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Equality of Opportunity and Religion

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Abstract

Equality of opportunity is a popular ideal, both for assessing access to specific goods, such as jobs, education and health, and as a more general principle of distributive justice. This chapter provides an overview of existing discussions of equality of opportunity in relation to religion. Many of these discussions have proceeded under the heading of multiculturalism, where minority religious practices have often been the focus of debate, e.g. in discussion of religious exemptions from generally applicable laws. The focus is on conceptions of equality of opportunity involved in such debates and on possible ways in which religion might raise issues relevant for the understanding of equality of opportunity as a general principle. Distinctions are made between different ways in which religion and equality of opportunity might relate to one another. Religion and equality of opportunity can be viewed as possible obstacles to each other. The chapter provides examples of this but focuses on other types of relations where considerations concerning the status of religion contribute to the understanding of what equality of opportunity requires as an ideal. Religion is then viewed as a distinct class of opportunities, which people should have equal access to, or as a factor affecting what equal access means, e.g. because access to some types of opportunities carries

special weight. The most prominent positions regarding these debates are presented and linked to debates about the theoretical status of religion in liberal political philosophy.

Keywords

Conscience, Equality, Identity, Integrity, Opportunity, Political Philosophy, Religion,

Introduction

The aim of this chapter is to consider equality of opportunity in relation to religion. The chapter focuses on which kinds of philosophical issues arise in relation to religion that might be relevant to equality of opportunity. There are several reasons why this is an interesting topic. On the one hand, many specific debates about equality of opportunity are in fact sparked by cases involving religious beliefs or practices. The most common types of debates of this kind concern claims for exemptions from generally applicable laws where the claim is based on religious practices such as religiously motivated modes of dress, days of rest or prayer, dietary requirements, or the like. Here, the question is what equality of opportunity means and requires in cases involving, e.g., Muslim women wearing Islamic headscarves, which might be contrary to dress codes in schools or work places, male Sikhs wearing turbans incompatible with requirement for crash helmets or hard hats, or Christians wanting to wear visible crucifixes, which might be ruled out by uniform requirements. Since religion thus prompts many discussions about equality of opportunity, it makes sense to consider its status in relation to equality of opportunity. On the other hand, there are general debates about the theoretical status of religion within political philosophy, partly motivated by the discussion of specific cases where the role of religion has turned out to be complicated and controversial. In cases of religiously motivated ritual slaughter, for instance, where animal welfare legislation clashes with Muslim and Jewish traditions, should the concern for the opportunity to

have Halal or Kosher meat outweigh the concern for animal welfare? So not only do we have many discussions of equality of opportunity that start out from cases involving religion, it is also interesting to consider what general debates about the theoretical status of religion imply with regards to equality of opportunity. Finally, the outcome of such debates matter to many people, either because religious practices are central to their view of the good life or because religious norms and authorities might negatively impact their opportunity to live the life they want. Precisely when religion matters, either positively or negatively, for the opportunities of different people, we need to get clear about the more principled questions about the role and status of religion in relation to ideas of equality of opportunity.

Debates of relevance to this topic have often addressed issues of religion under the broader heading of multiculturalism or cultural diversity, since issues of equal treatment often arise in relation to religious minorities. Since multiculturalism, at least in Europe, has increasingly been concerned with precisely religious minorities of immigrant origins, mostly Muslims, but also for example Sikhs and Hindus in the British context, many of the debates under the heading of multiculturalism have really been about minority religion. For this reason, some of the discussions addressed here were originally articulated, not in terms of religion, but in terms of cultural diversity. Some of these discussions will be included below insofar as they raise issues of relevance to religion.

The structure of the chapter is as follows. The first half of the chapter has an analytical focus. Here, the aim is to distinguish different types of relations between equality of opportunity and religion. The first sections spells out different understandings of equality of opportunity and religion, which then forms the basis for the distinctions made in the subsequent sections between different types of relations between equality of opportunity and religion. The second half of the chapter focuses on

specific normative debates about equality of opportunity and religion. Here, the aim is to present a survey of prominent views about equality of opportunity as a normative ideal and of how these views handle religion. The concluding section summarizes the most important points and links them to the general debate about the theoretical status of religion in political philosophy.

General or specific principles of equality of opportunity

Debates on equality of opportunity have proceeded on different levels. If religion is relevant to equality of opportunity, the relevance might not be the same at different levels of discussion. It is therefore important to distinguish between equality of opportunity at a specific and a general level of discussion.

On the one hand, equality of opportunity is often discussed in relatively specific and narrow respects, e.g. access to particular valuable social positions of advantage such as jobs or educational opportunities. Some versions of equality of opportunity are formulated as views about how access to jobs should be distributed, e.g. equality of opportunity understood as meritocracy or “jobs open to talents” (Cavanagh 2002, Mason 2006; Segall 2013; Arneson 2015). Equality of opportunity then means that the best-qualified candidate should get the job. Analogous understandings of equality of opportunity are articulated for other valuable positions or goods, e.g. equal access to education, health etc.

One way in which there can be shortfalls in terms of equality of opportunity in these specific and narrow respects is if discrimination occurs in employment, access to education or health etc.

Whereas specific notions of equality of opportunity normally involve articulation of legitimate grounds for differential treatment, e.g. specification of what counts as qualifications for assessment

of which candidates are the best qualified for a certain position, discussions of discrimination focus on illegitimate grounds for differential treatment, i.e. reasons for which it is not permissible to withhold some position or good. Standard formulations of discrimination, e.g. from discrimination legislation, operate with “protected characteristics” or “protected classes”, appeal to which are illegitimate grounds for differential treatment. Religion figures on most of these lists of protected characteristics, which means that it is often illegal to appeal to a person’s religion as a basis for deciding whether that person should get access to a certain position.

Many discussions of religion in relation to equality of opportunity accordingly focus on discrimination on grounds of religion. These debates raise a range of issues, including the exact relation between religion and discrimination, the definition of “religion” for these purposes, and the justifiability of differential treatment in relation to religion (Lægaard 2018). The present chapter will not enter into these debates, however. Not only are they mainly about discrimination, i.e. one possible breach of equality of opportunity, rather than about equality of opportunity as a positive value or principle. They are furthermore usually framed at the specific level in relation to one delimited type of position or good. This chapter will rather focus on a more *general* understanding of equality of opportunity with wider scope.

Equality of opportunity as a more general ideal is exemplified by what John Rawls called “fair equality of opportunity” (Rawls 1999: 63, 73-78, 266). Fair equality of opportunity requires that those with similar abilities and skills should have similar life chances. So here, equality of opportunity is a general principle of distributive justice, which is supposed to govern the entirety of what Rawls called “the basic structure of society”, not merely a specific section of it such as jobs or education. This general scope is the reason why Rawls distinguishes fair equality of opportunity

from more narrow ideas of careers open to talents or meritocracy. Fair equality of opportunity furthermore looks at distributional shares more generally rather than very specific goods such as jobs or education. Fair equality of opportunity is only one element of Rawls's theory of justice, which should always be considered together with Rawls's two other principles, the liberty principle and the difference principle. It nevertheless illustrates how equality of opportunity can be a general ideal or principle with broader scope. This point is also exemplified by what Segall calls "radical equality of opportunity", another label for luck egalitarianism, which is both general as regards types of goods, sectors and scope (Segall 2013: 4-5). This chapter will focus on such general notions of equality of opportunity and ask whether religion might raise issues in relation to them.

One reason for focusing on general notions of equality of opportunity is that more specific and narrow notions of equality of opportunity require some justification for the criteria they adopt for legitimate differential treatment, e.g. what counts as qualifications, and illegitimate differential treatment, e.g. what counts as protected characteristics on the basis of which differential treatment is not permitted. Why is it that natural ability is a legitimate ground for selecting one applicant for a job whereas so-called "reaction qualifications", i.e., qualifications an employee acquires as a result of the way in which others—customers, co-workers, and others—respond to her (Lippert-Rasmussen 2013: 235-61), is usually not? Should religious affiliation be treated like the one or the other in specific cases? It is natural to think that answers to specific questions like these will in part have to appeal to more general principles or values. It is of course possible to justify specifications of what counts as relevant qualifications or protected characteristics in different ways. It might for instance often be possible to provide consequentialist justifications for why people with certain qualification should be given specific jobs or why discrimination on specific grounds should be prohibited. In these cases, the more specific questions about equality of opportunity in the narrow

sense are settled by appeal to more general principles, which are not themselves principles of equality of opportunity. However, if equality of opportunity might also be a general principle or value, such as fair equality of opportunity is in Rawls's theory of justice, then we might appeal to equality of opportunity at the more fundamental level of justification as well. It is furthermore often in relation to such fundamental issues of justification that some of the philosophically interesting questions about religion in relation to equality of opportunity arise. For this reason, this chapter will focus on these types of philosophical debates with a view to whether religion might play a role at this level of discussion. Whereas discussions of discrimination belong within non-ideal theory, the focus on equality of opportunity as a general principle moves the focus more in the direction of ideal theory. Here, the question is what equality of opportunity means as an ideal rather than which specific measures might be justified in response to unjust acts such as discrimination.

Some of the most common discussions of religion in relation to equality of opportunity concern accommodation of religion in general and religious exemptions in particular. Accommodation denotes all the ways in which a society can adjust its rules and arrangements in order to make room for – in this case, religious – minority groups. One prominent type of accommodation is to adjust dress codes for specific job functions to allow religious minorities to wear what they take to be religious mandated clothing – such as Islamic headscarves or Sikh turbans – while conforming with the official dress code. Exemptions constitute a sub-set of accommodation, where this happens not by way of changing a general rule or arrangement in a way that better allows religious minorities to comply with the law and simultaneously live according to their religious convictions, but where the general rule is retained and members of specific religious minorities are then granted exemptions from it. The most well known examples of exemptions are decisions to exempt Sikhs from wearing

helmet while riding a motor bike or working on construction sites, or allowing Jews and Muslims to conduct animal slaughter without stunning.

Accommodation and exemptions are concrete actions or policies that may be justified based on a concern with equality of opportunity (although they are often rather based on other sorts of considerations, cf. Jones 2015 and 2017, White 2012). If accommodation and exemptions are justified based on a concern with equality of opportunity, they take the form of adjustments to the established system of rules, laws and regulations. The justification for such adjustments then is that the established system does not live up to the requirements of equality of opportunity. Which kinds of accommodation and exemptions may be required is therefore a function of two things: 1) what equality of opportunity requires, and 2) what the effects are with respect to equality of opportunity of the established system of rules and regulations, as well as of the proposed adjustments to this system. The focus of the rest of the chapter will be on the former rather than the latter type of question, i.e. on how we might understand religion in relation to equality of opportunity as a principle rather than whether, when and how equality of opportunity justifies exemptions.

Religion in relation to equality of opportunity

Having said something about equality of opportunity, it seems appropriate to say something about religion as well. The natural thing might seem to be to introduce a definition of religion, which could then be used in the subsequent discussion of how religion relates to equality of opportunity. This is not so straightforward, however. First, religion as a phenomenon is notoriously difficult to define. Most attempts to provide a real definition of religion turn out to be under- or over-inclusive. Religion is more like a family-concept than a precise concept definable in terms of necessary and sufficient conditions. Internal belief is crucial to some forms of religion (such as Protestantism)

whereas outward practice is much more important to others (such as forms of Islam). The idea of a transcendental deity is crucial to some religions (such as Christianity) but not to others (such as Buddhism). And so on. This means that attempts at defining religion will often not capture all cases of what we intuitively think of as religion, such forms of pantheism, and might include some that we intuitively do not think of as religion, such as political ideologies (Laborde 2017: 19-21).

Definitions of religion of course exist, e.g. in the legislation of many countries, where it makes a big difference whether a practice or a community qualifies as religious or not in legal terms. The present point does not concern legal definitions, however, but whether it is possible to provide a satisfactory philosophical definition for the purpose of discussions of equality of opportunity.

There is an even more important problem, however, with the idea of starting out with a definition of religion than the noted semantic criticism. The main problem is that the definition of religion for purposes of legal as well as philosophical use is itself a *normative* issue. The question is what we think should *count* as religion for a given purpose – here, in relation to principles of equality of opportunity. This is not a semantic issue that can be settled before entering into the philosophical discussion of equality of opportunity; rather, religion is, in contexts like this, what Cécile Laborde, drawing on a term coined by Ronald Dworkin, calls an interpretative concept (Laborde 2017: 30-32, cf. Dworkin 2011). The question is not what we usually mean by religion but which elements of the (in fact quite varied and different) phenomena we ordinarily talk about as religious that should be taken to be relevant for the purpose of equality of opportunity. As will be evident from the normative debates surveyed in the second half of this chapter, much of the philosophical discussion of religion in relation to equality of opportunity in fact concerns how we can categorize beliefs and practices for the purpose of finding out whether they *should* make a difference in terms of equality of opportunity. For this reason, the chapter will have to start without a definition of religion and we

should not expect the discussion to end up with a semantic definition either. The concluding section will return to the theoretical status of religion on the basis of the normative debates.

Extrinsic relations between religion and equality

Religion might be relevant to equality of opportunity in several different ways. This section will mention some of these in order to provide a structured overview of existing discussions. Some of these are not directly relevant to the focus on the philosophical understanding of equality of opportunity as a general principle, so they will then be set aside for the remainder of the chapter.

One type of relation between religion and issues of equality that has been the focus of much debate is that one might be an *obstacle* to the other. This relation might furthermore go both ways. In one case, equality may be seen as an obstacle to religion. This is for example the case when legislation concerned with the enforcement of non-discrimination or similar equality issues is imposed on religious organizations in a way that some representatives of these religious organizations view as contrary to the beliefs and practices of the religion in question. One prominent type of example of this concerns laws against employment discrimination, which, when applied to churches or related religious organizations such as religious schools, have generated clashes if the church or religious organization wants to dismiss an employee on the basis of religious reasons, which are ruled out by the applicable anti-discrimination law. In such cases, equality becomes an obstacle to religion.

Initially, equality is then an obstacle to religion in a merely *descriptive* sense, since it is simply an empirical fact that, e.g., an applicable law prevents the desired acts of a religious organization.

Nevertheless, this descriptive version of the conflict leads to a *moralized* version, since religious observance is in turn protected by freedom of religion and anti-discrimination laws are justified on

equality grounds. These kinds of cases therefore generate debates about the relative priority of equality and freedom of religion as normative commitments (Trigg 2012).

Given that these kinds of cases really do involve a clash between religious practices, which might be protected by freedom of religion or religious accommodations justified on other grounds, and equality, the relation can naturally go the other way as well. In that case, religion is an obstacle to equality. The “is multiculturalism bad for women” debate provides many examples of this kind of conflict, where group rights are criticized for allowing oppression of women, children or other internal minorities within minorities (Okin 1999; Eisenberg and Spinner-Halev 2005). Since many of the groups in question are religious minorities whose norms and practices of gender inequality are linked to their religious convictions, it is once again especially religious practices (at the descriptive level) and freedom of religion (at the moralized level) that are seen as obstacles to equality (Føllesdal 2005).

This perspective on the relation between equality of opportunity and religion can be generalized beyond the particular version focused on group rights and freedom of religion for religious minorities holding discriminatory views about men and women. Joseph Fishkin’s recent theory of equality of opportunity for example argues for broadening the range of opportunities open to people by loosening “bottlenecks” in the opportunity structure (Fishkin 2014). In this theory, a “bottleneck” is anything that closes off opportunities to an individual, e.g. formal requirements for access to positions or goods. Fishkin does not really consider religion in this context; he only mentions it in passing as a standard protected characteristic in anti-discrimination legislation. Nevertheless, this general way of thinking about equality of opportunity produces a perspective in which not only religion as an object of discriminatory qualification requirements for jobs but also

religion as such, be that in norms imposed on others or in internalized beliefs, is a potential bottleneck that might limit and constrain the opportunities open to individuals.

Whether equality is seen as an obstacle to religion or religion as an obstacle to equality, and whether this is understood descriptively or moralized, the relation between religion and equality will often be *extrinsic* in the sense that we can in principle understand and articulate what equality of opportunity means and requires independently from any consideration about religion. In this extrinsic perspective, religion and equality are independent, which is precisely why they can conflict. At the descriptive level, religion enters the picture as an empirical phenomenon, which either can pose an external obstacle to equality measures or itself be constrained by implementation of, e.g., anti-discrimination laws. At the moralized level, there is a genuine normative issue about the relative importance of equality of opportunity and freedom of religion or group rights protecting religious practices on other grounds (what Patten 2017 calls “external balancing”). Nevertheless, in such examples of clashes between two independent normative commitments, religion will not be relevant for understanding equality of opportunity as such.

Intrinsic relations between religion and equality

Rather than the kinds of extrinsic relations between religion and equality sketched in the previous section, the remainder of this chapter is concerned with whether there might be *intrinsic* relations between religion and equality of opportunity. This here means that considerations about religion are part of what it takes to understand equality of opportunity as an ideal and not merely an external obstacle to it. This might be thought to be the case in several ways.

One possible intrinsic connection between religion and equality of opportunity concerns the *object* of equality of opportunity. Does equality of opportunity require that people have equal opportunities to hold religious beliefs or to practice their religion? This might initially seem a strange question to ask, since the answer might seem straightforwardly affirmative. If one believes in equality of opportunity, surely this also holds for opportunities to hold religious beliefs or live one's life in accordance with them. However, if so, the question is what this means. Is religion a distinct category of opportunities to which people should have equal access? Alternatively, is religion merely an instance of a more generic category of opportunities? If the former is the case, how do we determine what falls within this category and how do we balance opportunities in this category against opportunities in other categories if they rule each other out in practice. If religion is rather an instance of a more generic category of opportunities, does this mean that inequalities in opportunities to hold religious beliefs or practice religion are not a problem from the point of view of equality of opportunity if the overall access to opportunities is equal? This raises issues regarding the *currency* of equality (of opportunity) (cf. Cohen 1989), i.e. how we *measure* the opportunities to which people should have equal access. To answer this, we need to consider both what we really understand by equality of opportunity and by religion in relation to this.

Equality might of course also be an object of religion, e.g. in the sense that it might be a value from a particular religious point of view (it might for instance be thought to be a Christian value because God, according to Christian beliefs, created men (and, for at least many Christians, women as well) as equals, cf. Waldron 2002). A religious conviction then provides a justification for why equality is a value, which might further have implications for how some people understand this value, e.g. whether or not the relevant kind of equality requires non-discrimination in access to specific jobs. In that case, this would also be an intrinsic relation between religion and equality of opportunity. It is,

however, an empirical question what peoples' beliefs are about the possible religious rationale for the value of equality. Such beliefs unquestionably vary a lot. Religious justifications furthermore run afoul of the strictures of political liberalism since people with different beliefs cannot reasonably be expected to find them convincing or even comprehensible (Rawls 1993). For these reasons, the focus in the following will not be on religious grounds for equality of opportunity.

Equality of opportunity and responsibility

A different kind of intrinsic relation between equality of opportunity and religion might pertain, not to the object of equality, but to what we mean by "equal opportunities". The easiest way to see this is to think of one common type of egalitarian theories, namely responsibility-sensitive forms of egalitarianism (e.g. what Segall 2013 calls radical equality of opportunity or what McTernan 2016 calls a practice-based approach). These theories are egalitarian at base, which means that they view inequalities as *prima facie* wrong. Inequalities are only *prima facie* wrong, however, because some inequalities are not problematic, according to responsibility-sensitive egalitarianism, if people are themselves responsible for being worse off. Responsibility-sensitive egalitarianism is not strictly equivalent to equality of opportunity. Equality of opportunity is concerned with the opportunities that obtain at a suitably defined initial point, not with how people subsequently make use of these opportunities. Responsibility-sensitive egalitarian theories, on the other hand, are outcome oriented in their focus, in the sense that they look at the actual inequalities that are present in a given scenario. Equality of opportunity views resulting inequalities as permissible if they result from an initial situation of relevantly equal opportunities. Responsibility-sensitive egalitarianism assess resulting inequalities in light of a backward-looking concern with responsibility.

Even though responsibility-sensitive egalitarianism and equality of opportunity are not strictly equivalent, there is nevertheless reason to consider them together, since responsibility-sensitivity is often part of the motivation for equality of opportunity views. One obvious reason for being interested in equality of opportunity is that, if initial opportunities were in a relevant way equal, then it seems that people can be held responsible for resulting inequalities, which are accordingly not problematic from the point of view of responsibility-sensitive egalitarianism. Initial equal opportunities are then a way of implementing what responsibility-sensitive egalitarianism requires.

Given that the motivation for equality of opportunity is at least sometimes traceable back to some form of responsibility-sensitive egalitarianism, the specification of what it means for opportunities to be equal will in turn have to reflect considerations about responsibility. Equalization of opportunities will then require that people are made equally well off in those respects where they cannot be held responsible for being unequally well off. The specification of the initial point at which people should have equal opportunities will similarly have to take account of what people can be held responsible for. If people's choices or their effects on them are for instance continuously affected by factors they cannot be held responsible for, then we cannot from a responsibility-sensitive point of view merely equalize at a given time and then view inequalities that develop after this point as unproblematic.

If the specification of what we mean by "equal opportunities" depends on a view about responsibility, religion might come into the picture if the religious nature of convictions informing or influencing peoples' choices or the effects hereof is relevant to whether we should view inequalities resulting from these choices as something people should be held responsible for. There are different possible views about whether and why people should be held responsible for their

choices when these are based on religious convictions. The difference between these views turn on how they conceive of religion and how they link religion to equality of opportunity. The second half of the chapter surveys some of the most prominent views about this.

The Barry-Parekh debate

One of the most prominent debates about equality of opportunity and religion has precisely focused on the two main questions just outlined, i.e. the question about religion as an object of equality of opportunity and whether religious convictions affect what people can be held responsible for. This is the debate between Brian Barry and Bhikhu Parekh. While this debate was framed as a debate about exemptions for cultural minorities, the central examples concerned religious minorities and the underlying concern was with equality of opportunity. Not only is this debate a discussion of religion under the guise of cultural diversity, it has also generated a number of responses that focus explicitly on religion as what explains the difference between Barry and Parekh's views. Both because of its prominence and because it illustrates the possible special importance of religion, the remainder of this chapter will first consider the Barry-Parekh debate and then a selection of the further arguments it has prompted.

In *Culture and Equality* (2001), Brian Barry proposed what he called "the strategy of privatization" as an alternative to what he called "the rules-and-exemptions approach". The former holds that equal treatment is secured by uniform public rules and that we should leave what people decide to do relative to a specified set of rules as their own business and responsibility. The latter, to the contrary, argues that public rules need not be the same for everybody, since some people might require exemptions from otherwise generally applicable rules, e.g. to conform to their religious practices. Barry presented his strategy of privatization as a liberal egalitarian alternative to the

multiculturalism expressed in the rules-and-exemption approach. For present purposes, however, the interesting thing about Barry's picture of the debate is that he explicitly articulates it as a competition between two different views of equality of opportunity, the difference between which he furthermore explicitly illustrated by examples crucially involving religion, e.g. Sikh turbans and *kirpans*, or Jewish or Muslim requirements of *kosher* and *halal* meat.

The issue of exemptions is central to Barry's discussion. For present purposes, however, the focus is on the underlying conceptions of equality of opportunity. These might in turn yield different views about exemptions, but the interesting question is what characterizes the different views of equality of opportunity, not what their implications are for exemptions. The underlying difference would remain even if one could design a system of rules that implemented the former without doing so by means of exemptions.

Barry's liberal egalitarian conception of equality of opportunity holds that

If uniform rules create identical choice sets, then opportunities are equal. We may expect that people will make different choices from these identical choice sets, depending on their preferences for outcomes and their beliefs about the relation of actions to the satisfaction of their preferences. Some of these preferences and beliefs will be derived from aspects of a culture shared with others; some will be idiosyncratic. But this has no significance: either way it is irrelevant to any claims based on justice, since justice is guaranteed by equal opportunities. (Barry 2001: 32)

This self-styled liberal claim that equal treatment is generated by a system of uniform laws accepts that virtually any law will be more burdensome to some people than to others (Barry 2001: 34).

This means that, for any system of general rules, some people will be able to comply with what they take their religion to require of them while simultaneously following the rule, whereas others might not. On Barry's liberal view, however, this does not imply that these people do not have equal opportunities. According to Barry, the critical distinction is between limits on the range of opportunities open to people and limits on the choices that they make from within a certain range of opportunities (2001: 37, cf. what Jones 1994: 39 calls the "fixed background" approach, of which Barry's view is one version). He articulates and defends this view against the view proposed by Bhikhu Parekh, which holds that:

Opportunity is a subject-dependent concept in the sense that a facility, a resource, or a course of action is only a mute and passive possibility and not an opportunity for an individual if she lacks the capacity, the cultural disposition or the necessary cultural knowledge to take advantage of it. (Parekh 2005: 241)

Against Parekh's subject-dependent view of opportunities, Barry responds that:

This proposal actually destroys the meaning of the word opportunity, which originally related to Portunus, who was (and for anything I know to the contrary still is) the god who looks after harbours. When the wind and the tide were propitious, sailors had the opportunity to leave or enter the harbour. They did not have to do so if they did not want to, of course, but that did not mean (as Parekh's proposal would imply) that the opportunity then somehow disappeared. The existence of the opportunity was an

objective state of affairs. That is not to say that opportunity could not be individualized: whether a certain conjunction of wind and tide created an opportunity for a particular ship might depend on its build and its rigging. But it did not depend on the 'cultural disposition' of the crew 'to take advantage of it'. They might, perhaps, have chosen not to sail because setting out on a voyage was contraindicated by a religious omen, but that simply meant that they had passed up the opportunity.

(Barry 2001: 37).

So whereas Parekh understands opportunities as subject-dependent in the sense that what counts as an opportunity is relative to what a given individual is disposed, given his or her capacities and beliefs, to do, Barry's view is that opportunities are objective states of affairs, in the sense that what counts as an opportunity is not relative to subjective dispositions. While Parekh formulates his view in terms of "cultural disposition" and "cultural knowledge", his examples of cases where his view leads to different provisions for different people mostly involve religious beliefs such as the Sikh belief that it is a religious duty for men to wear a turban and a *kirpan*, or the Muslim belief that it is a religious duty to wear a headscarf. Barry's examples are also mainly of religious practices and requests for religious exemptions. Therefore, the significance of religious convictions is central to this dispute over the nature of equality of opportunity.

Both Barry's and Parekh's views seem problematic, however. Parekh's view is less developed, but it might seem questionable that people should be accommodated simply because they are not disposed to take advantage of opportunities they would normally be considered as having. This is the basic intuition driving Barry's criticism, which is not merely about the semantic meaning of "opportunity" but about when it is reasonable to consider people as having equal opportunities. In

formulating his criticism, however, Barry articulates his own view in an equally radical and, to many commentators, implausible way, since it takes no account of how costly it is for differently placed people to “take advantage of” what he sees as objective opportunities (Mendus 2002; Miller 2002). Barry does subsequently allow for some exceptions to his initially stated radical view of equality of opportunity, which might actually allow for more exemptions than he himself is willing to acknowledge (cf. Caney 2002). Nevertheless, these are precisely exceptions justified on other (mainly pragmatic) grounds, not implications of his view of equality of opportunity (Shorten 2010 discusses all of these views and ends up settling for a sufficientarian position based on basic interests that require protection of certain opportunities rather than an egalitarian position requiring equal opportunities).

The Barry-Parekh debate can illustrate both of the types of relations between religion and equality of opportunity sketched above. One way of reading the disagreement between Barry and Parekh is as a disagreement over the definition of “opportunity”, where this is in turn understood as a disagreement about the currency of equality. At the same time, the disagreement might also be read as a dispute about what people can be held responsible for, i.e. about when opportunities are in fact equal, irrespective of what counts as an opportunity.

One reason why the Barry-Parekh debate can be read in either of these ways is that Barry’s liberal egalitarian position largely is a version of Ronald Dworkin’s idea of equality of resources (Holtug 2009, cf. Dworkin 2000). Dworkin classically pitted equality of resources against equality of welfare and argued in favor of the former against the latter on the basis that, among other things, equality of resources better caters to intuitions about individual responsibility. He thus invoked considerations of responsibility as a reason for choosing resources rather than welfare as the

currency of egalitarian justice. As the debate subsequently developed, the “equality of what” question and the question about responsibility were separated, since the choice of currency is independent from the question about what people can be held responsible for (Arneson 1989; Cohen 1989). Barry, however, sticks to a more or less unreconstructed Dworkinian equality of resources view (albeit one not assigning an explicit place to Dworkin’s “envy test”, which might challenge the objective nature of opportunities, cf. Dworkin 2000). This means that Barry’s reasons for favoring an objective understanding of opportunities partly reflect his view about what people can and should be held responsible for.

Fair opportunity

Barry is not the only scholar who bases his view of equality of opportunity in relation to religion on Dworkinian equality of resources. Alan Patten for instance argues for a liberal view of neutral treatment based on Rawls’s idea of fairness and Dworkinian equality of resources (Patten 2014: 137-148, 180-182). Patten aims to justify minority rights on liberal neutralist premises. He distinguishes his own account of neutrality from both neutrality of effect and neutrality of justification. What Patten calls neutrality of treatment requires that policies are not more accommodating of one conception of the good than of another. This is distinct from neutrality of effect because people, in a distinctively Rawlsian and Dworkinian vein, are held responsible for their preferences and conceptions of the good when these are pursued against a fair background.

Patten bases his notion of neutrality of treatment on a Rawlsian inspired principle requiring what he calls fair opportunity for self-determination (2014: 127). He has subsequently employed this principle in relation to the issue of religious exemptions to reach different conclusions than Barry,

despite the fact that Patten's principle, just as Barry's understanding of equality of opportunity, rests on Rawlsian and Dworkinian premises. Patten's idea is that liberals have a basic concern with securing self-determination for everybody. The self-determination of one person might conflict with the self-determination of another. In such cases, the liberal state should secure fair opportunities for self-determination, which requires that one person's opportunity to pursue and fulfil her ends should be balanced in a fair way against the reasonable claims of others. Concerns with fair opportunity for self-determination might also conflict with other values. Patten (2017a) exemplifies these conflicts with cases about claims for religious exemptions from general laws, e.g. laws about traffic safety or regulation of narcotics. In these kinds of cases, Barry argued against the rule-and-exemption approach on the basis that either the reason for a law is sound, in which case exemptions are usually not justifiable, or the reason for exemptions turn out to show that the reason for the law was not sufficiently good to begin with, in which case the law should be dropped (Barry 2001: 40-62). Patten argues, to the contrary, that once we think of cases as involving either "internal" balancing of competing ends important to different people's self-determination, or "external" balancing between the principle of fair opportunity of self-determination and other important values, then we often have cases where the rationale for the law holds up but where the special importance of religious commitments for some people provides a sufficient reason for an exemption.

Religion is accordingly relevant to this issue of fair opportunity insofar as religion is either a special category in itself or an instance of a category of special considerations that carry greater weight when balanced against other considerations. Patten notes that the latter possibility seems more plausible to him (2017a: 212-13), which means that religious convictions are not the only convictions that might have special weight. So Patten's argument about religious exemptions is, on the one hand, that balancing in some cases is the right way of approaching these conflicts and, on

the other hand, that burdens on religious (or other special) commitments is a more severe setback to a person's interests than setbacks to other kinds of interests (see also Patten 2017b). While he formulates these claims in relation to exemptions, the underlying concern is one with fair equality of opportunity.

Patten's disagreement with Barry is interesting, because they both proceed from broadly Rawlsian and Dworkinian premises. Whereas Barry interprets fairness and equality of resources to imply that religious commitments cannot carry special weight when balanced against other commitments, and that opportunities therefore must be understood in objective terms, Patten rather takes fairness to be a concern that affects what counts as equal opportunities in the first place. On Patten's view, opportunity is neither an objective state of affairs, as Barry claims, nor a subject-dependent one, as Parekh claimed, but a *moralized* concept. Patten argues that we can have cases where a religious believer is permitted to do something that others are not permitted to do, but where this is required by fairness. So according to Patten, the relevant concept of opportunity is informed by considerations of fairness rather than being given independently of the moral assessment, as is the case, albeit in different and contradictory ways, in both Barry's and Parekh's views.

Patten is not alone in invoking the Rawlsian idea of fair equality of opportunity in this context. Jonathan Quong (2006) also does this and explicitly contrasts this approach to equal opportunities with luck egalitarian arguments concerned with neutralizing the effect of luck. Quong furthermore makes clear how fair equality of opportunity differs from both Barry's notion that opportunities are objective states of affairs and Parekh's claim that opportunities are subject-dependent. Just as Patten, Quong argues for the permissibility and sometimes requirement of exemptions based on a broader notion of neutrality, which is neither neutrality of effects nor just neutrality of justification.

Even if a law has a neutral justification, it is still not fair if it leads to a very unequal distribution of burdens on different people with otherwise permissible conceptions of the good. Quong additionally requires the justification of laws to be impartial in something like the sense ensured by Rawls's original position where the parties only accept principles if they can be accepted from the point of view of all positions in society. Quong's argument is that an unequally burdensome law is not impartial in this sense and that exemptions may be permitted in such cases to mitigate the unequal burdens in question.

Quong points out that the Barry-Parekh disagreement assumes that the relevant question is whether religious beliefs are something people can be held responsible for, e.g. because they are chosen, or should rather be considered on a par with external circumstances for which people cannot be held responsible. Barry and Parekh agreed that this is the relevant question, they merely disagreed about the answer (see also Mendus 2002). Quong rejects the assumption that we should understand equality of opportunity based on this luck egalitarian choice/chance distinction. According to his understanding of fair equality of opportunity, the question is not whether two otherwise equally skilled and motivated people have the same opportunities, e.g. as part of employment in a given job, but rather whether they have the same opportunity to *combine* the pursuit of their chosen conception of the good with the job in question. Fair equality of opportunity requires that religious minorities have the same opportunity as enjoyed by the majority of citizens to combine their (reasonable) religious pursuits with basic civic opportunities like employment and education (Quong 2006: 65-66; Quong hereby rejects what Jones, 1994: 39-40, calls the "fixed background" view). This means that the relevant concept of opportunity is neither purely objective and focused on states of affairs independent of the people in question, as in Barry's case, nor a subject-dependent one in Parekh's sense. The relevant sense of opportunity is rather what might be called a *relational* one, where it is

the wider set of opportunities that matters, e.g. to be a parent *and* have a career, to be religious *and* a member of the police force.

The reason why religious commitments, according to Quong's interpretation of fair equality of opportunity, should be taken into account in this way when assessing whether a minority has fair opportunities, is that religious commitments, just as, e.g., the ability to raise a family, are part of a class of commitments generally seen as fundamental opportunities in a human life. In a Rawlsian original position, participants would prefer a system of rules that enabled them to combine these opportunities with those of employment and education over a system of rules that required some individuals to make stark choices between religious or family pursuits and the opportunities of employment and education (Quong 2006: 67). Religious convictions are thus special, in that we should assign special weight to the possibility of combining them with other pursuits when assessing whether people have equal opportunities. Nevertheless, they are not uniquely special, since they are part of a broader class of such basic or primary opportunities that all play the same role.

Religion as a basic good

The fair equality of opportunity view, then, has to assume that religion belongs to a class of what Quong (2006: 68) calls "basic or primary opportunities" that should carry special weight when balanced against other considerations (as in Patten's account) or when assessing whether a law can be impartially justified (as in Quong's account; this is a feature shared by most liberal theories, cf. Laborde 2017: 200). Even though this offers a way out of the conflict between Barry and Parekh's equally implausible positions, it opens the view to other types of objections. As Paul Bou-Habib has put it, what he calls "the basic good argument" is ultimately a *partisan* argument in the sense that it

makes assumptions about the value of religion that some people might reasonably disagree with (Bou-Habib 2006: 112; this is a version of what Laborde, 2017: 198, labels the standard liberal egalitarian objection to exemptions).

For present purposes, the question is what alternatives there are when we view this as a matter of equality of opportunity in relation to religion. Neither Barry nor Parekh single out religion as a special category, even though they both mainly use religious examples to illustrate and motivate their respective views. The fair equality of opportunity view provides an alternative approach to equality of opportunity to both of their views. However, for the fair opportunity view to provide justifications for religious exemptions, as both Patten and Quong want their view to do in at least some cases, it seemingly has to rely on assumptions about the special value of religion. There are different alternatives to try to avoid this. One is to reject the entire idea that there are special (“basic” or “primary”) classes of opportunities that should carry special weight when balanced against opportunities of other people or against other types of considerations (see May 2017). This would mean falling back on an entirely generic theory of equality of opportunities, e.g. Dworkin’s equality of resources, Arneson’s equality of opportunities for welfare, or something similar. In that case, as noted in the beginning of this chapter, there are no distinctive philosophical issues regarding religion in relation to equality of opportunities. The remainder of this chapter will therefore consider alternative ways to go. If it is a problem to designate religion as a special class of opportunities, but we still want to consider whether there might be special issues in relation to religion not captured by a generic theory of equality of opportunities, the intermediary possibility is to view religion under a more general category of special opportunities (what Patten 2017b: 134, calls the “shared significance claim”). This might on the one hand avoid the partisan charge and on

the other hand still provide justification for giving special, although not uniquely special, weight to religion in some cases.

Arguments from identification

There are several proposals that fall into this intermediary category. The rest of this chapter will consider three types, namely arguments based on identification, conscience and integrity.

Identification here denotes the subjective sense of attachment to certain properties, which a person feels define her as a person. A person can identify with beliefs and related practices and traditions, which often are but need not be religious. According to identity-based arguments, which are common in the literature on multiculturalism (Taylor 1994; Appiah 2005), it can be a reason for accommodating a practice or tradition that people identify with it (Audi 2015: 418). Identity-based arguments can be linked to ideals of equality of opportunity since any account of equality of opportunity requires an account of how to understand the relevant opportunities. But this might be done in different ways with quite different implications.

One way of linking considerations of identity to equality of opportunity is a version of Parekh's subject-dependent view of equality of opportunity. On such views, identification is a matter of who people *are*, and sufficiently central elements of identity can shape what are real opportunities for a person. A Muslim woman who strongly identifies with a particular interpretation of the Islamic injunction of modesty might feel that taking off her headscarf in public is not a real opportunity for her. There are different ways of understanding this. On one interpretation, a sufficiently strong identification can generate actual *inabilities* – some Muslim women might simply be unable to remove their headscarf in public. On the inability interpretation, identification and beliefs of sufficient strength can work just as a handicap. This (perhaps in conjunction with the “ought”

implies “can” principle) in turn provides a possible justification for why people in some cases should be exempt from rules requiring them to do something that clashes with their identity, especially if this prevents them from taking advantage of opportunities open to others. The inability justification is reminiscent of equality of opportunity justifications for accommodating people with physical handicaps.

There are, however, several problems with the inability justification. One is whether it is really a plausible claim that people who strongly identify in certain ways are actually unable to do something that clashes with their identity, as the analogy to arguments for accommodation of people with physical handicaps would require. This might simply be an implausible claim, as Barry would argue. It can, however, be modified to make it more plausible. Perhaps it is not strictly impossible for people to do what clashes with their identity. It might still be more *costly* to them in terms of the sacrifices they have to make to take advantage of the opportunities that others have available at little or no cost and in terms of subjective welfare. If equality of opportunity requires that society equalizes the costs involved in taking advantage of the various opportunities (Miller 2002) or that people should have equally attractive option sets (Holtug 2009), then identification will make a difference for what equality of opportunity implies, especially, but not only, regarding religion.

There is, however, another objection to the inability version of the identification argument, which might also apply to the cost version. The problem is that whereas people would usually rather be without physical handicaps, this is not the case for religious convictions and related practices and traditions with which people identify. That someone identifies with a religious belief and a related religious practice and tradition means that she affirms the belief and views the practice and tradition

as a positive part of her life, which she would not want to be without. It is precisely because believers usually identify with and endorse their beliefs that religious beliefs cannot be equated with handicaps (Barry 2001: 37; Jones 2015: 140, although see Zala 2018 for some possible partial exceptions).

Identification might also be linked to equality of opportunity in a quite different way. Contrary to some representations of his view, Barry does not claim that people should be held responsible for carrying the costs of their religious beliefs because they have chosen their beliefs. Barry in fact explicitly writes that people cannot decide what to believe and therefore cannot change their beliefs.

It is false that the changeability of preferences is what makes it not unfair for them to give rise to unequal impact. It is therefore not true that the unchangeability of beliefs makes it unfair for them to give rise to unequal impacts. (Barry 2001: 36)

Rather than being based on a claim that people have chosen and can change their beliefs (which Barry denies, cf. also Jones 1994), Barry's view that people can properly be held responsible for bearing the costs of their beliefs can be understood as based on the fact that people *identify with* their beliefs. Religious believers usually do not regret the fact that they hold their religious beliefs, they often affirm and value their beliefs, whether or not they have strictly chosen to adopt them. One way of understanding this is that, even though people cannot choose which first-order religious beliefs to have, they often have second-order beliefs that the first-order beliefs are good or right. If religious believers thus endorse and identify with their religious beliefs, this is a version of what Ronald Dworkin called authenticity. Even if religious believers might not feel able to act otherwise, they can view their religiously motivated acts as their own and as something they, for that very

reason, can and should be held responsible for. This is at least a possible implication of viewing religious beliefs through the lens of authenticity, which can be linked to responsibility (Dworkin 2011: 210-211). On such a view, identification can be a reason for holding people responsible for their beliefs rather than absolving them from responsibility for bearing the costs of their beliefs.

Arguments from conscience and integrity

Whereas arguments based on identification can proceed from anything with which a person might identify, conscience and integrity arguments are more narrow, since they focus on a more delimited class of conscientious beliefs about *duties* (see e.g. Nussbaum 2008 and White 2012 on the former, Bou-Habib 2006 and Taylor and MacLure 2011 on the later; although see Laborde 2017: 215-217 for the view that obligation and identity can be distinct elements of integrity). So whereas identification arguments as I have considered them above proceed from the fact of identification, which the cost and inability justifications take to determine what a person can and cannot be expected to do, conscience and integrity arguments proceed from the fact of perceived duties. This transforms the question of what people are *in fact* free to do to one about what they are *morally free* to do (Jones 2015: 144). Conscience and integrity based arguments provide reasons for why others should take the fact of perceived duties to provide reasons for them – e.g. in relation to what should count as equal opportunities.

There is a difference between conscience based and integrity based arguments, even though both provide justifications for giving special consideration to religion. Conscience denotes some inner conviction that is taken as a normative source of authority for the individual in question. So arguments for exemptions or special consideration based on conscience say that, because an individual conscientiously believes that it is his or her duty to act in a certain way, this should carry

special weight for others, e.g. when considering whether to grant exemptions from laws that might prevent this. Conscience based arguments do not challenge the content of the duty; at most they challenge the sincerity with which the individual believes that something is indeed required by duty.

Integrity based arguments have a different structure. They also involve inner beliefs or convictions but do not proceed directly from an individual's belief that something is a duty to the conclusion that therefore it should be given special weight. Integrity arguments accept that conscience is a source of normative authority, but only for the individual in question, not for others or for the state. Instead, integrity based arguments say that integrity has objective value, where integrity is what is maintained when a person acts in accordance with his perceived duties (Bou-Habib 2006: 117, see also Laborde 2017: 203-204). Integrity signifies a *relation* between perceived duties and a person's actions. It is not the perceived duties as such that generate reasons for others to assign special weight to, e.g. a person's religious convictions; it is the objective value in the state of affairs where people are able to act according to their perceived duties that provides such reason for others.

Both conscience based arguments and integrity based arguments provide ways of justifying why the opportunity to practice and observe religious duties should be given special weight. As such, they can be linked to ideals of equality of opportunity just as arguments from identification in ways that generate justifications for religious exemptions or for placing more exacting requirements of justification on laws that burden religious practice. They are nevertheless not partisan or sectarian arguments, since religious convictions according to these types of arguments are not uniquely special but are part of a broader category of conscientious convictions.

This is not to say that integrity-based arguments are uncontroversial. It might also be controversial to assign objective value to integrity (Fornaroli 2019). Even if one accepts the value of integrity, it might be controversial to assign special importance to conscience insofar as respect for this special importance would result in “cost shifting”, e.g. that burdens are moved from religious practitioners to other citizens (Leiter 2013). Theories about equality of opportunity that incorporate versions of the integrity-based argument therefore have to provide principles for assessing when claims for exemption of accommodation based on integrity are reasonable and can legitimately result in cost-shifting and when such claims are outweighed by concern for the opportunities of others and can accordingly not result in cost-shifting. Liberal views based on some interpretation of the fair equality of opportunity view discussed above will generally say that people should be held responsible for the costs of their beliefs but only insofar as background conditions are fair (Jones 1994). A theory will accordingly have to specify principles for assessing what counts as unfair background conditions. Laborde’s proposal for such a theory identifies two distinct types of background unfairness that are relevant for such discussions of equality of opportunity (2017: 220-238). *Disproportionate burdens* are cases where the burden imposed by a law on a group of citizens is disproportionate relative to the aim served by the law. *Majority bias* are cases where rules allow members of the majority to combine their “integrity protecting commitments” with other opportunities whereas they do not allow members of the minority to do the same.

Conclusion and Future Directions

Returning to the question noted in the beginning about the theoretical status of religion, identity-based and especially conscience- and integrity-based arguments all exemplify how religious convictions can fall into a special category, but where it is not religion *as such* that is special. According to Cécile Laborde (2017), this is a general point about the status of religion in liberal

political philosophy. Religion is a complex phenomenon with different aspects that raise different concerns in political philosophy. In some respects, religion is a comprehensive doctrine that might be problematic from the point of view of public reason. Nevertheless, not all religious arguments are non-public and religious arguments are not the only kind of non-public reasons. In other respects, religion is a social identity that might form the basis for differential treatment. But again, this is not only the case for religion, which here is more like race or ethnicity, and it is not always the case that religion leads to social exclusion. Finally, religion is in some respects a matter of personal ethics. This respect is relevant to discussions of equality of opportunity, since this raises questions about the justifiability of general rules and of exemptions to such rules when they clash with religious beliefs. Again, however, this is not something unique to religious beliefs; other kinds of conscientious convictions raise similar concerns. Laborde (2017) accordingly proposes a general “disaggregation approach” separating religion into different dimensions, which are then each considered as instances of more general categories that raise specific issues within liberal political philosophy. In the case of religious beliefs, Laborde adopts a version of the integrity-based argument sketched above. She views “integrity protecting commitments” as a general category (Laborde 2017: 203-217), of which religious beliefs might be an instance. This means that integrity is the *metric* of equality of opportunity in such cases (2017: 214). So religion is special, but not uniquely so (2017: 201), since it is an instance of a more general category of integrity protecting commitments.

This disaggregation approach in general and the integrity protecting commitment model in particular are plausible responses to the question about the theoretical status of religion, both in political philosophy in general and in relation to equality of opportunity in particular. Even granting this, there are plenty of issues that are still open to debate. Bou-Habib (2020) for instance criticizes

Laborde's specific conception of integrity for not making adequate requirements on peoples' other regarding attitudes when invoking integrity as a reason for exemptions. This, however, is a family-disagreement about the most plausible version of an integrity-based argument for exemptions (see also Seglow 2019).

Laborde's disaggregation approach both synthesizes many of the existing discussions about religion in liberal political philosophy and opens up new directions for future research. In relation to issues concerning equality of opportunity, Laborde's approach provides a new framework for discussing arguments from integrity.

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