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Legal Systems and Competing Notions of Justice: Explaining Variance in Religious and Nonreligious Philosophical Exemptions across Western Democracies

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Legal Systems & Competing Notions of Justice:
Explaining Variance in Religious
and Nonreligious Philosophical Exemptions
across Western Democracies


A thesis submitted in partial fulfillment of the requirement
for the degree of Bachelor of Arts in Government from
The College of William & Mary

By:

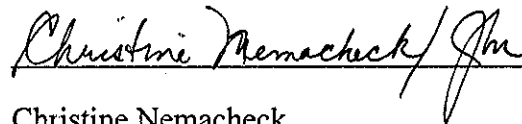
Chelsea Olivia German

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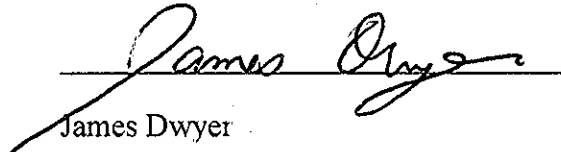
(Honors)



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April 26, 2012

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Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (Universal Declaration of Human Rights, Article XVIII)

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest. (Religious Freedom Restoration Act of 1993, U.S. Public Law No. 103-141, Section 3)

Why is my liberty judged of another man's conscience? (1 Corinthians, 10:29, King James Bible)

1. Introduction & Literature Review

In 1964 a man named Daniel Seeger, accused of draft dodging, found his case taken to the United States Supreme Court. He had sought conscientious-objector status for years and met with multiple refusals due to his lack of belief in a Supreme Being. Seeger understood that conscientious objection required a religious origin to be legally recognized and asserted his claim to be legitimately religious in these words:

Personally, I do not believe that life derives any meaning from cosmic design but I do believe that a person can give his life meaning by doing something worthwhile with it, i.e., by relating his existence in a constructive and compassionate way to the problems of his social environment. In this sense pacifism, among other things, is for me a *transcendent* concern and it is in this respect that I consider myself religious.

The court expanded its definition of "religion" to no longer require faith in God, in order to accommodate the pacifism of Seeger, an atheistic Quaker. This decision highlights the subject of legal exemptions, normative concerns about what beliefs if any should warrant such discharge from the law, and hence holds far-reaching implications for relativistic or universally prescriptive approaches to justice. Contemplation of these issues compels one to analysis not

only of the normative questions orbiting this subject but also of current patterns and possible explanations of legal exemptions as they presently stand throughout the Western World.

The tension between uniform legal application and legal accommodation-of-difference has become a frequent focus of contemporary political philosophy. Legal exemptions for medical or other similar circumstantial causes meet with little controversy, but when the only factor separating a citizen who must obey a law from one who need not obey lies in differing beliefs the topic demands attention. Moral, political and legal theorists question whether such exemptions are warranted and, if so, by which beliefs. Exemptions based in belief, when granted, come in two kinds, one inclusive of the other but more expansive: religious exemptions and philosophical exemptions. The former exempts individuals whose objection to the relevant law stems from a belief that can be categorized as religious (complicated by the difficulty inherent in undertaking such a categorization). The latter exempts on the basis of moral convictions that may or may not be religious in nature. The literature on this issue ranges from genealogies of the legal definitions of “religious” and discussions doubting the demonstrability of sincere belief, to normative debates on the authority of the individual in relation to the state. These contributions are mainly theoretical in nature. Although a few comparative studies have analyzed particular exemptions (i.e., animal slaughter regulation exemptions) across states from a religious rights standpoint, no empirical work has yet considered exemptions across multiple fields to examine overall differences in the distribution of exemptions or to discern variance in the availability of religious and philosophical exemptions across states. I will tread exactly this uncharted territory of examining differences in the empirical reality of exemptions across the U.S., Western Europe

and several other liberal democracies and thence seek to explain the variance, situating the findings in the historical progression of politico-philosophic thought.

Religion, Morality and Law

Two interrelated normative problems present themselves in relation to ethical legal exemptions: the justifiability of ethical exemptions of any kind and the justifiability of nonreligious exemptions. (Philosophical exemptions by definition encompass religious exemptions, negating the need to question the justice of nonreligious exemptions in isolation). I will now provide a sketch of these dilemmas and their origin. On one side stands exemption-skepticism, the view that the law should apply to all, blind to divergence in religious belief or nonreligious ethical orientation (Strnadová, 213). Opposing this are the advocates of pluralism and accommodation-of-difference. They come in two varieties: the proponents of religious freedom who uphold the imperatives of faith over any mortal law on the one side and the champions of self-determination whether its drive be spiritual or secular on the other. The wrestling of these three outlooks predates the problem of legal exemptions. As one writer notes, “The major agencies of social control are morals, religion and law. In the beginning of law these are not differentiated” (Pound, 18).

At the dawn of civilization religious institutions bore the burden of keeping social order, and the earliest governments, from what is known, were almost invariably allied to or fused with religious authority. In the fifth century B.C., Sumerian city-states first crystallized around vast polyfunctional temples and were ruled by governor-priests (Maisels 344). In this system the chief executive was the eminent power of the Sumerian pantheon, Enlil, and all government

functionaries were referred to as his servants (Maisels, 345). Ancient Egypt remains famed for its Imperial cult of god-kings. Each Greek polis worshiped a patron deity, and embraced religion as a political force, the will of the deity inseparable from the good of the polis it protected. Ergo, for citizens in such systems as those in Sumer, Egypt and Greece, obedience to the law and religious piety were one. Courts and temples were merely separate structures wherein one enacted different aspects of the regnant Authority's will, equal in status: "If anyone steal the property of a temple or of the court, he shall be put to death" (*The Code of Hammurabi*, Article VI). When religious and governmental authority first began to distinguish themselves, law slithered into religion's directing role, commanding with the force of the state where the incentives of divine punishment and favor had once reigned. According to one scholar, "State and religion have historically had an uneasy relationship, at times being close allies, at others harsh adversaries" (Cosgel, 401). Even today law, religion and morality remain intertwined and sometimes interchangeable. The issue of ethical exemptions they now surround contrasts in its youth, a current incarnation of a primordial struggle. There are no belief-based exemptions in the Code of Hammurabi; such exceptions mark complicated modern systems capable of granting that not all of their laws may be consistent with the dictates of individual conscience (Cohen, 269). Systems, in other words, that dare to acknowledge tension between morality and religion and law.

An Exemption's Evolution

A return to the tale of Mr. Seeger and the circumstances surrounding his case will illustrate the above-described tension. In the beginning there was the question of whether conscientious exemption should be allowed at all. From the state's perspective, a citizen who disagrees with any of its laws is in error, just as from the citizen's point of view it is the state that errs (Kemp,

314). To excuse an error out of consideration for its earnestness, then, out of its agents' own sense of conscience and awareness of the state's moral duties to its citizens even when they go astray, provided the case is not too extreme, may prompt the enactment of statutory exemptions. For a more detailed psychoanalysis of the reasoning process culminating in the awarding of exemptions see Kemp, 314-320. A 1917 U.S. conscientious objection statute exempted only members of "any well-recognized religious sect or organization... whose existing creed or principles forbid its members to participate in war" (Smith, 86). Here law bowed to institutionalized religion. By 1940 this statute was broadened to make the requirement of organized religious affiliation less explicit, exempting anyone who "by reason of religious training or belief is conscientiously opposed to war." This bestowed the individual with the authority to self-determine religious beliefs regardless of the presence or lack thereof of institutions with comparable beliefs and without the need for membership in any such existing institution. Unfortunately for Seeger, this statute would be struck down before his case.

In 1943 a nonreligious pacifist was granted exemption through this act, stirring discomfort and a clarification of its requirements. It was decided that "philosophy and morals and social policy without the concept of a deity cannot be said to be religion" but "merely personal moral codes" and that only "an individual's belief in relation to a Supreme Being" would merit exemption (Macgill 1357-9). "The Supreme Being clause limited the exemption to objections stemming from externally compelled beliefs, to the exclusion of ones internally derived" (Macgill, 1360). Self-determination of legally respected conscience was for a time rescinded. Yet concessions to religion soon gave way to recognition of nonreligious conscience. In 1968, the Supreme Court heard Seeger's case. The criteria elevating one to the status of a conscientious

objector were broadened to include the nonreligious provided each held “a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by God in those admittedly qualifying for the exemption” emphasizing that no difference was to be drawn between “externally and internally derived beliefs” (Mcgill 1364, 68). While religion still in some ways legally outweighs secular conscience in the United States, as in the Constitution where proposed amendments to protect “freedom of conscience” in addition to religion have failed, by 1970 government was “to treat religious and secular conscience equally” when granting military exemptions (Greene, 963; *Columbia Law Review*, 1431).

Rising Secularization

Two conflicting narratives describe current trends in religiosity, both of which add to the relevance of this paper in that they wield undeniable political and legal implications in the arena of exemptions. First, there is the narrative of spreading secularization. As one analysis concludes, “Experts argue that, proportionally, there are more atheists in the world than ever before” (Zuckerman via Rosenblum, 398). According to this narrative, ever-advancing and publicly accessible science provides the certainty once only religion afforded, gradually colonizing the territory of public confidence where religion hitherto reigned unquestioned. The unaffiliated, an identifier inclusive of atheists, agnostics and those simply lacking any interest in religion, now hold the position of being the largest religious designation in the population of the state of Colorado, where one in four people self-identifies as such (*Pew Forum on Religion and Public Life*, 2007). It is the second largest religious (or rather nonreligious) label in California, Oregon, Washington, Nevada, New Hampshire, Vermont, Rhode Island and Connecticut, and forms over twenty percent of the population of Arizona and New Mexico (Ibid). As one study finds, “The U.

S. population continues to show signs of becoming less religious, with one out of every five Americans failing to indicate a religious identity in 2008” (Kosmin & Keysar 2008). Even those who are religious are adapting more secular practices and worldviews, particularly the educated. This possesses manifest political significance:

In the United States, the education levels of various denominations are inversely correlated with their church attendance: Episcopalians are both the most highly educated and attend church the least amongst Christian denominations, while Baptists are the least educated and attend church the most regularly... Because education correlates with public influence, those denominations whose adherents have public influence are more likely to have adherents who spend less time in church and believe fewer traditional teachings (McCusker 398).

A differing although perhaps not mutually exclusive narrative describes a resurgence of religion, occurring as a reaction to secularization. Both trends arguably foreshadow more conflict between religious (or irreligious) beliefs and the law.

Religious Resurgence

Whereas the classical secularization thesis maintains the decline of religion’s significance in modern society and politics, many hold a different view of religious and societal evolution, one variation whereof is titled *religious economies theory*, which proposes that religion has actually become more influential and dynamic over time” (Featherstone, 78). Despite the popularity of secularization theory in the social sciences, evidence to the contrary abounds. To counter the common theoretic explanation that modernization and the spread of scientific mindedness lead to the inevitable societal dissolution or lessening of religion, one need only look at the United States, where church attendance rates are today considerably higher than in the eighteenth and nineteenth centuries: “paradoxically the most modernized nation in the world has become, and

remains, one of the most religious societies on the planet” (Featherstone, 80). Competition in a vibrant global religious economy has been suggested as an alternative to Samuel Huntington’s famous “clash of civilizations” theory of 1993 (Finke, 45). Although religious economies theory often focuses primarily on religious influence in the sphere of international politics, its exalting of religion to the status of a central force motivating political decisions clearly involves additional consequences for domestic political outcomes and the crafting of laws. Whether religiosity is currently declining, rising, or doing both in different ways, its evolving role in society obviates the importance of scrutinizing religious and nonreligious legal exemptions to the study of law and political science.

Relativism and Universalism

Returning to the tension between those advocating accommodation-of-difference and their opponents calling for a single, universally applicable law, this paper will attempt to clarify their respective philosophic foundations. Moral relativism drives accommodation-of-difference; universalism provides a common justification of exemption-skepticism. When Friedrich Nietzsche notoriously proclaimed “Gott ist tot” (*God is dead*) late in the nineteenth century, he referred to the demise not only of religion, but of all unquestionable Truth of an allegedly objective or universally applicable nature, instead asserting that all is dependent upon perspective. One of the most powerful and enduring concepts of postmodernism, an element of Nietzsche’s perspectivism has percolated throughout Western culture, evolving into the cultural relativism, political correctness and pluralistic approach now so common in liberal democracies. Nietzsche himself would have mocked this now dominant form of relativism, for in his worldview, while all truths were subjective they were certainly not equally noble. The idea of a

multiplicity of truth allows for equal though conflicting moral norms, neither of which can objectively be lauded as better than the other: as one writer words, “different people have different cultures, and what we sense as outrageous or as morally commendable may not be so in their eyes, in their terms or by their values” which must be respected as equally compelling (Browning, 20). This absence of externally-derived and thus universally valid standards of morality prompts political scientists to ask questions such as:

If there are no external reasons, if all we have are reasons and arguments internal to the moral psychologies of agents, are we theoretically obliged to concede a relativism about values, such that secular liberal values have only a relative truth on their side? (Bilgrami, 175-6).

Such questioning leads, by the logic of relativism, not only to multicultural tolerance but to laws that allow for numerous religious and philosophical legal exemptions so that citizens might pursue individual moral truths that differ from the morality espoused by the law. Challenging and likely predating relativism is the Enlightenment faith in self-evident Truth binding all men equally, which results in identical application of the law to all citizens. The clash between these two theories of legal justice can then be said to be rooted in a philosophical battle between universal and relativistic notions of truth and morality. Belief-based exemptions ineludibly imply some degree of moral relativism; the policy of one-law-for-all finds its grounding in moral universalism or objectivism.

Religious Constraints on Relativism

Another way to approach these theoretical underpinnings (which have been established as trust in the state’s universally applicable moral system on the one hand, and on the other as a relativistic acceptance of the view that different moralities are of equal worth) is from their associations with various religions. This will elucidate why some support religious exemptions

but not exemptions for nonreligious philosophical beliefs. The relativistic moral attitude is of course not uniquely the product of postmodern philosophy, but also extracts validation from older Protestant thought, for the elimination of religious hierarchy and subsequent equalization of each individual's link to his deity can be seen as necessitating equal authority for differing views, even when these views conflict with those made into law by the majority (Howard, 107). While this worldview maintains the existence of a single truth, it is relativistic in that it emphasizes the difficulty of determining which men have access to this truth and thus which opinions are to be believed. To emphasize how far into the past moral relativism's roots extend, it would here be beneficial to reiterate one of the quotes located at the beginning of this paper which expresses an uncharacteristically relativistic note in a Book otherwise mainly concerned with espousing a universal religion: *Why is my liberty judged of another man's conscience?* (1 Corinthians, 10:29, King James Bible). The Protestant form of moral equalization entails limits on itself: differing viewpoints can only merit equal consideration insofar as they originate in an individual's connection with God and remain recognizable as interpretations of religious morality. A belief outlying this standard would not receive exemptive legal acknowledgment until the language of laws pertaining to ethical exemptions underwent secularization, as happened in the abovementioned case of Mr. Seeger.

Individual Authority and the Future of Law

While religious legal exemptions remain far more widespread than their nonreligious equivalents (as the data in the quantitative crux of this thesis will demonstrate), gradually swelling secularization of ethical exemptions prompts the question: if all viewpoints merit equal consideration, how does the authority of a given individual conscience or will stand in relation to

the authority of law as the democratic expression of collective conscience? One view is that “individuals offer their obedience to the state as a moral choice and, by their consent, grant moral force to choices collectively made” (Unknown, *Harvard Law Review*, 1703). Yet if an individual’s morality lies too far outside the range of accepted, legally-enforced morality, this gives rise to cases for which no one could sanely propose legal accommodation. No reasonable society would grant a legal exemption to a murderer who says that by his personal moral code murder is permissible and asks that his belief be legally accommodated. The volitional necessity of any given deeply-held belief does not provide sufficient grounds for legal accommodation (Koppelman, 216). When religion remained a necessary component of legally recognized exemption-worthy belief, as in the 1917 version of U.S. conscientious objection law, the criterion for determining which beliefs deserved accommodation was clear: membership in a respected religious institution espousing similar beliefs. However the trend of secularization is slowly spreading the idea that governments should not favor religious values over nonreligious values in the construction and implementation of ethical legal policy (Mahoney, 305). The legal distinction or lack thereof between religious and non-religious philosophical exemptions holds implications for the justification of belief-based exemptions of any kind. Without a clear-cut criterion like membership in a particular church, there exists no intuitive boundary as to which beliefs merit exemptions beyond extreme cases like the abovementioned murderer (whose belief lies too far outside the moral norm for consideration) and the pacifist (whose belief is readily comprehensible even to those who disagree with it, as it is merely a radical expansion of the norm against unprovoked violence common to all *homo sapiens* with functional social instincts). Many beliefs are not so unthinkable as the murderer’s, yet not so understandable as the pacifist’s, falling instead at some indeterminate point between the two. How then can legal theorists

determine the boundary between folly unworthy of accommodation and intelligent, sincere individualism deserving of exemptive recognition? If secularization continues, answering this question may delineate the very limits of the law's authority and ultimately define the future of the relationship of government to the individual. While such an undertaking lies beyond the scope of this project, a quantitative and comparative analysis of laws on the issue as they currently stand in several liberal democracies may offer a denser foundation from which to expand scholarship in this area. Whether modern Western democracies offer many or few belief-based exemptions, whether their recipients need be religious or may receive exemption for convictions of a nonreligious nature, and the factors which predict decisions on these vital matters, shall herein be investigated to this exigent purpose.

2. Analysis of Western Democracies

Hypotheses and Set-Up

Looking at the extent to which ethical legal exemptions are available in several countries in Western Europe, as well as Australia, Canada, and the U.S., will clarify how each has handled the quandaries discussed above and allow inquiry into what factors have influenced each country's relative alliance within the debates of one-law-for-all versus respect-for-differences, and the validity of only religious versus both religious and nonreligious philosophical claims. Some examples of common exemptions include exemptions from mandatory military service, from taxes (in the case of organizations), from dress codes for official photographs on national identification cards or licenses, from required vaccinations, and from following an established method of killing animals (in the case of ritual slaughter).

- Hypothesis 1: *Lower levels of general and/or political religiosity cause greater equality between religious and nonreligious exemptions.*
- Hypothesis 2: *Greater levels of general and/or political religiosity cause fewer exemptions of any kind.*
- Hypothesis 3: *Lower levels of religious tolerance cause fewer exemptions of any kind.*
- Hypothesis 4: *States with majority Protestant populations will give more exemptions relative to majority Catholic states.*

The proposition behind the first hypothesis is that a less religious or more secular population will be less likely to draw distinctions between religious and nonreligious philosophical declarations, and this will ultimately result in laws that treat the two similarly. The basis for hypotheses 2 and 3 is the idea that greater religiosity leads to laws less sympathetic to religious minorities and the nonreligious. (Religious exemptions tend to exist for religious minorities because presumably a state's laws will have no conflict with the majority religion) (McCusker 395). However, it must be noted that causation may flow in the opposite direction as well: it has been suggested that greater legal institutionalization of a state's dominant culture leads to lessening tolerance towards minorities (Weldon, 331). Party policy (which eventually influences law) is affected not only by religiosity but by specific religious composition (Janda 349). Therefore this study will look for variance between predominantly Catholic and Protestant areas, with the expectation that, after controlling for level of religiosity, states with majority Protestant populations will allow more exemptions than majority Catholic ones, due to the tradition of pluralism brought about by the equalization of individuals enacted by the Protestant reformation (Howard 91).

The dependent variable will be measured by an index that examines each state's relative frequency of religious exemptions and of variance in exemptions applicable to religious versus nonreligious philosophical claims. This study will concern itself with the following states: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, the U.K. and the U.S. To produce the index, several common exemptions will be examined, with each state listed in each case as allowing no exemptions, religious exemptions or both religious and nonreligious philosophical exemptions (often called "conscientious exemptions" when no distinction is made). Significant variance in the overall frequency of exemptions' availability will then be subject to explanatory analysis. While no momentous variance in the equality of religious and nonreligious exemptions rests in the following datasets, the across-the-board predominance of religious exemptions will receive analytical attention.

The following factors will be taken into account as independent variables: tolerance towards different faiths and irreligion (self-reported), subjective religiosity (self-reported), behavioral religiosity (church attendance), political religiosity (presence of prominent parties with ties to a religion, official endorsement of a state religion, etc.), majority religion type (Catholic or Protestant), politicalness (self-reported), legal system type (common law or civil law system) and two philosophical public opinion measures (self-reported position on the relative importance of freedom versus equality and the importance of one's say in government). Data to calculate the first four, the sixth and last two of these factors will be obtained from the World Values Survey.

The Data

Below is a chart of the data I have collected followed by an explanation for each area of exemption. After these explanations an index of relative exemption levels will be presented.

	Military		Tax		Medical		Dress		Slaughter Methods	
	Phil.	Rel.	Phil.	Rel.	Phil.	Rel.	Phil.	Rel.	Phil.	Rel.
U.S.	2	2	1	1	0.36	0.94	0	1	1	1
AUSTRAL.	1	1	0	1	1	1	0	1	0	1
CANADA	2	2	1	1	1	1	0	1	0	0
AUSTRIA	1	1	0	1	NM	NM	0	1	0	1
BELGIUM	0	1	1	1	NM	NM	0	0	0	0
DENMARK	1	1	0	1	NM	NM	0	1	0	1
FINLAND	2	2	1	1	NM	NM	1	1	0	1
FRANCE	0	0	1	1	0	0	0	0	0	1
GERMANY	2	2	0	0	1	1	0	0	0	1
ITALY	1	1	1	1	0	0	0	0	1	1
NETHERL.	0	1	0	1	NM	NM	0	0	0	1
NORWAY	2	2	1	1	NM	NM	0	0	0	0
SPAIN	1	1	0	1	NM	NM	0	0	0	1
SWEDEN	0	1	0	1	NM	NM	0	1	0	0
SWITZ.	2	2	0	1	NM	NM	0	1	0	0
U.K.	2	2	1	1	1	1	0	1	0	1

Explanation of Military Exemption Scores

There exist two types of military exemptions: exemption from conscription claimed before deployment (Type 1) and exemption based on an ethical objection that arises after enrollment (Type 2). Type 2, when offered, exempts regardless of whether enrollment was voluntary or conscripted. In countries that have suspended or do not currently practice conscription, many still have the right to Type 1 exemptions legally enshrined in the case of renewed conscription.

	Conscription	Type 1 legally enshrined or available	Type 2 available
U.S.	No (since 1973)	Yes	Yes
AUSTRALIA	No (since 1972)	Yes	No
CANADA	No (since 1945)	Yes	Yes
AUSTRIA	Yes	Yes	No
BELGIUM	No (since 1992)	Yes	No
DENMARK	Yes	Yes	No
FINLAND	Yes	Yes	Yes
FRANCE	No (since 2001)	No	No

GERMANY	No (since 2011)	Yes	Yes
ITALY	No (since 2000)	Yes	No
NETHERLANDS	No (since 1992)	Yes	No
NORWAY	Yes	Yes	Yes
SPAIN	No (since 2001)	Yes	No
SWEDEN	No (since 2010)	Yes	No
SWITZERLAND	Yes	Yes	Yes
U.K.	No (last conscript discharged in 1963)	Yes	Yes

[All data from *War Resisters' International* web database: http://www.wri-irg.org/programmes/world_survey]

With the exception of France, all countries have Type 1 exemptions available or legally enshrined so as to become available should conscription recur. (While no longer legally ensured, it should be noted that France did award exemptions in the past, although fewer than other states). Because most of these countries have all had compulsory service recently and the four exceptions, the U.S., Australia, Canada and the U.K., have both Type 1 and Type 2 exemptions, current conscription is not taken into account in the calculation of exemption score. Had there been a country that suspended conscription more than two decades ago that did not offer Type 1 exemptions, this would have problematized the data by raising the possibility that secular objections simply never arose at the time when conscription last took effect. In such a scenario, scoring without taking this into account would have been the equivalent of penalizing a country for having no rainforest protection laws when it contained no rainforests. As it is, the score scheme goes as follows:

No Exemptions	Type 1	Type 1 & 2
0 points	1 point	2 points

Explanation of Tax Exemption Scores

Here the score is calculated by inquiring into whether religious organizations (churches) receive tax exemptions and tax-deductible donations and whether the largest (or one of the

largest in the case of countries with several prominent organizations) equivalent secularist associations receives similar exemptions. The tax exempt statuses of the following secularist societies were investigated:

U.S.	American Atheists (http://www.atheists.org/)
AUSTRALIA	Atheist Foundation of Australia (http://www.atheistfoundation.org.au/)
CANADA	Humanist Association of Canada (http://humanistcanada.ca/)
AUSTRIA	Allianz für Humanismus und Atheismus (http://atheisten.at/)
BELGIUM	Centre d'Action Laïque (http://www.laicite.be/)
DENMARK	Dansk Ateistisk Selskab (http://www.ateist.dk/)
FINLAND	Suomen Ateistiyhdistys (http://www.dlc.fi/~etkirja/Ateistit.htm)
FRANCE	L'Association Athéisme (http://atheisme.internation.free.fr/)
GERMANY	Bund der Konfessionslosen und Atheisten (http://www.ibka.org/)
ITALY	Unione degli Atei e degli Agnostici Razionalisti (http://www.uaar.it/)
NETHERL.	De Vrije Gedachte (http://www.devrijegedachte.nl/)
NORWAY	Human-Etisk Forbund (http://www.human.no)
SPAIN	Unión de Ateos y Librepensadores de España (http://ateos.org/)
SWEDEN	Humanisterna (http://www.humanisterna.se/)
SWITZ.	Freidenker-Vereinigung der Schweiz (http://www.frei-denken.ch)
U.K.	British Humanist Association (http://www.humanism.org.uk)

Explanation of Medical Exemption Scores

Although there exist many kinds of ethical exemptions in the medical realm, for the purposes of simplifying the data to be gathered, this study has limited itself to investigation of exemptions for compulsory vaccinations. Several countries in this study do not legally compel vaccination, and in these cases NM, standing for Not Mandatory, stands in the column where the score would have appeared. Because this study counts overall instances of exemption, the fact that not all states qualify to receive a score in this area is not a problem. The states under study in which inoculation is not mandatory under the law and where unvaccinated children meet with little disadvantage in entering school (although it should be noted that rates remain high despite this) are Austria, Belgium, Denmark, the Netherlands, Norway, Sweden, and Switzerland (*World Health Organization* 4, 8; MacIntyre 440; Allier 1; Martin 268). In Canada vaccination is not

mandatory in all provinces, but those requiring it offer exemptions. In the United States eighteen states allow for nonreligious philosophical exemptions in the area of required vaccinations, while all but three states give religious exemptions. This has been reflected in the U.S. score by, rather than assigning a 0 or 1, using the percentage of exempting states as the final score. In all other cases a 1 denotes the availability of exemption and a 0 the lack thereof.

Explanation of Dress Exemption Scores

All national identification cards and licenses require photographs wherein the face of the card holder is unobscured and recognizable. For this reason head-coverings are often banned in such photographs. Several states have made exemptions for religious headgear, such as yarmulkes, wigs, and, provided it is folded so as not to obscure the face, the head-scarves worn by many female adherents of Islam. Finland is the only state in this study which does not specify that such coverings have to be religious in nature. So long as they do not conceal the face and are habitually worn, presumably nonreligious accessories would be accepted. While this exemption may seem, *prima facie*, to lack the magnitude of the other exemption categories mentioned thus far, it involves the same principle of a belief-based legal exception. This summer in Austria a man named Niko Alm, in protest of the religious bias of the headgear exemption in his country, successfully fought a three year battle to be allowed to wear a spaghetti strainer on his head in his driver's license photograph as a "pastafarian," a follower of a parody religion known as the Church of the Flying Spaghetti Monster (BBC, 1). Even an ostensibly inconsequential law can carry symbolic significance. When exemptions are allowed to the headgear rule a 1 is assigned, otherwise a 0. (Although Alm was eventually accommodated in the granting of a license featuring his nonreligious head-covering, he only received this right through a facetious religious

claim. The law on the books remains exclusive of nonreligious headgear, and thus Austria is not listed as offering a philosophical exemption).

Explanation of Animal Slaughter Method Exemption Scores

All the states under consideration have humane slaughter laws whereby farm animals must be injected with a substance that prevents their feeling pain before they are killed. This is incompatible with the traditional methods of ritual animal slaughter used to produce halal and kosher meat by Muslims and Jews, respectively. Thus some states offer exemptions in regards to injection requirements for the purposes of halal and kosher meat creation. Of the states in this study only the U.S. and Italy allow for relaxation of injection laws for reasons that are not explicitly religious. In Italy traditional, non-anaesthetized animal killing is allowed if performed in the executioner's yard on an animal to be consumed by his or her family. In the U.S. traditional killing is allowed if it is part of the slaughterer's cultural tradition (this exemption appears to have been created with Native Americans in mind), regardless of whether that tradition is religious. While these exemptions could be argued to not qualify as purely belief-based in nature, the specific requirements (a certain manner of killing in the case of Italy and a specific cultural heritage in the U.S.) can be seen as merely indicating the *sincerity* of a required belief, as in cases where membership in a religious institution is required as proof of a religious claim's authenticity. Tribal membership in the U.S. as an indicator of the presence of a sincere belief compelling one to utilize traditional slaughter techniques bears particular resemblance to cases wherein church or mosque or synagogue, et cetera, membership is considered evidence of genuine belief. The restrictions dictated by Italian law also seem to act as indicators that the exemption recipient is acting out of a belief in tradition in that they weed out those with

evidently falsified beliefs. It accomplishes this by specifying a manner of killing that is traditional in all aspects and thus prevents cases of a commercial meat producer taking advantage of the exemption policy merely to save money by forgoing the requisite injections. Where an exemption is allowed a 1 is allocated and in other cases a 0.

Index of Relative Exemption Levels in Western Europe and the U.S.

Based on the scores in the data listed above each state receives three scores in the index: a score for the overall availability of exemptions, a score for the availability of philosophical exemptions and a score showing the difference in availability between religious and philosophical exemptions (number of philosophical exemptions subtracted from the number of religious exemptions). This yields the following:

	Total Number of Exemptions	Number of Religious Exemptions	Number of Nonreligious Philosophical Exemptions	Difference in Availability of Religious versus Nonreligious Philosophical Exemptions
U.S.	10.3	5.94	4.36	1.58
AUSTRALIA	7	5	2	3
CANADA	9	5	4	1
AUSTRIA	4	4	1	3
BELGIUM	3	2	1	1
DENMARK	5	4	1	3
FINLAND	9	5	4	1
FRANCE	3	2	1	1
GERMANY	7	4	3	1
ITALY	6	3	3	0
NETHERL.	3	3	0	3
NORWAY	6	3	3	0
SPAIN	4	3	1	2
SWEDEN	3	3	0	3
SWITZ.	6	4	2	2
U.K.	10	6	4	2

Initial Observations

The most striking difference *prima facie* is that between the large number of exemptions available in the U.S., U.K., Canada, Finland, and to a lesser extent, Australia and Germany, relative to the small number available in France, Sweden, Belgium and the Netherlands. Another surprise is the great variability amongst Nordic countries where one might expect a pattern. Finland places amongst the most frequently exemption-granting states and Sweden amongst the least while Norway gives a number of exemptions situating its policies in the center between these two extremes. Less surprising is the difference between the U.S., with its devotion to religious freedom, and France, as its policy of *laïcité* exists to protect the state from religion rather than religion from the state (Gedicks, 476). Canada's, Australia's, and the U.K.'s similarity to the U.S. is also strikingly intuitive, for their respective legal systems and cultures share the same historical roots. Religious exemptions are more numerous than philosophical exemptions overall. Interestingly, states that give more religious exemptions also give significantly more philosophical exemptions (Pearson Correlation = .712). This suggests that an attitude in favor of accommodating differences, while initially limited to religion, easily spreads to accommodate extra-religious differences as well. This is more in line with the philosophical justification of postmodern relativism cited in the introduction than with the Protestant-rooted form of relativism posited, and seems to support the classical secularization thesis.

Table of Independent Variables

	Majority Religion	Value Tolerance	Level of Political Religiosity	Level of Professed Religiosity	Church Attendance Rate (%)	Legal System	Professed Politicalness	Value Freedom > Equality	Value Say in Gov't
U.S.	Prot.	67.1	0	81.6	44	Com. Law	55.6	71.7	32.4
AUSTR	Cath.	69.1	0	39.2	55	Com. Law	57.7	N/A	N/A

-ALIA									
CAN.	Cath.	69.1	0	59.1	49	Com. Law	52.6	62.4	N/A
AUST- RIA	Cath.	74.4	0	58.2	30	Civ. Law	38.3	60.4	29.7
BEL.	Cath.	82.1	1	47.4	44	Civil Law	28.2	50.5	20.7
DEN.	Prot.	75.0	1	29.9	5	Civil Law	42.4	63.0	23.9
FIN.	Prot.	79.4	0.5	49.1	4	Civil Law	21.1	60.3	40.0
FRA.	Cath.	63.6	0	37.8	21	Civil Law	34.3	53.2	21.0
GER.	Prot.	77.3	1	44.1	14	Civil Law	44.6	65.5	33.0
ITA.	Cath.	54.6	0	70.8	45	Civil Law	32.3	43.4	29.6
NETH.	Prot.	68.3	1	43.4	35	Civil Law	54.8	57.9	16.3
NOR.	Prot.	86.5	1	39.9	5	Civil Law	23.7	65.7	13.4
SPAIN	Cath.	78.1	0	55.0	25	Civil Law	21.9	44.6	23.8
SWED.	Prot.	77.4	1	30.9	4	Civil Law	49.2	62.8	29.9
SWITZ	Cath.	67.1	1	51.7	16	Civil Law	39.8	57.5	17.3
U.K.	Prot.	69.1	1	42.8	27	Com. Law	39.5	65.9	30.4

[World Values Survey Databank.]

Explanation of Majority Religion Score

All of the states in this study are majority Christian with varying populations of Catholicism, Protestantism, irreligion and other faiths. Sometimes classifications were extremely difficult, as in Switzerland where the population percentage practicing Protestantism and Catholicism are almost equal (47.5% versus 48.9%). In this case the state has still received the label of Catholic, as that denomination was larger even if admittedly only by a small amount. Canada and Australia are also only narrowly majority Catholic. In many states, though, the majority was strikingly clear, as in Spain (98.4% Catholic; 0.5% Protestant). The exact breakdown is as follows:

	% Protestant	% Catholic	% Nonreligious and Other Religions
U.S.	48.8	32.8	18.4
AUSTRALIA	37.6	52.0	10.4
CANADA	36.0	53.3	10.7
AUSTRIA	52.7	32.1	15.2
BELGIUM	6.5	91.7	1.8
DENMARK	96.8	1.1	2.1

FINLAND	72.6	1.6	25.8
FRANCE	1.9	93.7	4.4
GERMANY	57.0	40.0	3.0
ITALY	0.6	98.9	0.5
NETHERLANDS	25.8	53.0	21.2
NORWAY	94.1	0.8	5.1
SPAIN	0.5	98.4	1.1
SWEDEN	68.5	1.2	30.3
SWITZERLAND	47.5	48.9	3.6
U.K.	70.5	13.8	15.7

[World Values Survey Databank, Question F025, Four-Wave Aggregate Data from 1981-2002]

The variation in religious (or irreligious, as the case may be) minorities outside of Catholicism or Protestantism is fascinating, but failed to produce any significant statistical correlation with the amount or variation between religious and philosophical legal exemptions available in a state. Nor did it factor into any of this study's original hypotheses. Ergo it was left out of the final analysis.

Explanation of Religious Tolerance Score

Unfortunately, the World Values Survey does not contain a measure of "tolerance towards other religions," and so this has by necessity been estimated by looking at tolerance of out-groups in general. Only one measure in the World Values Survey databank involved tolerance, and so this measure has been utilized although it merely approximates an ideal measure of tolerance towards different faiths and the nonreligious. The specific wording of the question asks whether or not it is important to teach children tolerance and respect for other people. Taking the assumption that people commonly seek to inculcate their own values in children, this measure should provide a reliable indicator of the general valuation of "tolerance" as a virtue in the countries under consideration. If this assumption proves accurate, then it appears that tolerance is

highly valued across-the-board, with the highest valuation occurring in Norway and the lowest in Italy.

Explanation of Political Religiosity Score

	Presence of Explicitly Religious Major Party	Official State Church	Political Religiosity Score
U.S.	No	No	0
AUSTRALIA	No	No	0
CANADA	No	No	0
AUSTRIA	No	No	0
BELGIUM	Yes (<i>Christen-Democratisch en Vlaams</i>)	No	1
DENMARK	No	Yes (<i>Church of Denmark</i>)	1
FINLAND	No	Somewhat ¹ (<i>Evangelical Lutheran Church of Finland</i>)	0.5
FRANCE	No	No	0
GERMANY	Yes (<i>Christlich Demokratische Union Deutschlands</i>)	No	1
ITALY	No	No	0
NETHERL.	Yes (<i>Christen Democratisch Appèl</i>)	No	1
NORWAY	No	Yes (<i>Church of Norway</i>)	1
SPAIN	No	No	0
SWEDEN	No	Yes (<i>Church of Sweden</i>)	1
SWITZ.	Yes (<i>Christlichdemokratische Volkspartei der Schweiz</i>)	No	1
U.K.	No	Yes (<i>Church of England</i>)	1

¹: See “Church and State,” the Evangelical Lutheran Church of Finland’s Official Website: <http://evl.fi/EVLen.nsf/Documents/A47B48B9B3B2188AC22572B400213CE6?OpenDocument&lang=EN>

The Political Religiosity Score seeks to measure the imbrications of the political and religious spheres by looking at the presence of major political parties with explicit religious ties and of official state churches. Defining what constitutes a “major” party varies by country and is admittedly subjective. In the case of the European states, I looked at the number of seats each party currently holds in the European Parliament (EP), the European Union’s lower house, and if a party was not one of the top four seat-holders from its state, I did not count it as major. EP representation of a party tends to reflect its popularity in the reigning government of its own state. Although nearly every state has a major party affiliated with the Group of the European People’s Party (Christian Democrats), and often additional minor parties sharing this affiliation, not all of these contain “Christian” or another expressly religious term in their party names, so I did not count them as “explicitly religious.” In Sweden, for example, the *Moderata Samlingspartiet* and the *Kristdemokraterna* parties both maintain affiliation with the Group of the European People’s Party, but only the latter has an explicitly religious identifier (*Krist* equates to the English “Christ”) in its name. This latter party holds only one seat at the moment in the EP, excluding it from the four top seat-holding parties representing Sweden, and thus it is not listed as “major.” All data on current Members of the EP was gathered from the EP’s official website (<http://www.europarl.europa.eu/meps/en/search.html>). In the cases of Norway and Switzerland, which do not hold any seats in the EP, different factors were utilized to determine whether a party qualified as major. In Switzerland the *Christlichdemokratische Volkspartei der Schweiz* is currently part of a four-way coalition government and one of the largest parties, and this was deemed constitutive of a designation as “major.” The Norwegian *Kristelig Folkeparti* satisfies the criterion of containing a religious appellation in its title, but is not currently one of the four

most dominant parties in Norway in terms of electoral representation, ergo its exclusion from the Political Religiosity Score.

Explanation of Professed Religiosity Score

	% that claims religion is “very important” or “rather important”	% that claims to draw strength or comfort from religion	Average = Professed Religiosity Score
U.S.	81.4	81.8	81.6
AUSTRALIA	39.2	N/A	39.2
CANADA	59.1	N/A	59.1
AUSTRIA	55.8	60.7	58.2
BELGIUM	45.4	49.4	47.4
DENMARK	29.2	30.7	29.9
FINLAND	43.6	54.7	49.1
FRANCE	39.2	36.5	37.8
GERMANY	38.1	50.1	44.1
ITALY	71.1	70.5	70.8
NETHERL.	40.6	46.3	43.4
NORWAY	39.3	40.6	39.9
SPAIN	51.5	58.5	55.0
SWEDEN	30.6	31.2	30.9
SWITZ.	48.5	54.9	51.7
U.K.	41.7	43.9	42.8

[World Values Survey Databank]

Explanation of Legal System Types

There exists great variance amongst the legal systems of this planet. “One approach in attempting to divide and classify the legal systems of the world has been to divide them into three main types of legal family or legal tradition: civil law, common law and socialist law” (De Cruz, 32). Using this method of classification, all of the states under scrutiny in this study operate under either the civil law or common law traditions. A brief, rudimentary summary of what divides these systems would here be practical. Civil law works in abstract, conceptual,

formalistic, codified rule-based terms proceeding from general principles; common law, on the other hand, is concrete, court-based and proceeds case-to-case seeking practical solutions as problems arise and thus gradually building up a complex of precedents (De Cruz, 39). Because common law is court-based, it boasts greater flexibility and speed of change than civil law. Civil law, in contrast, must strictly adhere to compiled codes and enjoys superior stability as change is bound by the slow-moving legislative process. Common law, it follows, would more quickly respond to shifting needs or attitudes within the population it serves. (This may have been one factor explaining why conscription was abolished relatively early and across-the-board in the four common law countries studied, whereas in the countries employing civil law, conscription has only ended recently if at all). While this was not one of the original independent variables set forth, the wisdom of its addition is palpable and owed entirely to Professor Clay Clemens (see “Acknowledgments”).

Explanation of Valuing Freedom and One’s Say in Government

Because the dependent variable’s level conceivably depends upon which of two philosophic notions of justice is taken (accommodation-of-difference or exemption-skepticism), it seems logical to consider philosophical factors prevalent in public opinion. Two philosophical measures were taken into account: the percent of the population claiming to value the abstract concept of “freedom” more than that of “equality,” and the percent of the population who selected in a questionnaire of their overall priorities, “giving the people more say in government” as “most desirable.” As has been elsewhere stated, all data in regards to these factors were gathered from the World Values Survey.

Apparent Correlations

		Total Exemptions	Religious Exemptions	Philosoph. Exemptions	Variation
Majority Religion Type	Pearson Correlation Sig. (2-tailed)	.283 .288	.306 .249	.189 .483	.096 .724
Values Freedom > Equality	Pearson Correlation Sig. (2-tailed)	.536* .039	.653** .008	.397 .143	.201 .472
Church Attendance Rate	Pearson Correlation Sig. (2-tailed)	.173 .523	.176 .514	.160 .554	-.017 .951
Values More Say in Gov't	Pearson Correlation Sig. (2-tailed)	.552* .041	.585* .028	.491 .075	-.004 .989
Law System Type	Pearson Correlation Sig. (2-tailed)	.722** .002	.769** .001	.578* .019	.096 .723
Political Religiosity	Pearson Correlation Sig. (2-tailed)	-.162 .548	-.150 .579	-.202 .452	.107 .694
Professed Politicalness	Pearson Correlation Sig. (2-tailed)	.183 .498	.407 .117	-.032 .907	.524* .037
Tolerance	Pearson Correlation Sig. (2-tailed)	-.007 .979	.195 .470	-.200 .458	.509* .044
Professed Religiosity	Pearson Correlation Sig. (2-tailed)	.430 .096	.314 .236	.510* .043	-.344 .191

* Indicates a significant correlation, ** Indicates a very significant correlation.

Initial Conclusions

For all of my original hypotheses I fail to reject the null. Religiosity by any measure – be it rate of church attendance, professed religiosity or political religiosity – does not correlate significantly in any way with a state’s level of relevant legal exemptions (except for professed religiosity and philosophical exemptions, the connection whereof will be given due attention momentarily). Professed religiosity and tolerance are the only initially proposed independent variables to bear some significant result, but in neither case was it the result initially predicted. It seems that greater valuation of tolerance increases the *variation* in availability of religious and nonreligious philosophical exemptions. Where such variation occurs, within the cases studied, the variation always favors religious exemptions over nonreligious ones. A population’s level of professed politicalness also correlates weakly but significantly with variation. While no intuitive explanation for these correlations exists, they perhaps warrant future investigation. As another fascinating aside, professed religiosity correlates weakly but significantly with a state’s level of philosophical exemptions, suggesting somewhat counter-intuitively that more religious populations may in some ways express *greater* tolerance towards nonreligious beliefs than less religious populations. Alternatively, religiosity might simply correlate with an approach to justice more closely aligned with accommodation-of-difference than with one-law-for-all. However because there is no correlation with overall exemption level or religious exemptions and because the correlation is only a weak one, I am hesitant to draw any conclusion based on it with any great degree of confidence.

Two independent variables not originally considered, both of which might be categorized as philosophical value measures – the preference for freedom over equality and the belief that increasing the say of the people should be the government’s top priority – correlate significantly

with increased exemptions and increased religious exemptions. Demanding particular attention a valuation of freedom as superior to equality maintains a *very* significant correlation with the level of religious exemptions offered by a state, suggesting that a preference for freedom over equality may entail a greater respect for religious freedom to the extent that such freedom merits protection even when incompatible with general laws. It is not difficult to intuit the logic behind how a predilection for freedom over equality and the prioritizing of one's "say" in government matters might lead to greater legal exemption levels, as both of these philosophical preferences involve esteem for self-determination and are thus plausibly indicative of a desire to maximize delegation of decision-making power to political actors at the individual-level.

However, by far the most significant connection detected by this study is the positive correlation found linking legal system type to the relevant legal exemption levels. While only four states with legal systems based in common law were analyzed (the U.S., Australia, Canada and the U.K.) as opposed to twelve states with civil law systems, the pattern that emerges strikes not only with the strength of the correlation but by the presence of a correlation across all relevant fields (overall exemption level, religious exemption level and nonreligious philosophical exemption level). The correlation between legal system and exemption type inarguably qualifies as the finding this study can most confidently assert. It may be argued that these four states share many attributes beyond the basis of their legal system, such as a common language and cultural heritage, and so future research expanding the case studies to include less similar but nonetheless common law system-utilizing states such as India would perhaps prove illuminating. Whatever additional traits the U.S., Australia, Canada and the U.K. share that might differentiate them from the other states under consideration, a connection between a state's legal system type and

the philosophy of justice promoted in the laws it enacts (be it a relativistic philosophy of acceptance, meaning accommodation-of-difference, or universalism and fairness as in one-law-for-all) seems, *prima facie*, highly plausible. The institutional nature of this shared feature – legal system type – as opposed to the other, more abstract and cultural linkages between these states, as well as legal system type’s direct and undeniable connection to the legal realm, together seem to bolster at the theoretical level the chances of a connection between it and legal exemption levels.

3. Analysis of the U.S.

Hypotheses and Set-Up

The exemptions examined herein differ from those in earlier dataset comparing U.S. nationwide legal exemptions to those in Western Europe, Canada and Australia, as many areas regulated by federal law display no variation across the fifty states. For example, the Humane Slaughter Act, or the Humane Methods of Livestock Slaughter Act (P.L. 85-765; 7 U.S.C. 1901 et seq.), regulates animal slaughter methods across-the-board. Unfortunately the categories available for investigation were fewer, and the less extensive data analyzed within this section may be of less consequence than that in the previous, but nonetheless fascinates. I propose the following hypotheses:

- Hypothesis 1: *“Red” (conservative) states will offer more exemptions than “blue” (liberal) states.*
- Hypothesis 2: *States where a greater percentage of the population is unaffiliated with religion will offer fewer exemptions.*

Additionally, I would expect some regional patterns to emerge. To circumvent the complexity of surveying laws in all fifty many states, only three exemption categories were researched: medical, discrimination and headgear. Further details on these categories, scoring methods and sources follow the resulting dataset:

The Data

	Medical		Headgear		Face-Veil		No Photo	
	Phil.	Rel.	Phil.	Rel.	Phil.	Rel.	Phil.	Rel.
Alabama	0	1	0	1	0	0	0	0
Alaska	0	1	0	1	0	0	0	0
Arkansas	1	1	0	0	0	0	0	1
Arizona	1	1	0	1	0	0	0	0
California	1	1	0	1	0	0	0	0
Colorado	1	1	0	1	0	0	0	0
Connecticut	0	1	0	1	0	0	0	0
Delaware	0	1	0	0	0	0	0	0
Florida	0	1	0	1	0	0	0	0
Georgia	0	1	0	0	0	0	0	0
Hawaii	0	1	0	1	0	0	0	0
Idaho	1	1	0	1	0	0	0	0
Illinois	0	1	0	1	0	0	0	0
Indiana	0	1	0	1	0	1	0	1
Iowa	0	1	0	1	0	0	0	0
Kansas	0	1	0	0	0	1	0	1
Kentucky	0	1	0	0	0	0	0	0
Louisiana	1	1	0	1	0	0	0	0
Maine	1	1	0	0	0	0	0	0
Maryland	0	1	0	1	0	0	0	0
Mass.	0	1	0	1	0	0	0	0
Michigan	1	1	0	1	0	0.5	0	0
Minnesota	1	1	1	1	0	0	0	1
Mississippi	0	0	0	1	0	0	0	0
Missouri	0.5	1	0	1	0	0	0	1
Montana	0	1	0	0	0	1	0	0
Nebraska	0	1	0	1	0	0	0	1
Nevada	0	1	0	1	0	1	0	0
New Hamp.	0	1	0	0	0	0	0	0
New Jersey	0	1	1	1	0	0	0	1
New Mexico	1	1	0	0	0	0	0	0
New York	0	1	1	1	0	0	0	0
N. Carolina	0	1	0	1	0	0	0	0

N. Dakota	1	1	0	1	0	0	0	1
Ohio	1	1	0	1	0	0	0	0
Oklahoma	1	1	0	1	0	0	0	0
Oregon	0	1	0	1	0	0	0	1
Pennsylvania	1	1	0	1	0	1	0	1
Rhode Island	0	1	0	1	0	0	0	0
S. Carolina	0	1	0	1	0	0.5	0	0
S. Dakota	0	1	0	1	0	0	0	0
Tennessee	0	1	0	1	0	0	0	1
Texas	1	1	1	1	0	0	0	0
Utah	1	1	1	1	0	0	0	0
Vermont	1	1	0	1	0	0	0	0
Virginia	0	1	1	1	0	0	0	0
Washington	1	1	1	1	0	0.75	0	1
W. Virginia	0	0	0	1	0	0.5	0	0
Wisconsin	1	1	0	1	0	0	0	1
Wyoming	0	1	0	1	0	0	0	0

Explanation of Exemption Categories

The medical exemption category, as in the dataset in the analysis across countries, refers to public school vaccine requirement exemptions. Missouri’s philosophical exemption “applies only to daycare, preschool and nursery school,” hence its half-point score in that exemption category (*National Conference of State Legislatures, 2012*). In all other instances within that category the availability of an exemption is scored as a 1 and the absence of an exemption with a 0. The headgear category, again just as in the earlier analysis, regards accommodation in driver’s license photography policy of the licensee’s preference to wear a cap, turban or head-scarf. The dearth of relevant data to analyze resulted in this category being further segmented into three distinct exemptions: the allowance of head-scarves that cover the hair but do not obscure the face, face-veils (which, definitionally, *do* obscure the face) and photograph-free licenses (meant to accommodate a belief associating the soul with reflected or otherwise duplicated images and thus igniting a fear that photography steals the soul) (Schomberg-Scherff, 189). The data on these three exemptions were gathered primarily from Mohamed Nimer’s paper, “Religious

Accommodation for Driver's License Photographs: A review of codes, policies and practices in the 50 states." Troublingly, some of the data within that study may not be wholly reliable. For example, 35 States are listed as providing religious exemptions, including Minnesota (4). Afterwards, 7 states are listed in a different, likely mutually exclusive, category, also including Minnesota. Since Montana is absent from this section I believe one of the instances of "Minnesota" is likely to be a typo for "Montana" and have adjusted the data accordingly.

Discrimination Exemption

Another exemption category considered was discrimination exemptions, denoting the exemptions often granted to religious institutions, via the Free Exercise Clause, that excuse these institutions from antidiscrimination requirements in their hiring practices. The extent of these exemptions varied considerably, ranging from allowing religious organizations to discriminate in favor of hiring members of their own creed but not to discriminate based on any other criteria (Wisconsin), to allowing discrimination based on sexual orientation when deviation from heterosexual norms conflicted with the organization's religious beliefs (California), to the broadness of condoning "any action with respect to matters of employment... calculated by such organization to promote the religious principles for which it is established or maintained" (Massachusetts) (*Harvard Law Review*, 1996). However in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et al.* (October, 2011), the Supreme Court ruled that all religious organizations have the right to discriminate at least in their selections for ministerial decisions. Because there then exists a federal level religious exemption and no philosophical exemptions at the state level, this category would lack variation and was thus dismissed from this study, although it is certainly relevant to note as

another example of the abundance of religious exemptions compared to nonreligious philosophical exemptions. Education was also considered as a potential realm for research, but the religious and nonreligious philosophical exemptions awarded in that area tend to occur at a national law, such as the exemption of the Amish from compulsory education, grounded in a perceived conflict between such education and their parents' religious liberty, awarded in *Wisconsin v. Yoder* (Dwyer, 52).

Index of Relative Exemption Levels in the 50 States

	Total Number of Exemptions	Number of Religious Exemptions	Number of Nonreligious Philosophical Exemptions	Difference in Availability of Religious versus Nonreligious Philosophical Exemptions
Alabama	2	2	0	2
Alaska	2	2	0	2
Arkansas	3	2	1	1
Arizona	3	2	1	1
California	3	2	1	1
Colorado	3	2	1	1
Connecticut	2	2	0	2
Delaware	1	1	0	1
Florida	2	2	0	2
Georgia	1	1	0	1
Hawaii	2	2	0	2
Idaho	3	2	1	1
Illinois	2	2	0	1
Indiana	4	4	0	4
Iowa	2	2	0	2
Kansas	3	3	0	3
Kentucky	1	1	0	1
Louisiana	3	2	1	1
Maine	2	1	1	0
Maryland	2	2	0	2
Mass.	2	2	0	2
Michigan	3.5	2.5	1	1.5
Minnesota	5	3	2	1
Mississippi	1	1	0	1

Missouri	3.5	3	0.5	2.5
Montana	2	2	0	2
Nebraska	3	3	0	3
Nevada	3	3	0	3
New Hamp.	1	1	0	1
New Jersey	4	3	1	2
New Mexico	2	1	1	0
New York	3	2	1	1
N. Carolina	2	2	0	2
N. Dakota	4	3	1	2
Ohio	3	2	1	1
Oklahoma	3	2	1	1
Oregon	3	3	0	3
Pennsylvania	5	4	1	3
Rhode Island	2	2	0	2
S. Carolina	2.5	2.5	0	2.5
S. Dakota	2	2	0	2
Tennessee	3	3	0	3
Texas	4	2	2	0
Utah	4	2	2	0
Vermont	3	2	1	1
Virginia	3	2	1	1
Washington	5.75	3.75	2	1.75
W. Virginia	1.5	1.5	0	1.5
Wisconsin	4	3	1	2
Wyoming	2	2	0	2

Initial Observations

Although there is clear variation, no immediately comprehensible pattern surfaces from this index. The average number of exemptions offered by a state according to this table is 2.715. The states offering the most exemptions (in each case 4 or more) are Indiana, Minnesota, New Jersey, North Dakota, Texas, Utah, Washington and Wisconsin. These states possess little in common geographically or demographically. On the opposite end of the spectrum, the states offering fewer than 2 exemptions are Delaware, Georgia, Kentucky, Mississippi, New Hampshire and West Virginia. There appears to be some logic to this grouping: two of these states are in New England while the other four are often categorized as Southern. Yet those two regions are

generally considered to lie on opposing ends of the political continuum and should not, intuitively, take similar attitudes in regards to the justice of exemptions. Those states displaying the most variation in availability between religious and philosophical exemptions (always in favor of more religious exemptions, as in the country-level data of the previous section of this thesis) were Tennessee, Pennsylvania, Oregon, Nevada, Nebraska, Kansas and Indiana, all with variation scores of 3 or greater. Many of the states in this list are in the “American Heartland” and almost all are “red” – the exceptions to the latter, of course, being Oregon and the urban areas of Pennsylvania and Nevada. Indiana is also sometimes considered a swing state.

Independent Variable Data

	Political Orientation	Voter Turnout: % of Eligible Population	% of Population Unaffiliated with Religion
Alabama	5	40.8	8
Alaska	5	48.4	N/A
Arkansas	4	36.0	13
Arizona	4	35.2	22
California	1	35.9	21
Colorado	4	46.5	25
Connecticut	1	41.7	23
Delaware	1	44.2	19
Florida	3	36.3	16
Georgia	5	35.5	13
Hawaii	1	35.9	N/A
Idaho	5	39.5	18
Illinois	1	38.3	15
Indiana	4	35.6	16
Iowa	2	47.9	15
Kansas	5	39.2	14
Kentucky	4	40.7	12
Louisiana	4	36.8	8
Maine	1	54.4	25
Maryland	1	41.8	17
Mass.	1	44.6	17

Michigan	1	42.8	17
Minnesota	1	52.2	13
Missouri	4	35.5	16
Mississippi	5	42.4	6
Montana	5	46.8	20
Nebraska	5	35.5	16
Nevada	3	35.3	21
New Hamp.	2	44.3	26
New Jersey	1	31.4	12
New Mexico	2	38.8	21
New York	1	30.9	17
N. Carolina	4	36.4	12
N. Dakota	5	45.4	12
Ohio	3	43.7	17
Oklahoma	5	36.4	12
Oregon	1	48.7	27
Pennsylvania	1	40.1	13
Rhode Island	1	41.2	23
S. Carolina	5	37.6	10
S. Dakota	5	51.5	12
Tennessee	4	32.8	12
Texas	5	26.9	12
Utah	5	33.6	16
Vermont	1	48.6	26
Virginia	4	35.3	18
Washington	1	48.4	23
W. Virginia	4	36.1	19
Wisconsin	1	49.8	16
Wyoming	5	43.8	20

Explanation of Political Orientation Scores

States were assigned a political orientation based on the national election results from 1996, 2000, 2004 and 2008. Higher scores correspond to greater Republican tendencies and lower scores to more Democratic ones. If a state voted Republican in all four elections it received a score of 5; if it voted Republican in three of the four elections it was assigned a 4. 3 designates a swing state that voted twice for the Democratic candidate and twice for the Republican candidate

over the course of these last four elections. A 2 was given to a state that went blue in three of the four elections and a 1 if it voted Democratic consistently in the last four election cycles.

Lack of Correlation

		Total Exemptions	Religious Exemptions	Phil. Exemptions	Variation
Political Orientation	Pearson Correlation	-.104	-.054	-.112	.063
	Sig. (2-tailed)	.473	.712	.440	.663
	N	50	50	50	50
% Unaffiliated	Pearson Correlation	-.115	-.188	.026	-.169
	Sig. (2-tailed)	.428	.191	.858	.239
	N	50	50	50	50
Voter Turnout	Pearson Correlation	-.004	.011	-.019	.031
	Sig. (2-tailed)	.981	.939	.897	.829
	N	50	50	50	50

** . Correlation is significant at the 0.01 level (2-tailed).

* . Correlation is significant at the 0.05 level (2-tailed).

Initial Conclusions

Once more, I fail to reject the null for any of the hypotheses put forward at the outset. A deficiency of breadth in the exemption categories inspected may be responsible for the lack of significant correlation. It could also be that the unique character of each state precludes the possibility of any sweeping explanation for differences in the availability of religious and nonreligious philosophical legal exemptions. It is also possible that a pattern would have indeed emerged with analysis of more potential independent variables. However this comparative exercise does not wholly lack merit, as lessons can be drawn from this analysis of the varying

legal exemptions across the fifty states. The index confirms that religious exemptions appear to always outnumber philosophical exemptions, just as in the country-level data from the earlier section of this thesis. Moreover, the mere presence of variation across states in the U.S., even if it is unclear what causes the variation or how significant that variation might be considering the very limited spheres of exemption examined, fascinates and implies there may be gain from future research.

4. Conclusion

Findings, Implications & Suggestions for Future Inquiry

The treasure-hunt of reconnoitering this under-explored but critical area has yielded a bounty of intriguing correlations and further questions. Of course these findings suggest myriad implications, and any hubristic attempt to panoptically construe them could not succeed, but I will endeavor as inclusive a sketch as is possible. Common law systems appear to promote the accommodation-of-difference model of legal justice, whereas civil law systems tend to produce policies of exemption-skepticism, with far fewer belief-based legal accommodations. This is the finding that can be drawn from the above data with the most certainty. A weaker but still significant correlation appears to exist linking certain philosophical attitudes when widely held in the public mind – namely a professed preference for freedom over equality and the belief that greater say in government should be endorsed as a top priority – with the prevalence of belief-based legal exemptions. This suggests philosophical bases may not only conceptually underlie the debate over which of these two legal philosophies qualifies as most just, but tangibly influence it. The two philosophies referenced are of course accommodation-of-difference and

exemption-skepticism: “while multiculturalists celebrate the provision of cultural exemptions as realizing a more substantive equality than that achieved under a difference-blind model of citizenship, critics argue that cultural exemptions are unwarranted in theory and discriminatory in practice” (McGann 1-2). The analysis of variances within the United States proved inconclusive and rather unsatisfying but the very presence of variation does proffer an area for further research, and the analysis also corroborated the finding from the country-level investigation that religious exemptions remain more numerous than nonreligious philosophical exemptions. Further inquiry, in the territory of political and legal theory, should perhaps be conducted concerning this disparity, as regardless of where one stands in regards to the question of accommodation-of-difference versus one-law-for-all, when a belief-based exemption *is* offered, it puzzles the secular mind that potential beneficiaries should be discriminated against on the basis of their pertinent belief’s lack of divine inspiration. As indicated towards the end of the introduction (13-14), when exemptions spread from the domain of the religious to that of internally-derived belief, a problem arises in that the boundaries delineating which beliefs then warrant exemption liquefy. Although defining what counts as “religious” can present a problem, legitimate religious concerns remain easier to recognize than a notion as recent and amorphous as a nonreligious belief nonetheless representing a transcendent concern worthy of legal exemption. When nonreligious beliefs are weighed as equal to religious ones, it complicates the justifiability of all belief-based exemptions because of this difficulty in charting *what* specifically qualifies a conviction for legal exemption. The consequences of secularization, then, may include an erosion of faith in the justice of belief-based exemptions that eventually takes shape in profound exemption-skepticism. If true, this would aid in making sense of what perhaps constitutes the most initially disconcerting finding of this study: that where religiosity is highest,

the most philosophical exemptions are offered. Religious and nonreligious exemptions do not quantitatively betray an inherently inimical relationship, although the former remains ever dominant.

Yet stronger than any polled representation of the public's moral compass in predicting a state's philosophy towards justice is its legal system. As common law systems offer greater flexibility (relative to civil law systems) and more quickly reflect the public's desires, it may be that the citizenry's philosophy does serve as the primary factor steering a country's laws towards a given philosophy of justice (accommodation-of-difference versus one-law-for-all). Just as the common law countries studied above ended conscription decades before the civil law countries studied began that process, it is possible that they offer a glimpse of the philosophical attitude towards exemptions that will eventually come to pass in the civil law countries (and that have already arrived in Norway and Germany), although this prospect classifies as speculation more than prediction (just as the earlier suggestion of secularization potentially resulting in enhanced exemption-skepticism). A more thorough theoretic discussion of this issue will not be undertaken here, as it exceeds the scope of this thesis. While the greater portion of future scholarship to be directed upon the subject of belief-based legal exemptions may foreseeably be normative, hopefully the quantitative and comparative foundation here provided can add some modicum of insight and prove helpful.

The greatest challenge to this study's primary finding, the influence of legal system type on a country's approach to justice and legal exemptions, stands prone to the criticism that other shared factors (common history, language, cultural heritage and perhaps moral norms) binding

the U.S., the U.K., Australia and Canada account for their similar rate of belief-based exemptions.

While this is a valid concern that future research may confirm or dispel, it is not difficult to discern the logic of a state's legal system affecting its laws, to suspect concrete institutional features as causes before resorting to explanations stemming from less measurable cultural dynamics (which may still signify the underlying bases for the institutional processes) and to appreciate the strength of the correlation tying legal system type to frequency of belief-based exemptions herein ascertained.

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