefs? They differ from the Hale-Bopp beliefs in several obvious respects: they have more adherents, are more familiar to nonbelievers, and are more deeply integrated into the cultural and normative practices of our society, even among the normative practices of those who do not accept the beliefs in question. Is that enough to

57. Blackburn’s host may falsely believe his children are intelligent and attractive, but he is hardly epistemically blameworthy for so believing!

58. Recall Nietzsche’s quip about putative “free thinkers” who say, “We loathe the Church, not its poison [that is, its moral teaching] . . . . Apart from the Church, we too love the poison . . . .” FRIEDRICH NIETZSCHE, On the Genealogy of Morality, in ON THE
think they warrant respect in some sense more *affirmative* than mere toleration?

One might suppose, for all kinds of practical (for example, Hobbesian) reasons, that the category of *widely accepted culpable false belief* deserves different treatment than the category of *idiosyncratic culpable false belief*, though it is hard to see why that would add up to anything like the affirmative kind of Appraisal Respect that Blackburn’s host expected or Nussbaum’s “precious faculty” account would suggest. So perhaps our focus should not be on the *quantity* of culpable false belief involved but on its *culpability*, which seems to be the relevant factor. After all, if I believe that I am Zeus and you are a mere mortal and so should not be so insolent as to ask me hard questions about the paper, then I have a culpably false belief, which does not warrant affirmative respect (and probably not even tolerance!).

Is our religious believer in the same situation? Certainly any answer depends, in the first instance, on the available evidence and thus the standards for what would constitute blameworthy epistemic irresponsibility. In the fourteenth century, religious belief was quite plainly neither irrational nor unwarranted—and thus *not* culpably false belief—but after the scientific revolution and the Enlightenment, it is less clear. Of course, there is a large literature in Anglophone philosophy devoted to defending the rationality of religious belief. I shall not, here, be able to address this literature in any detail. Suffice it to observe that its proponents are uniformly religious believers and that much of it has the unpleasant appearance of post hoc, sometimes desperately post hoc, rationalization. Alex Byrne, a philosopher at Massachusetts Institute of Technology (MIT), captures the dominant sentiment among other philosophers about this literature rather well:

[I]t is fair to say that the arguments [for God’s existence] have left the philosophical community underwhelmed. The classic contemporary work is J.L. Mackie’s *The Miracle of Theism*, whose ironic title summarizes Mackie’s conclusion: the

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59. It also depends on whether there are excusing conditions for the epistemically culpable false belief. Sometimes the costs of giving up false beliefs that are *widely accepted in one’s family or community*, for example, are intolerably severe, such that someone holding such beliefs may be epistemically culpable but excused nonetheless. Religious beliefs may often be such beliefs, but it hardly follows that that kind of excusing condition would rescue them for Appraisal Respect.

60. For a recent example, see ALVIN PLANTINGA, Warranted Christian Belief (2000).
persistence of belief in God is a kind of miracle because it is so unsupported by reason and evidence.\textsuperscript{61} Of course, our prior account of what makes a matter of conscience religious did not include any reference to theism but rather to the categoricity of at least some religious commands and the fact that some religious beliefs are insulated from evidence, as evidence is understood in common sense and the sciences.\textsuperscript{62} The so-called reformed epistemology of apologists for religious belief like William Alston and Alvin Plantinga is, thus, predicated on an attack on “Enlightenment-approved evidence.”\textsuperscript{63} I am going to assume—uncontroversially among most philosophers but controversially among reformed epistemologists—that “reformed epistemology” is nothing more than an effort to insulate religious faith from ordinary standards of reasons and evidence in common sense and the sciences, and thus religious belief is a culpable form of unwarranted belief given those ordinary epistemic standards. Even allowing that that is true, does it follow that such beliefs do not warrant a more affirmative kind of respect than mere Recognition Respect, which could be discharged by toleration?

To think there is a problem here, we do need to assume that culpable failure of epistemic warrant is a reason to withhold Appraisal Respect from a belief. Is that true? Often when we admire someone’s loyalty or devotion to a cause or a person, we admire his or her willingness to remain committed to it notwithstanding countervailing evidence. She thinks her son is a wonderful pianist, even though his piano teacher would sooner take gas than give the boy another futile lesson. He continued to support Senator McCarthy’s presidential bid in 1968, even after it was clear one of the hawkish candidates would get the nomination. The mother and the supporter ought to know better as a purely epistemic matter, but there is something admirable about their stances. In these cases, though, we think the loyalty or devotion has some value either to the person or the cause so valued, or that it exemplifies a trait of character or habit of mind that is otherwise valuable.


\textsuperscript{62} The latter insulation is, to be sure, central to what makes theism possible, as Mackie argues.

\textsuperscript{63} I borrow the phrase from Peter Forrest’s generally sympathetic account in Peter Forrest, \textit{The Epistemology of Religion}, STANFORD ENCYCLOPEDIA OF PHIL. (Mar. 11, 2009), http://plato.stanford.edu/entries/religion-epistemology.
Let us suppose, as seems most plausible, that religious belief in the post-Enlightenment era involves culpable failures of epistemic warrant. Can it be redeemed by the kinds of considerations just noted? This, it seems to me, is the central and hard question about whether the law of religious liberty should embody mere *toleration* or a more affirmative kind of Appraisal Respect. Do matters of conscience that issue in *categorical demands on action* and that are *insulated from reasons and evidence* have a special kind of *value* that we should appraise highly or merely tolerate?

It might be tempting in the United States in the early twenty-first century to think the answer obvious. After all—to take an example close to home—religious believers overwhelmingly supported George W. Bush, one of the worst Presidents in the history of the United States and a moral monster without peer among leaders of purportedly civilized countries, during his reign of criminal military aggressions and domestic mismanagement. Of course, if we really thought there were some connection between religious belief and support for the likes of George W. Bush, then even toleration would not be a reasonable moral attitude to adopt towards religion: after all, practices of toleration are, themselves, answerable to the Millian “harm principle,” and there would be no reason ex ante to think that Bush’s human carnage is something one should tolerate.

But such a posture is not warranted: there is no reason to think that beliefs unhinged from reasons and evidence and that issue in categorical demands on action are especially likely to issue in “harm” to others. As we noted earlier, there are plenty of cases—resistance to Nazism, or opposition to apartheid—where religious believers pursued what now seems the obviously morally correct course long before others. On the other side, take the *au courant* case of Bernard Madoff, who swindled thousands of individuals out of billions of dollars by promising unrealistic returns on purported “investments.” Although Madoff exploited his religious connections, to be sure, it is quite clear that he himself was acting on the basis of hypothetical imperatives—where the consequent of each conditional was his own enrichment—that were keenly attuned to reasons and evidence: he was clearly an astute student of the facts about human psychology! Perhaps beliefs that issue in *categorical demands on action* and that are *unhinged from reasons and evidence* are more harmful, on average, but it seems to me much more empirical evidence would actually be required to support that conclusion.
Do we really need such evidence, though, to answer our initial question? The default position, as I have argued elsewhere,\textsuperscript{64} is that we ought to tolerate—show Recognition Respect—towards religious beliefs, but do we have any reason to accord them a more affirmative form of respect, for example, Darwall’s Appraisal Respect? That is the central issue here. And it is now difficult to see how any of the preceding considerations would support the conclusion that religious matters of conscience warrant esteem or reverence. Only if there were a positive correlation between beliefs that were culpably without epistemic warrant and valuable outcomes would it seem that we should think them proper objects of Appraisal Respect. But the evidence on this score is, to put it mildly, mixed.\textsuperscript{65}

V. CONCLUDING (TENTATIVE) THOUGHTS

So where does that conclusion leave us with regard to the law of religious liberty? Legal regimes regarding religious practices usually provide for exemptions from laws that burden religious practice and prohibit governments from “establishing” one form of religious practice. Good governments, of course, have a variety of moral obligations, but one of those is obviously to tolerate those practices that are morally deserving of tolerance. That obligation might seem to warrant a “free exercise” regime, including exemptions from generally applicable laws

64. Leiter, \textit{supra} note 4.

65. Perhaps the argument for Appraisal Respect for religious beliefs and practices could be redeemed by the following argument. (Here I am indebted to Peter Railton.) Think of the National Science Foundation (NSF) or the National Endowment for the Humanities. Most of the work these institutions fund turns out to be of little or no value to anyone, other than the grant recipient. Some of it is positively dreadful or, in retrospect, foolish. Yet we might have reason to appraise these institutions highly because they do make possible some research of great value by anyone’s estimation. Because we have conceded, already, that religious commitment, with its distinctive commitment to categoricity and indifference to reasons and evidence, is in fact conducive to distinctively good outcomes in certain circumstances—resistance to fascists and racists—might we not have analogous reasons to appraise highly religion? To be sure, it often leads to horrors and abominations, but it also yields “moral gems.” If this argument is to be persuasive, however, everything turns (again) on questions of degree: does religious belief and practice yield valuable outcomes \textit{often enough} relative to the bad outcomes it yields? If the NSF mostly funded work in alchemy, Intelligent Design, and Lamarckianism, while occasionally footing the bill for genuinely cutting edge research in chemistry or biology, we would not highly appraise the institution but instead think its existence \textit{barely justified} given the track record. The track record on religion is, quite obviously mixed, sufficiently mixed, that it is hard to see the kinds of considerations noted above supporting the attitude of Appraisal Respect.
for actions demanded by conscience. Because, however, there is no reason to limit claims of conscience to claims of religious conscience, the issue becomes considerably more complicated.\textsuperscript{66} Exemptions from generally applicable laws for all claims of conscience promise both insuperable epistemic problems for adjudicative bodies—which must figure out which claims are claims of conscience and which are not, and without reliance on proxies like participation in religious rituals—and enormous burdens on the rest of society as exemption claims multiply.\textsuperscript{57} Eliminating exemptions, however, would, as Nussbaum notes, impose a burden on matters of minority conscience because, for obvious reasons, societies will not create legal prohibitions that burden widespread demands of conscience.\textsuperscript{68}

A strong antiestablishment principle, along the lines of French laïcité, would only be a partial barrier to the latter problem, which arises not simply from government efforts to promote particular religions but from the way in which the other regulatory actions of government will be insensitive to infringements upon matters of minority conscience. Perhaps such a burden, however, is the price of not treating religious conscience as special, when no principled argument could support that practice.

We can now see, too, the import of deciding whether the moral foundation of liberty of conscience is toleration (minimal respect) or something more affirmative, like Appraisal Respect. Those practices that are proper objectives of Appraisal Respect often do command exemptions from generally applicable laws. Think of the tax-exempt status of charitable—including religious—organizations in American law. Because society highly appraises charitable activities, they are exempt from the general rules pertaining to taxation.\textsuperscript{69} More generally, we might think that attitude and practices that warrant Appraisal Respect ought to command governmental solicitude and support, as opposed to “mere” toleration. If claims of conscience were all proper objects of Appraisal Respect—a thesis rejected earlier\textsuperscript{70}—then a broad claim for exemptions would have more force than it does. But if the only claim of conscience

\textsuperscript{66} The conclusion of Leiter, supra note 4, but one accepted also by Nussbaum, supra note 6.

\textsuperscript{67} It would also be tantamount to a “constitutional . . . right to civil disobedience,” if I may borrow Michael White’s apt characterization. Michael J. White, The First Amendment’s Religion Clauses: “Freedom of Conscience” Versus Institutional Accommodation, 47 San Diego L. Rev. 1075, 1092 (2010).

\textsuperscript{68} Nussbaum, supra note 6, at 125.

\textsuperscript{69} A legal posture that has obvious ideological benefits in a system predicated on greed.

\textsuperscript{70} Supra notes 65–68 and accompanying text.
is for toleration, then it is not obvious why the state should subordinate its other morally important objectives—safety, health, well-being—to claims of conscience, religious or otherwise.