

Proposal
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My paper will address the question, "Does religion merit special protection in the law?" within the Canadian legal context.

The Canadian Charter protects freedom of religion. "[O]nly beliefs, convictions and practices rooted in religion, as opposed to those that are secular, socially based or conscientiously held are protected under the Charter's freedom of religion." Why? What is it about that category of beliefs and practices falling under the rubric religion that justified differential treatment from the non-religious beliefs and practices? Why, for example, should the law require workplace accommodation of holy day observance, where a day off for religious practice is protected but a day off to attend a political rally would not be; also consider religious garb in school where wearing a ceremonial dagger or knife in accordance with religious belief is protected but wearing a knife in school for other reasons would not be tolerated. Is it defensible for a modern liberal democratic society, such as Canada, to continue treating freedom of religion as being unique? Or, can religion's protection be adequately addressed by more general protections of other rights such as equality or speech? Is religion's protection an anachronism a quirk of history that is no longer applicable in our multi-cultural society? These are among the questions that I will address in the paper.

The fact that the law protects freedom of religion suggests that the law (indeed society at large) had, at one point, some theory or account of why religion was given such significance. For why else would the law specifically include religion as a protected category if it did not understand its importance? Modern society must now make sense of this legacy to ensure that there is an adequate explanation for the current context. It is curious that in jealously guarding the freedom of religion the Supreme Court of Canada (SCC) has not yet seen fit to articulate an explanation as to the continued relevance of such protection. Such reticence may suggest that the SCC itself does not understand why the law would continue to grant religion a special status in a liberal democracy.

There is general agreement, in the literature, that individuals should not suffer discrimination or otherwise be disadvantaged because of their religious beliefs; however scholarship is divided about whether religious freedom should receive special recognition in law. For example, one of the key arguments addressed in this paper is Christopher Eisgruber and Lawrence Sager's Equal Liberty approach which recognizes that religious practices, needs, and interests of minority religious groups are to be accommodated by government in the same way as are mainstream interests. There is no need, in their view, for religious freedom to have special treatment in the constitution because at the heart of every religious freedom struggle is the issue of fairness. There is general agreement that individuals should not suffer discrimination or otherwise be disadvantaged because of their religious beliefs; however scholarship is divided about whether religious freedom should receive special recognition.

The literature that addresses the Canadian protection of religion is relatively sparse. While there is some, it has not been a robust or a sustained discussion. By far the lion's share of debate has centred on the United States context. The US debate, not surprisingly, has concentrated on the interaction between the two clauses in the First Amendment of the U.S. Constitution. The principles discussed in the US commentary have some bearing on the Canadian context; however, the fact remains that it is a US focused enterprise with its own peculiarities. My paper will seek to fill a gap in the literature by presenting a Canadian centred discussion about why religion is protected in the law.