

Legal Exemptions for Religious Feelings^{*}

Lucas Swaine[†]

I. Introduction

Should citizens of liberal democracies be offered legal exemptions for their religious feelings?

The question may strike one as curious but it is in fact pressing and important. In this paper, I undertake to explain why this is so. I provide a descriptive account of the nature of religious feelings and discuss the place of those feelings in ongoing controversies pertaining to Islam and Muslim extremism. I then examine particular forms of governmental inquiry into Muslims' religious feelings, suggesting that existing practices used to probe Muslims' emotions and sentiments are normatively problematic. I provide an account of the normative concerns with the forms of governmental investigation that I specify, and I consider prospective legal emendations that may be suitable for ameliorating situations in which government officials investigate citizens' religious feelings.

II. Religious Feelings

Feelings contribute to people's humanity, giving depth and meaning to experience. Without feelings, a person endures in numbness. Feelings are important parts of agents' interior lives.

They help to guide action, they can be indicative of agents' thoughts or desires, and they may be subjects of moral or psychological analysis.

^{*} Manuscript prepared for "The Scope of Religious Exemptions" conference, Bowling Green State University, April 17-18, 2015. Draft version: please do not cite.

[†] Dept. of Government, Silsby Hall, Dartmouth College, Hanover, NH, 03755 <lucas.swaine@dartmouth.edu>

The idea of feeling is construed in multiple ways in common and scholarly discourse, with a number of senses attached to germane linguistic terms. By “feeling” I mean simply “emotion or sentiment.” Martha Nussbaum proposes that some feelings have “rich intentional content,” whereby “feeling” is a terminological variant of “perception” or “judgment.”¹ Other feelings lack that content, she suggests, as may be seen in the examples of feeling energetic or fatigued.² Robert Gordon submits that emotions display “factive” qualities: they require that an agent believe propositions in order to be produced.³ This holds for anger, jealousy, love, shame, and so on. No strict demarcation between feelings and emotions exists in ordinary language, and there is no need to distinguish strongly between them here. I proceed on the plain understanding that feeling is a category under which emotion is subsumed. This allows one to cover both standard human emotions and sentiments of unease, feeling unwell, feeling pleasure or pain, and so forth, all under the rubric of feeling.⁴

Interpersonal discourse commonly includes such questions as “How do you feel?” or “How do you feel about [*S* or ϕ or ψ]?” People take interest variously in others’ feelings: inquiring about them can be useful for discovering why someone ended up ϕ -ing (i.e., thinking, feeling, or acting in some way) or why they did not. Emotions and sentiments often connect to action, bearing notably upon what agents are motivated to say or do. Strength or intensity of

¹ Martha C. Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (New York: Cambridge University Press, 2001), p. 60. See also Martha C. Nussbaum, *The Therapy of Desire: Theory and Practice in Hellenistic Ethics* (Princeton, NJ: Princeton University Press, 1994), pp. 89-95, 243-44, 424.

² Nussbaum (2001), p. 60.

³ Robert M. Gordon, *The Structure of Emotions: Investigations in Cognitive Philosophy* (Cambridge, U.K.: Cambridge University Press, 1987), pp. 52-64; Lucas Swaine, “Blameless, Constructive, and Political Anger,” *Journal for the Theory of Social Behaviour*, Vol. 26, No. 3 (1996): 257-74, at p. 263. I assume that feelings may have more or less by way of intentional content. It is plausible that different emotions may be more or less factive, by degree.

⁴ This conceptualization excludes some connotations of “feeling.” It does not include feeling as an intuitive understanding, or a sensibility, or an immediate sensation, or an impression of something or other.

feeling appears to correlate with action, too, at least in weakly positive ways. For instance, it is plausible that an agent is less likely to help someone if she dislikes the individual in question, *ceteris paribus*. Alternatively, one will be less likely to try to exact revenge, all else being held equal, if one is indifferent to some damage that another has caused. But feeling is distinct logically and materially from outward action; and in many instances, agents have feelings one way or another, without acting in ways related to the emotions or sentiments that they have, or behaving in accordance with the feelings that they lack.

Feelings can be objects of normative interest. They may be markers of moral character,⁵ they can give a glimpse into the nature or quality of an agent's thinking, and they can help one to assess how or whether another may ϕ or not- ϕ in the future, when the activities in question have moral tincture. It can be a matter of social concern why someone feels this way or that, or whether they have feelings on a subject of interest.⁶ And expressions of feelings prove important in various parts of political life. This holds for discursive interactions between citizens, and for relations between citizens and groups. It is true also for wider forms of action in the public sphere, as where people support or oppose policies or laws, engage in advocacy or protest, or interact with officials in government institutions.

⁵ Lucas Swaine, "Moral Character for Political Leaders: A Normative Account," *Res Publica*, Vol. 19, No. 4 (2013), pp. 317-33, at p. 319; Michael S. Moore, "The Moral Worth of Retribution," in *Responsibility, Character, and the Emotions: New Essays in Moral Psychology*, ed. Ferdinand Schoeman (New York: Cambridge University Press, 1987), pp. 179-219, at pp. 203-04; John Sabini and Maury Silver, "Emotions, Responsibility, and Character," in *Responsibility, Character, and the Emotions: New Essays in Moral Psychology*, ed. Ferdinand Schoeman (New York: Cambridge University Press, 1987), pp. 165-75.

⁶ Cf. Albert Camus, *L'Étranger*, ed. Ray Davidson (London, U.K.: Routledge, 1988 [1942]), pp. 45-47.

Religious feelings are emotions or sentiments connected to religiosity in particularly close kinds of ways.⁷ Religion is commonly understood to take form in a recognizable doctrine affirmed by adherents who engage in outward worship in its regard. Following this description, one can distinguish three salient qualities suitable as identity conditions for religious feeling. A feeling can be religious due to its *derivation*, its *content*, or its *direction*, respectively.⁸ First, a feeling is religious by *derivation* if it is *drawn from* a religion in a practical or a doctrinal sense. Where it is practically derived, the agent has acquired the emotion or sentiment, as a psychological or sociological matter, from a religion. Normally, this occurs when one adopts the tenets of a religion or where one engages in the lived experience of some form of worship. A doctrinally derived religious feeling, on the other hand, is a feeling entailed by a religious doctrine. It is an emotion or a sentiment that is supposed to follow from acceptance of a faith's doctrine, based on standard interpretations of the religion's tenets and values.⁹

A feeling is religious in *content* if its *substance* is religious in essence. Feelings have religious content if intrinsically they are part of a doctrinal affirmation or an element of worship,

⁷ I take "religion" to mean "belief in otherworldly powers with a practice of worship in their respect." Cf. Lucas Swaine, *The Liberal Conscience: Politics and Principle in a World of Religious Pluralism* (New York: Columbia University Press, 2006), pp. 32-33, 61-63. Cf. Kent Greenawalt's suggestion that "[u]sually, a claim or practice is indisputably religious"; see Greenawalt, "Five Questions about Religion Judges are Afraid to Ask," in *Obligations of Citizenship and Demands of Faith: Religious Accommodation in Pluralist Democracies*, ed. Nancy L. Rosenblum (Princeton, NJ: Princeton University Press, 2000), pp. 196-244, at p. 208; see also pp. 237-38 n. 42. Cf. also Kevin Vallier, "Liberalism, Religion and Integrity," *Australasian Journal of Philosophy*, Vol. 90, No. 1 (2012), pp. 149-65, at p. 155; Sonu Bedi, "What Is So Special about Religion? The Dilemma of the Religious Exemption," *Journal of Political Philosophy*, Vol. 15, No. 2 (2007), pp. 235-49, at pp. 236-37; Frederick Mark Gedicks, "The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in the United States," *Emory International Law Review*, Vol. 19 (2005), pp. 1187-1275, at pp. 1200, 1249-53.

⁸ Cf. Robert Audi's distinction between secular and religious arguments, whereby arguments may be religious if they have "essential religious content," if they are "evidentially religious," or if they are "motivationally religious"; see Audi, *Religious Commitment and Secular Reason* (New York: Cambridge University Press, 2000), pp. 70, 71, 73. Only the first of the categories that Audi mentions, that pertaining to content, is transferrable to the task of distinguishing religious from nonreligious forms of feeling.

⁹ See, e.g., James 5:11 ("Behold, we count them happy which endure.")

so conceived.¹⁰ And a feeling is religious in its *direction* when it is *oriented toward* religion. Direction is a matter of what a feeling is about, the orientation or aim of an emotion or sentiment. When it has religious direction, a feeling may be focused on some element of one's own religion or a religion that one does not affirm.

These qualities of religious feelings are not mutually exclusive and they allow for a variety of combinatory possibilities. For instance, one might experience elation derived from a feeling of disapproval directed at another religion than one's own, or pity based on the condemnation of atheism or unbelief. And so long as at least one of these identity conditions is met, a feeling may be said to be religious, provided that it is a religious agent who holds the feeling at issue. An agent with no theological commitments may well have feelings about a religious practice she encounters (she might feel superior to the practitioners, for example), but one would not call hers a "religious feeling," even were its content, direction, or derivation religious in the ways I describe. This allows one to distinguish feelings about religion from religious feelings, the latter of which only religious devotees may possess.¹¹ These distinctions generate the added benefit of allowing one to avoid calling "religious" all people with feelings about religion.¹²

¹⁰ See, e.g., 1 Peter 1:5-6, 1:8. The feelings mentioned in these passages are described as an intrinsic part of Christian religious affirmation, not as emotions derived from Christian faith and worship. The absence of certain feelings can also be an intrinsic part of religious worship; see James 5:9 ("Grudge not one against another, brethren, lest ye be condemned: behold, the judge standeth before the door.")

¹¹ It stands to reason that religious parties may also have nonreligious feelings about religion.

¹² The same could be said with regard to beliefs about religion, as opposed to religious beliefs. See generally Gemma Cornelissen, "Belief-Based Exemptions: Are Religious Beliefs Special?" *Ratio Juris*, Vol. 25, No. 1 (2012), pp. 85-109. Cf. Andrew Koppelman's discussion of "intense preferences" and the weight they should be given in political decision-making, in Koppelman, "Is It Fair to Give Religion Special Treatment?" *University of Illinois Law Review*, Vol. 3 (2006), pp. 571-603, at pp. 584-87.

This account squares with the factive nature of emotions and with the idea of feeling as emotion or sentiment. It allows one to distinguish religious feelings from religious beliefs, furthermore; the two are not logically identical, even if the former may in many cases entail the latter. The present account also permits one to differentiate religious feelings from other kinds of feelings that agents can have. And by way of examples, the kinds of feelings covered here include friendship, good will, love, pity, elation, exaltation, anger, vengefulness, disapproval, superiority, disdain, excitement, pain, and sadness, among others. These feelings are found widely across human persons, and in religious parties as well.

III. Religious Feelings and Islamic Extremism

Religious feelings have become matters of social and political concern in Western democracies in recent years, with the focus shifting to worries about Islamism and, inter alia, the emotions and sentiments of Islamic extremists. Current anxieties revolve around religious extremists who bear lethal interpretations of Islamic doctrine, with worries about just what such people are prepared to do. Will Kymlicka reflects that ethnic relations become “securitized” in liberal democracies when people see minorities as threats to safety, suggesting that this has occurred in cases of Muslim minorities.¹³ Muslims sit at the center of considerable social and political controversy, viewed variously as belligerent and untrustworthy.¹⁴ With attacks by Islamic extremists in a wide number of countries, and conflict raging in various parts of the world, it is understandable that many take Muslims’ feelings and attitudes to be matters of reasonable

¹³ Will Kymlicka, *Multiculturalism: Success, Failure, and the Future* (Washington, D.C.: Migration Policy Institute, 2012), p. 22.

¹⁴ See BBC Radio 4 Today Muslim Poll (February 25, 2015) < <http://www.comres.co.uk/polls/bbc-radio-4-today-muslim-poll/> > (accessed March 30, 2015); Pew Research Center, July, 2014, “How Americans Feel About Religious Groups”; M. Steven Fish, *Are Muslims Distinctive? A Look at the Evidence* (New York: Oxford University Press, 2011), pp. 146-57, 164, 245, 255-56, 362 n. 23.

concern, given standard accounts of the motivational power of emotions and sentiments and working connections between feelings and action.

Kambiz GhaneaBassiri expands on this situation in examining the writings of Bernard Lewis, according to whom Islamist ideology spawned an “outbreak of rage” in recent decades, with Muslims turning “the anger they felt toward European colonial powers toward the United States.”¹⁵ GhaneaBassiri reflects that “the West was bewildered by the depth of Muslim anger” during the Salman Rushdie affair.¹⁶ There has since erupted a considerable amount of terrible violence and recrimination, with Islam itself now viewed in a negative light and Muslims regarded with deep suspicion.¹⁷ GhaneaBassiri suggests that one can see this in the false rumors of Barack Obama being a “secret Muslim,” in the lead-up to 2008 Presidential election, and the “stigma associated with Islam” that such rumors convey.¹⁸ Denise Spellberg observes the outcry from politicians and media personalities over Muslims’ “supposed failure to denounce terrorism.”¹⁹ Muslims in liberal democracies face pressures to join “a war against ‘bad Muslims’,” GhaneaBassiri contends, with the attendant idea that “unless proved to be ‘good,’ every Muslim [is] presumed to be ‘bad’.”²⁰

¹⁵ Kambiz GhaneaBassiri, *A History of Islam in America* (New York: Cambridge University Press, 2010), p. 370.

¹⁶ GhaneaBassiri (2010), p. 331. He quotes Ali Mazrui, who states: “[i]n the debate concerning Rushdie’s *The Satanic Verses*, I have had a number of conflicting emotions of my own. I have been torn between believing in Islam and believing in free society, between being myself a writer and being a religious worshipper, between believing in the *Shari’a* and an opponent of all forms of capital punishment in the modern age” (ibid.). See Ali A. Mazrui, “Satanic Verses or a Satanic Novel? Moral Dilemmas of the Rushdie Affair,” *Third World Quarterly*, Vol. 12, No. 1 (1990), p. 116.

¹⁷ Fish (2011), pp. 4, 5, 156, 159, 362 n. 23.

¹⁸ GhaneaBassiri (2010), p. 349.

¹⁹ Denise A. Spellberg, *Thomas Jefferson’s Qur’an* (New York: Alfred A. Knopf, 2013), p. 279; see also pp. 286, 292, 299. Cf. GhaneaBassiri’s discussion of Paul Barrett’s remark that Muslims “face critical choices as they struggle for the soul of their faith in the United States” (2010, p. 374); see Paul M. Barrett *American Islam: The Struggle for the Soul of a Religion* (New York: Farrar, Straus and Giroux, 2007), p. 277.

²⁰ GhaneaBassiri (2010), p. 374. See also Frédéric Volpi, *Political Islam Observed: Disciplinary Perspectives* (New York: Columbia University Press, 2010), p. 136.

Similar concerns circulate throughout Europe. According to Bhikhu Parekh, many Europeans believe that a “sizeable group” of Muslims sees violence as a justified response to blasphemy or to satire directed toward their religion.²¹ With the failure culturally to integrate laid at their own feet, Muslims in Europe have become the “enemy within,” people looking to “subvert Europe.”²² Many Europeans remain unsure whether Islam is compatible with basic democratic values, Parekh proposes, a problem leading to “suspicion,” even to outright hostility.²³ Frédéric Volpi adds that there is widespread uneasiness about members of liberal democracies being “contaminated” by Islamist beliefs.²⁴ Such worries have led to ideas of constructing a “national Islam” for France, even to commentary from German Chancellor Angela Merkel to the effect that multiculturalism has proved to be an “utter failure.”²⁵

Expanding calls for change within Islam, for increased monitoring of suspected radicals, and for more thorough integration of Muslim immigrants casts light on what Parekh calls the “relentless pressure” to harmonize public and private values within these populations.²⁶ More demanding forms of integration require, as far as possible, that “public values [be] internalized and become part of every citizen’s moral identity and self-understanding.”²⁷ France has

²¹ Bhikhu Parekh, “Europe, Liberalism and the ‘Muslim Question’,” in *Multiculturalism, Muslims and Citizenship*, ed. Tariq Modood, Anna Triandafyllidou, and Ricard Zapata-Barrero (New York: Routledge, 2006), pp. 179-203, at pp. 184-85.

²² Parekh (2006), p. 180.

²³ Parekh (2006), p. 196.

²⁴ Volpi (2010), p. 128; see also p. 133.

²⁵ See Christian Joppke, “The Retreat Is Real—But What Is the Alternative? Multiculturalism, Muscular Liberalism, and Islam,” *Constellations*, Vol. 21, No. 2 (2014), pp. 286-95, at p. 288; see also John R. Bowen, *Blaming Islam* (Cambridge, MA: MIT Press, 2012), pp. 17-18.

²⁶ Parekh (2006), p. 187.

²⁷ Parekh (2006), p. 187

marshaled integration concerns to justify intervention “in immigrant ways of life and thought.”²⁸

And the same is true for Germany, reflects Parekh, where officials have been unsatisfied by immigrants merely outwardly conforming to public values: immigrants must “make an ‘inner affirmation’” of German public values, as well.²⁹

IV. State Inquiry into Muslims’ Religious Feelings

Democratic governments have reasonable interests in the alignment of their citizens’ actions with constitutional values enshrined in public institutions and expressed in law. Feelings are an important and understandable matter of concern, here. Emotions and sentiments connect variously to how or whether citizens participate politically, to what policies or laws people support or disdain, to how citizens handle conflict and disagreement, when it arises, and so forth. For the purpose of securing a just and well-ordered political and legal system, governmental attention to citizens’ feelings is in these respects quite sensible.

However, the scope of possible governmental engagement with citizens’ emotions and sentiments is extremely broad. It covers a wide variety of kinds of actors, forums, topics, and forms of interaction. One can distinguish multiple areas of normative and legal importance within this panorama: (a) the citizenship status of the people involved (i.e., whether the subjects are citizens of the polity with whose agents they interact, as opposed to being noncitizens, legal permanent residents, applicants for citizenship, etc.); (b) the kinds of government agents or agencies involved; (c) the forums in which interactions take place; (c) the rules and procedures

²⁸ Parekh (2006), p. 187

²⁹ Parekh (2006), p. 187; see also p. 202 n. 11. Cf. Joppke’s discussion of British Prime Minister David Cameron’s remarks on the need of religious organizations to affirm liberal values in order to receive public funding (2014, p. 289).

governing relations between parties; (d) expectations of the various participants; (e) whether punishments or sanctions may be applied to the parties at hand, for failing to comply with various requests or demands; (d) whether any of the parties express or disclose feelings; (f) which kinds of emotion or sentiment are at issue; (g) the forms of expression at issue; and so on. These are some of the more salient areas of interest, by way of governmental engagement with citizens' feelings, and they are sufficiently involved that they might seem to make the present analysis appear prohibitively unwieldy.

I proceed by keeping the focus of analysis tapered and constrained. First, one maintains focus squarely on religious feelings. To be clear, the area of concern here is not simply people's beliefs. Neither do I discuss subjects' attitudes, if attitudes are distinguished from emotions and sentiments, nor shall I focus on feelings that lack religious content, or which are not religiously directed or derived. Second, with respect to the subjects under consideration, one limits analysis to Muslims.³⁰ This appears useful for three reasons: Muslims have been embroiled in considerable political and legal controversy; they are members of religious minorities in liberal democracies; and Muslims are vulnerable to prejudice and discrimination as a minority religious group. This narrower focus may illuminate broader normative or legal considerations; whether it does, maintaining analytical concentration on Muslims is at least *prima facie* beneficial for the reasons mentioned here. Third, I restrict the scope of analysis to subjects who are citizens of the liberal democracies with whose officials they interact, on the grounds that it is plausible that different kinds of duties and relationships hold between government and noncitizens. This

³⁰ I take Muslims to be those religious practitioners who self-identify as followers of Islam; I claim neither that Islam is a religion that is intrinsically pluralistic, nor that various "Islams" exist. Cf. Amir Hussain, "Islam in the Plural," in *A Companion to the Muslim World*, ed. Aryn B. Sajoo (New York: I.B. Tauris Publishers, 2009), pp. 87-105, at p. 98. Cf. Zeyno Baran (ed.), *The Other Muslims: Moderate and Secular* (New York: Palgrave Macmillan, 2010), p. 1.

excludes foreign nationals who may face citizenship tests in which they are queried by government officials about their feelings or pressured to disclose them.³¹ This may be another important area of concern, but it can be separated from the analysis at hand.

It serves to apply five further analytical constraints, for sake of clarity. First, the parties inquiring about Muslim citizens' religious feelings may be limited to *political authorities*. The parties in question must be governmental officials, acting in an official legal capacity or under color of law. This covers political and legal agents of various kinds, in their respective functions as state authorities or agents thereof. Second, the kind of forum of inquiry may be restricted to *formal settings*. This includes legal proceedings, hearings, interrogations, depositions, and so forth, where there is an official purpose to the inquiry and specified, applicable rules and procedures. I mean to exclude informal settings in which parties have no reasonable expectation that they should or must comply with inquiries regarding their emotions or sentiments. Third, by way of *subject capacity*, the purpose of engaging citizens in these interactions is to gather evidence on some matter of concern. This covers those individuals subpoenaed to testify as witnesses in civil or criminal court, as well as subjects called before congressional or parliamentary committees to provide testimony. Also included are subjects under deposition, who are detained for questioning, or who may be situated in similar proceedings or hearings. Fourth, the situations under examination here are those in which officials *request information* of the parties subject to questioning. Government officials must subject individuals to questioning or employ related fact-finding techniques on the individuals with whom they interact. Fifth, one limits focus to circumstances in which there are penalties for subjects' noncompliance. The

³¹ Cf. Joppke's discussion of "new citizenship tests" and how they may "examine [a] candidate's moral and ethical views" (2014, p. 290).

situations considered here are those in which government has the *power to penalize* subjects for failing honestly and in good faith to disclose information, for lying or committing perjury, for being evasive, or for other forms of noncompliance.

It is important to note what this analysis excludes. It leaves aside criminal defendants on the grounds that their feelings, religious or otherwise, may plausibly be significant in determining guilt or innocence. Criminal defendants' emotions and sentiments can matter to their motivation or their intent, or to their state of mind more generally; given that investigation of defendants' feelings very plausibly is reasonable and warranted in a variety of situations, I bracket such cases. Also excluded are investigations of people's feelings when no public officials are involved, even though the account that I provide may prove applicable to interactions between private parties. Furthermore, I set aside cases in which the information-gathering party has no power to penalize subjects or to cause them to be punished. Neither do I address situations in which those who occupy positions of political or legal authority engage with others informally and outside of their official capacities.

It serves to provide two concrete examples to illustrate the kinds of situations that the analysis includes, with regard to state inquiry into Muslims' religious feelings. The first pertains to questioning Muslims about their religious feelings while the subjects are in detention. The second concerns hearings, before congressional or parliamentary bodies, in which Muslims are pressed to disclose or to discuss their religious emotions and sentiments. I draw these examples from two different countries, appreciating that notable differences exist between liberal democracies' constitutional values and broader legal codes. The present treatment proceeds with

such variation acknowledged and in plain view; there is no need to limit focus to just one country, for the argument at hand.

The first example is that of Muslim citizens detained for questioning under Schedule 7 of the United Kingdom's Terrorism Act 2000, according to which officials may detain and question parties at ports or borders for up to nine hours, to investigate whether the individuals have any involvement in terrorist actions. Schedule 7 does not require reasonable suspicion of participation in terroristic activities, on the part of examining officers, of the detainees at hand. It allows constables, immigration officers, and customs officers to question citizens on an extremely broad set of topics, stipulating that one who is questioned "must [...] give the examining officer any information in his possession which the officer requests."³² For those detained under these provisions, this includes information regarding their religious emotions and sentiments on topics that the examiner may wish to explore. Those subjected to questioning under Schedule 7 commit an offence if they willfully obstruct or seek to frustrate a search or examination.³³ Individuals found guilty of such offences may be imprisoned or fined.³⁴ According to the United Kingdom's Islamic Human Rights Commission, Muslims have been stopped and interrogated at much higher rates than others.³⁵

³² United Kingdom: The Terrorism Act 2000 [U.K.], Schedule 7, paragraphs 1(1), 5, 5a. See also *Examining Officers and Review Officers under Schedule 7 to the Terrorism Act 2000* (London: TSO, 2014), pp. 10-11, 14-15, 16, 21, 22, 35 (referring to Annex A [Notice of Detention under Schedule 7], suggesting that there is not a "right to remain silent," under Schedule 7, and stating that detainees are under the duty to "[a]nswer questions put to [them] by [an] examining officer").

³³ Terrorism Act 2000 [U.K.], Schedule 7, paragraph 18(1)(c).

³⁴ Terrorism Act 2000 [U.K.], Schedule 7, paragraph 18(2).

³⁵ See "UK Muslim Representatives Take Schedule 7 Terror Law to the Supreme Court," Islamic Human Rights Commission, Tuesday, November 11, 2014 < <http://www.ihrc.org.uk/activities/press-releases/11254-uk-muslim-representatives-take-schedule-7-terror-law-to-the-supreme-court> > (accessed March 25, 2015). The IHRC proposes that the implementation of Schedule 7 has led to systematic "religious profiling," adding that "[a European Convention on Human Rights] report found that people who identified as Pakistani were 154 times more likely to be detained than those identifying as white."

The second example is that of the United States Congressional hearings on Muslim extremism, held on March 10, 2011 and led by Representative Peter King, chair of the House Homeland Security Committee (HHSC). The HHSC utilized its subpoena power to call a list of witnesses for a special hearing on the radicalization of American Muslims.³⁶ At the hearing, witnesses were questioned about a variety of topics pertaining to American Muslims and to Islam, in a public forum in which the proceedings were televised. Congressional committees' authority to compel witnesses to produce testimony, on pain of contempt of Congress for refusal or failure to comply, facilitated the questioning.³⁷ Some witnesses recounted stories about their or others' experiences with Muslim radicalization. Others disclosed their views on anti-American ideological positions or testified to what they reckoned other people felt or believed. Among the witnesses was Rep. Keith Ellison: he spoke emotionally about Mohammad Salman Hamdani, a Muslim paramedic who, in Ellison's words, "bravely sacrificed his life to try to help others on 9/11."³⁸

V. Existing Forms of Governmental Inquiry: Normative Dimensions

I turn now to consider the normative dimensions of the forms of inquiry that I have described. I have to this point suggested that governmental inquiries into Muslims' religious emotions and sentiments are at least *prima facie* normatively problematic. This leaves open the question of just

³⁶ This particular hearing was called "The Extent of Radicalization in the American Muslim Community and the Community's Response."

³⁷ See *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204 (1821). Refusal to testify before a Congressional committee is punishable under 18 U.S.C. §1505; see James Hamilton, *The Power to Probe: A Study of Congressional Investigations* (New York: Random House, 1976), p. 76.

³⁸ "Rep. Peter King's Muslim Hearing: Plenty of Drama, Less Substance," *Washington Post*, March 10, 2011. Keith Ellison is the first practicing Muslim to be elected to Congress, and one of only two members of Congress who are Muslim. See Spellberg (2013), pp. 284-87. Cf. Jocelyne Cesari, *Why the West Fears Islam: An Exploration of Muslims in Liberal Democracies* (New York: Palgrave Macmillan, 2013), describing how Keith Ellison "tearfully etched into America's consciousness the story of Salman Ahmad [sic]" (p. 145).

what the problems may be with such investigations. What, exactly, is wrong with inquiring about Muslims' religious feelings, under the specified parameters? And how serious are the concerns?

There are two particular branches of concern regarding government inquiry into Muslims' religious feelings. The first arm attaches to the prejudicial and hazardous nature of these investigations. The second grows out of apparent rights-violations committed against those who are compelled by political authorities to provide information about their religious feelings, so described. I take these in order.

The particular sphere of concern stemming from features of Muslims' religious feelings has multiple parts: Muslims' religious feelings may be out of sync with other people's sentiments or emotions; Muslims may experience their religious feelings as complicated or at odds with other feelings or beliefs they have; the sentiments and emotions may be difficult to communicate; the feelings at issue are prone to being misunderstood by others; and discussion or disclosure of their feelings may be prejudicial to the interests of Muslims as citizens. These components require elaboration.

First, Muslims' religious feelings may be *out of sync* with those of the general citizenry of which they are members, on various salient topics. This should not be surprising: religious devotees' feelings can be quite different and dissimilar, from person to person, as one sees in comparing individuals across religious doctrines or considering religious practitioners' emotions and sentiments in comparison to those of nonreligious citizens. The pluralistic conditions of liberal democracies include a variety of distinctive and irreducible comprehensive doctrines, as

well as disparate sets of otherworldly values.³⁹ These considerations lead one to appreciate how religious minorities' feelings may be dissimilar from others' on a variety of subjects and in several significant respects. The point seems clearly applicable to Muslims, holding both intra-religiously as well as with regard to the practices and values of nonmembers of the Islamic faith.

Second, people with religious feelings can be *conflicted* about the emotions and sentiments they experience. Even on highly controversial topics, religious practitioners may have feelings that push and pull in contrary ways. Such is plausibly the case for Muslims, who can at times feel conflicted on issues that the modal citizen does not. For example, Muslims may have feelings of sympathy for Jihadists, the Charlie Hebdo attackers, ISIS fighters, and so forth, while also abhorring the actions of those toward whom such emotions or sentiments are directed.⁴⁰ Other examples include Muslims' religious feelings about the Iraq war, concerning international policies and actions of presidents or prime ministers of democratic countries, and so on. To this one can add that Muslims may also have uncommon feelings about their religious emotions or sentiments. It is possible to have multiple religious feelings about the religious feelings one possesses, including feelings of disdain, support, sympathy, anger, elation, or revulsion, and those feelings may conflict with each other or otherwise not easily be reconciled.

³⁹ Swaine (2006), chapter 2. See also John Rawls, *Political Liberalism*, expanded edition (New York: Columbia University Press, 2005 [1993]), pp. 13, 38-40, 78, 152-53, 174-78, 199, 200, 400.

⁴⁰ See BBC Radio 4 Today Muslim Poll (February 25, 2015) (finding that 27% of British Muslims "say they have some sympathy for the motives behind the attacks on Charlie Hebdo in Paris"); see also "Muslims and the N.Y.P.D." (editorial), *New York Times*, published online May 25, 2014, at NYTimes.com, <<http://www.nytimes.com/2014/05/26/opinion/muslims-and-the-nypd.html>> (accessed March 30, 2015). The editorial refers to NYPD officers questioning people about "their feelings about the president, their opinions about the war in Iraq." See also Tufyal Choudhury and Helen Fenwick, "The Impact of Counter-Terrorism Measures on Muslim Communities," *Equality and Human Rights Commission Research Report 72* (Manchester, U.K.: Equality and Human Rights Commission, 2011), pp. 69-73, *passim*.

Third, religious feelings can be difficult to *articulate*. Religious practitioners sometimes find it a complex and challenging matter accurately to convey or to explain their religious feelings to others. It is quite plausible that individuals often will not entirely understand the religious feelings they have, rendering it difficult to give voice to them in adequately lucid and articulate ways. Fourth, as a related point, religious feelings appear to be easily *misinterpreted* by others. Not infrequently, people view others' religious emotions or sentiments as esoteric and bizarre, when they learn of them, or when they hear religious practitioners' accounts of the feelings they have. This, too, seems no less applicable to Muslims than to other religious devotees.

Fifth, the compelled disclosure of religious feelings can be *prejudicial* to Muslims' reasonable interests in maintaining respect as equal members of a democratic society. Compulsory disclosure risks leading government officials and other citizens to think Muslims worse people, a problem that crops up when state agents press Muslims to lay bare their feelings on controversial subjects. The individual revealing her feelings may be viewed as a bad individual, or someone with unhealthy values and attachments, even a person with frightful dispositions that make her risky from the point of view of public safety, even if such is not the case. In this way, government investigations can be harmful to the interests of persons subject to the inquiry, or to other people, such as fellow members of the subject's broader religious community.

Those subjected to the inquiries that I describe may be viewed as "bad" Muslims, even deemed enemies within, because of the feelings they attempt to disclose—even if they engage in

no threatening or illegal action whatsoever. This leads one to conclude that the investigations discussed here reasonably can be deemed unfair and prejudicial, and as forms of inquiry generating real and serious disadvantage to Muslim citizens. It is normatively problematic to compel disclosures of Muslims' sentiments and emotions and to throw them into the volatile, judgmental mix of "inarticulate feelings" in a democratic society.⁴¹ So doing generates further problems for an already vulnerable religious minority.

The second branch of concern regarding state agencies' investigations of Muslims' religious feelings pertains to rights that Muslim citizens could assert against such inquiries. It is plausible that a basic right to freedom of thought exists, and that this right shields an individual's prerogative not to disclose her emotions or sentiments to others. The idea of a right to freedom of thought finds support in the work of John Stuart Mill. In *On Liberty*, Mill proposes that the "appropriate region of human liberty" includes the "inward domain of consciousness," demanding "liberty of thought and feeling."⁴² Mill contends that people must be concerned about the tyrannizing effects of "the prevailing opinion and feeling," as well as the more familiar "tyranny of the magistrate."⁴³ He reflects that Christian morality, for all the benefits it has brought, remains "incomplete and one-sided," adding that the condition of human affairs would

⁴¹ Alan Wertheimer, *Coercion* (Princeton, NJ: Princeton University Press, 1987), p. 108. The quotation comes from Justice Felix Frankfurter, addressing a separate topic, suggesting that the question whether some confessions are voluntary or coerced "invites psychological judgment [...] that reflects deep, even if inarticulate, feelings of our society"; see *Haley v. Ohio* 332 U.S. 596, 603 (1948). Cf. Camus (1988).

⁴² John Stuart Mill, *On Liberty*, ed. Elizabeth Rapaport (Indianapolis, IN: Hackett Publishing Co., 1978 [1859]), p. 11.

⁴³ Mill (1978), p. 4.

be considerably worse were it not for “ideas and feelings” unsanctioned by morality of the received variety.⁴⁴

One can identify more specific grounds for a right to freedom of thought sufficiently broad to cover feelings under its rubric. First, a right of this kind would be supported by the value of individual persons having feelings of their own, of developing and experiencing their emotions and sentiments without being forced to disclose them to government agents if the latter demand as much. The value here is in the production of robust human beings, as Mill might say, as well as in the pursuit and revision of one’s own conception of the good, and in the individual development that such practices allow. Second, individual moral responsibility seems to depend on encountering and reckoning with one’s feelings, considering and weighing them, and deciding to act or not-act upon the feelings that one has or which one may lack. It appears to diminish the integrity of individual moral responsibility to place agents in social conditions in which they may be made to disclose uncommon or potentially discordant feelings to government officials. The prospects of legally compelled disclosure can have a corrosive effect on the range and variety of feelings one has, threatening to abrade one’s methods, even one’s capabilities, of assessing feelings of various kinds. Like the former point, the value of individual moral responsibility supports a right to freedom of thought sufficiently expansive to cover emotions and sentiments, and it helps to establish what is at stake in human agents being free to possess and consider their feelings, under their own power and without the threat of interference from government.

⁴⁴ Mill (1978), p. 47. Cf. Wilhelm von Humboldt, *The Limits of State Action*, ed. J. W. Burrow (Indianapolis, IN: Liberty Fund (1993 [1791-92/1850])), pp. 66-68, 69.

Third, it is plausible that one is entitled to keep to oneself the feelings that one possesses, which is to say that one has a right not to disclose one's feelings to others, to keep the emotions and sentiments one produces to oneself. If there were no such right, then were it possible for others to employ technology to read one's feelings, over one's protestations, it would be hard to see what kind of moral objection one could raise to others so doing, *ceteris paribus*. Fourth, even if the right to keep one's feelings to oneself were qualified or attenuated, it is not obvious that there exists a right of government effectively to demand that individuals disclose their feelings to its officials. Even granting that others may at times reasonably be able to demand to know one's feelings, those instances appear to be rare and limited to intimate relationships that are not descriptive of those between citizens and democratic government. This makes doubtful the idea that state officials have jurisdiction over the province of one's feelings, with regard to their disclosure or admission, in the kinds of forums I have identified. At least, the considerations adduced here weigh against the notion that government has clear and unqualified jurisdiction over a citizen's feelings when the emotions or sentiments are not joined with any outward action on the part of the person who has them. An argument to the contrary, one sufficiently robust to overturn the opposing considerations, would seem to be very hard to come by.

Fifth, it would require a step further still to justify as morally permissible the punishment of subjects who do not comply with demands to divulge their religious feelings. Even a right to demand that an agent ϕ does not entail that the party with that right may do anything to ensure that the agent does ϕ .⁴⁵ It does not mean that legal pressure or the threat of formal punishment is rightly warranted, either. Drawn together, these five factors illuminate further the normatively

⁴⁵ See, e.g., Cheyney C. Ryan, "Self-Defense, Pacifism, and the Possibility of Killing," *Ethics*, Vol. 93, No. 3 (1983), pp. 508-24, at p. 514.

problematic nature of governmental investigation of Muslims' religious feelings, when conducted in official forums with attendant demands of candid disclosure and penalties for noncompliance.

This analysis is not predicated an indictment of democratic political and legal systems. I take it for granted that a wide range of human actions may be subject rightfully to government scrutiny and legal regulation, including outward actions combined with various forms of motives and intentions. These are important elements of government's purpose to maintain public safety and to pursue justice. One presumes, furthermore, that government has reasonable interests in investigating criminal activity, scrutinizing potentially illegal activity, trying to determine facts about criminal behavior, and preventing or punishing crime. Investigating feelings can help law enforcement to figure out how someone might act or whether they have acted illegally: questioning people about their feelings can cast light on whether anything nefarious is afoot, and it can be useful in determining whether interrogees are being truthful in their statements. But these considerations do not mean that government has a right to draw out people's feelings, or to force their disclosure, in the kinds of cases described above.

VI. Prospective Remedies

I have to this point argued that there is cause to hold that particular forms of inquiry into Muslims' religious feelings are normatively problematic. It remains to consider what kinds of institutional rectification or legal adaptation, if any, might reasonably be employed in democratic polities to address these concerns and to regularize governmental investigation. It appears that investigations of Muslims' religious emotions and sentiments may favorably be normalized

through *state-side restrictions* or *personal protections*.⁴⁶ My treatment here is brief and exploratory, but one can comment on some general aspects of this matter, in anticipation of further work on the topic.

First, an expanded acknowledgment of the value of freedom of thought, accompanied by institutional guarantees and protections of a right to that particular freedom, would assist to clarifying rightful boundaries of government investigation into Muslims' religious feelings. Groundwork for legal recognition of this right can be located in Article 18 of the 1948 *United Nations Declaration of Human Rights* (UDHR), which proposes that “[e]veryone has the right to freedom of thought.”⁴⁷ It is joined by Article 18 of the International Covenant on Political and Civil Rights, maintaining that the right to freedom of thought provides that “[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”⁴⁸ The subsequent *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*⁴⁹ affirms that the UDHR and the International Covenants on Human Rights “proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion or belief.”⁵⁰

⁴⁶ I take “state-side restrictions” to be limitations placed on government action, whereas “personal protections” are those that individual citizens may employ to shield themselves from various kinds of requests or demands. These may be instituted in combination.

⁴⁷ GA res. 217A (III), UN Doc A/810 at 71 (1948), Article 18. Cf. *Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, Europ.T.S. No. 5; 213 U.N.T.S. 221.

⁴⁸ G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967), Part III, Article 18.

⁴⁹ G.A. res. 36/55, 36 U.N. GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/51 (1981).

⁵⁰ *Ibid.* Cf. the *Cairo Declaration on Human Rights in Islam*, August 5, 1990, U.N. GAOR, World Conference on Human Rights, 4th Session, Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993), Articles 10, 11, 18, 20. See generally Donna J. Sullivan, “Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination,” *American Journal of International Law*, Vol. 82 (1988): 487-520.

These important declarations and covenants yield a framework on which to build a more robust and clearly codified protection of freedom of thought in liberal democracies, under which Muslims would be more adequately protected from the kinds of inquiries into religious feelings that I have discussed. A broader, more tangible set of protections for freedom of thought would allow for a range of possible accommodations and structural amendments. These could, in turn, provide an auspicious normalization of governmental investigation of Muslims' religious sentiments and emotions. Some prospective paths for emendation include: (a) greater limitations on kinds and methods of questioning that government agents may permissibly employ in their investigations; (b) legal exemptions for Muslims with regard to forms of inquiry that government may otherwise employ; (c) diminishment or removal of punishments for noncompliance with governmental investigations, for Muslim deponents, witnesses, or interrogees; and (d) restrictions on the scope of subpoena power. There are various other possibilities to consider; but a combination of such alterations could be enlisted to craft exemptions to generally applicable laws, or they might be employed as part of a broader effort to modify existing government practices pertaining to the investigation of Muslims' emotions and sentiments.

Second, the kinds of investigations that I pinpoint raise broader religious liberty concerns; in particular, they generate concerns with respect to religious free exercise. The right to religious free exercise could be offered as another ground for protecting Muslims from undue or excessive forms of questioning by state officials. It appears that development and experience of religious feeling is critical for an individual's generation of religious attachments and pursuit of religious ends. If systematic threat of compelled disclosure of one's religious emotions and

sentiments interferes significantly with one's normal and reasonable religious development, as it appears to do, additional grounds emerge on which to object to the practices I have described.

Third, whereas one might reckon that a right not to be compelled to incriminate oneself would be suitable to shield Muslims from undue investigation of their religious emotions and sentiments, such is not the case. To take the American example, while the Fifth Amendment to the United States Constitution safeguards one from bearing witness against oneself,⁵¹ the express concern of its relevant clause is protection from legal compulsion to self-incriminate.⁵² The language of the Fifth Amendment suggests that those who invoke it have, or may have, something potentially incriminating to hide, furthermore, whereas criminality is not at issue in the cases that I have depicted.⁵³ This makes the Fifth Amendment less appropriate than one might imagine for the purposes of regulating government investigation of Muslims' religious feelings.

Fourth, a right to privacy could perhaps be rearticulated and asserted, as a way of assuaging normatively problematic qualities of governmental inquiry into religious feelings.

Consider the United States Constitution's Fourth Amendment: it states that people have a right

⁵¹ The language of the Fifth Amendment reads: "No person [...] shall be compelled in any criminal case to be a witness against himself" (U.S. Constitution, Amendment V).

⁵² Cf. *Hoffman v. United States*, 341 U.S. 479 (1951) (providing that the Fifth Amendment privilege against self-incrimination applies to testimony that would be adequate to sustain a conviction against a witness, and to testimony that would link an evidentiary chain necessary to prosecute the individual who claims the privilege); *Kastigar v. United States*, 406 U.S. 441 (1972) (permitting government to compel testimony even when a witness asserts a Fifth Amendment privilege against self-incrimination, if government grants the witness immunity from prosecution for the compelled testimony, and for evidence derived from that testimony, in subsequent criminal proceedings). See St. John's Law Review, "Compulsory Testimony and Constitutional Limitation," *St. John's Law Review*, Vol. 31, No. 1 (2013 [1956]), pp. 66-78.

⁵³ Ex hypothesi, trying to avoid legal self-incrimination is not the issue for Muslim deponents and interrogees, in the cases I have defined. There are cases in which witness testimony about emotions can raise self-incrimination concerns, as where the emotions in question may be an aggravating factor in a criminal act (e.g., under hate-crime statutes). See, e.g., California Penal Code §422.55, 422.6-422.865.

“to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”⁵⁴ However, a right to be “secure in [one’s person]” is not necessarily a right to be secure in one’s religious feelings.⁵⁵ What is more, people do not normally conceive of interrogations or investigations of religious emotions and sentiments as Fourth Amendment issues, at least not at present. Evolving rights to privacy in other constitutional democracies are similar in this regard.⁵⁶ There is some reason for this: when government subjects citizens to questioning or otherwise prompts people to disclose their feelings, it need not rummage through anyone’s papers or effects; and investigators need not search someone’s physical body, either. In addition, according to Fourth Amendment jurisprudence and standing constitutional interpretation, an individual must expect privacy in the thing that is searched, and there needs to be a reasonable expectation of privacy for what is searched, within society.⁵⁷ It is not clear that a reasonable expectation of privacy applies to religious feelings, at least not on standards currently in use.

⁵⁴ U.S. Constitution, Amendment IV.

⁵⁵ Cf. Justice Hugo Black’s argument that the words of the Fourth Amendment “connote the idea of tangible things with size, form, and weight, things capable of being searched, seized, or both” (*Katz v. United States*, 389 U.S. 374, 365 [1967]) (Black, J., dissenting). Black’s view has not held sway in the Supreme Court, but the application of the Fourth Amendment to religious feelings nevertheless appears tenuous. Cf. also *Lawrence v. Texas*, 539 U.S. 558, 562 (2003), where Justice Kennedy, writing for the Court, stated: “Liberty protects the person from unwarranted government intrusions into a dwelling or other private places [...] [a]nd there are other spheres of our lives and existence, outside the home, where the State should not be a dominant presence. Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.”

⁵⁶ See, e.g., Basil Markesinis, Colm O’Cinneide, Jörg Fedtke, and Myriam Hunter-Henin, “Concerns and Ideas About the Developing English Law of Privacy (And How Knowledge of Foreign Law Might Be of Help),” *American Journal of Comparative Law*, Vol. 52, No. 1 (2004), pp. 133-208; Andrew Taslitz, “The Fourth Amendment in the Twenty-First Century: Technology, Privacy, and Human Emotions,” *Law and Contemporary Problems*, Vol. 65, No. 2 (2002), pp. 125-87; *Imagining New Legalities: Privacy and Its Prospects in the 21st Century*, ed. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (Stanford, CA: Stanford University Press, 2014); Timothy Azarchs, “Informational Privacy: Lessons from Across the Atlantic,” *University of Pennsylvania Journal of Constitutional Law*, Vol. 16, No. 3 (2014), pp. 805-34.

⁵⁷ See *Katz v. United States*, 389 U.S. 374 (1967); *California v. Greenwood*, 486 U.S. 35 (1988) (regarding reasonable expectations of privacy).

VII. Emendations to Investigation of Feeling

I have proposed that there is cause to consider modifying and regulating anew the treatment of Muslim citizens when they are deponents, interrogees, or witnesses before political authorities. I have suggested furthermore that this treatment could be expanded to cover state agents' questioning of religious practitioners more generally, under broader rights to freedom of thought or religious free exercise, and given concerns that investigation of non-Muslim religious practitioners' religious feelings can be similarly prejudicial and hazardous. Not only Muslims may have religious feelings that are complicated or conflicting, difficult to communicate, hard to interpret, or potentially discordant with regard to the views of others. Whereas they might not be castigated as "bad Muslims," non-Muslim religious devotees may be construed as "bad Christians" or "unchristian," or deemed otherwise to be antagonistic or untrustworthy, if they are compelled to divulge religious feelings they may possess. This is an ongoing problem in pluralistic liberal democracy, wherein an individual citizen's religious feelings may run contrary to others' deeply held sensibilities and judgments, sometimes dramatically so.

These considerations lead one to surmise that legal emendation might usefully and reasonably be made to political authorities' practices of inquiring into the feelings of both religious and nonreligious citizens in constitutional democracies. An argument to that effect could be furnished based on a more extensive justification of the individual right to freedom of thought, with that right recruited to limit both governmental investigation of nonreligious citizens' feelings and inquiry into religious citizens' nonreligious emotions and sentiments. A legal framework sensitive to the value of freedom of thought could allow citizens to enjoy new kinds of protections, as witnesses or deponents, or as interrogees, with restrictions placed on both

the content and the methods of questioning to which they are subject. Nonreligious citizens might be provided with the ability to decline to answer certain kinds of questions about their feelings, under new legal mechanisms; and penalties for noncompliance could be lessened or removed, possibly in conjunction with greater limitations on subpoena power. It should be possible to make such modifications while maintaining robust relevant-evidence tests, employing deft methods of examining or proving character, and keeping intact various rules and exceptions to hearsay.⁵⁸ Those institutional rules need not be structurally undercut by remediating government investigation of Muslims' religious feelings, or the religious feelings of other religious devotees, or citizens' emotions and sentiments more generally.

VIII. Conclusion

I have argued that religious feelings are distinctive and noted a variety of pressing social and political problems generated by government officials' practices of investigating feelings of that kind. Those problems appear to be sufficiently serious to warrant corrective action for vulnerable religious minorities, as the case of Muslim minorities suggests. To those who wonder what is special about religion, in a normative political or legal sense, this treatment provides an answer in part.⁵⁹ And to those objecting to the idea that religious practitioners deserve any form of differential treatment, this approach may generate the appreciation, if not the fear, that legal exemptions for religious practitioners' emotions and sentiments could provide a foundation on which to develop greater protections for freedom of thought in constitutional democracies.⁶⁰

⁵⁸ See, e.g., United States Federal Rules of Evidence, Article IV, Rules 401-405; Article VI, Rules 607-610; Article VIII, Rule 803(3) (2014).

⁵⁹ See Bedi (2007), p. 247, passim; Cornelissen (2012), pp. 105-06, passim.

⁶⁰ Cf. the analog of conscientious objection; see Greenawalt (2000), pp. 208-09. See also *United States v. Seeger* 380 U.S. 163 (1965); *Welsh v. United States*, 398 U.S. 333 (1970).