This paper is the start of a new project for me. It is an introduction, a critique of the central way we think both about minority religious accommodations in law but also about how we protect with law what we consider important. This is a sort of clearing of the conceptual table with one sweeping move so that we can talk in a new way about this subject when I move forward with the positive project. Of course, it is a truism, that the negative space left by a critique leaves the impression of what the positive project will be.

Certainly I think a positive feature rather than a bug of my account of Practices of Self Realization and Virtue or as I shorten in the paper PSRVs is that it cuts across religious and secular practices in a unique way. In concentrating on a practice based account of Islam it focuses and groups together in a unique way religious traditions. That is, traditions within Islam, Catholicism, Judaism, as Spinner-Halev argues, maybe even Hinduism. PSRVs are the kinds of actions that are special without regard to if it is religious or so called secular practices such as working toward virtue, becoming the best tennis player or chess player or chef one can be. In this way I completely sidestep the cottage industry surrounding whether religion is “special” or not. I think Alan Patten correctly argues, the claim might be that religion has unique significance that sets it apart from all other kinds of commitments and ends. Or it might be that religious commitments are part of a broader class of significant commitments. None of this need be an embarrassment to the premise that religious commitments have special significance. By opting for the shared significance version of the premise, one can acknowledge that there are other kinds of commitments that have special significance too. But I think we cannot protect these commitments until philosophers can go beyond valuing only universal or absolutely obligatory actions and then using those as weighted comparators to all other actions.

I want to change the focus and scope of the way we look at action. One way we often focus reduces to the individual which can too often focus on negative liberty or too internally on psychology, but neither do I want to focus on large state ideologies that can often empty the subject of agency. Instead my focus is on a middle strata, on virtue and the habitual, embodied practices yet also intersubjectively communal actions, that sit in between pure voluntarism and forced action that political philosophy and theory often ignores. Originally this started as a ten page conference paper on the problems of courts weighing accommodations based on whether something was a “choice” or not, this includes religious practices, but also things like state sponsoring of healthcare needs for transgendered people as well as thinking of disability as just suffered. In this current, larger paper, while clearly the implicit critique of luck egalitarianism is still here, I peg the root of these problems to the broader influence of what I call the “morality system.” I here go back to the 80s and early 90s to bring light to philosophers working in the Aristotelian and Wittgensteinian framework such as Charles Taylor, Bernard Williams, Susan Wolf, even John McDowell and Elizabeth Anscombe. Collectively they argue that we ignore the expansiveness of the ethical sphere at our own peril. That separating “special” action from mere preference by using absolute obligation and universality as a sorter ignores other special actions that don’t deserve just to be completely overridden. This not to say that the moral has no place in our deliberation, this isn’t some Nietzschean overturning of values argument. I am saying that the moral system, our duty to contextless others, is only one source of influence in our deliberation. While my point is that there are many other sources, I concentrate, to illustrate my point, on one type to make my point and that is practices of self realization and virtue.

Veiling is only one type of PSRV, we can probably brainstorm many others not having to do with religion, the person working toward being a chef, the single minded artist and so forth. I claim that in the public sphere, PSVRs must always be translated into the language of obligation or necessity. I put a lot of work into this paper trying to show that PSVRs are not reducible to what is called duties of the self. **It is not that obligations are here, PSRV are here and mere preference is down here.** PSRVs can be stronger than obligations, while at the same time weaker than duties to the self. There is no duty to be the best piano player one can be just because one happens to have a natural talent for it. And Bernard Williams reminds us that neither is it always wrong to break a promise if it risks a project that is central to one’s life. There is no commensurable scale we can put PSRVs with duties. If an obligation is a 10 out of 10 and a duty to the self is a 4 out of 10, a PSRV isn’t a 7 out of 10, it’s both an 11 out of 10 and a 2 out of 10.

I picked the example of the veil both because there is controversy over it’s obligation but also because it is the practice I know the best. It is like the turban, there are many religious Sikhs who do not wear it, it is like the saint worship at graves that became the grist to Winnifred Sullivan’s mill that made her question whether there is religious freedom in America. You won’t find it in the bible, yet there are practice based, tradition based, intersubjective based reasons that these practices should be exempted. They are not mere preference. There are many Muslim women who argue that they are pious but do not veil because the veil is not obligatory. I agree with this yet this should not preclude our providing an exception for those who feel that they cannot be pious without it. My work here is to provide a conceptual space so that both of these ideas can be true. For instance, Shahab Ahmad whose magisterial work “What is Islam”, published just before his death two years ago, tries to push back against our assumption that the essence of religion is law. I use Saba Mahmood in this way to rethink our conception of veiling. She turns our focus away from what does the veil mean, is it political, religious or cultural? Instead she asks, what does the veil do? Instead the veil should be thought of as a necessary means to train oneself in being virtuous towards a project of self realization. This is an Aristotelian reading, which should make it intelligible enough so that I can make athletic metaphors. Different bodies, with different purposes need different training, the marathon runner does not do the same thing as the wrestler. Which is to say that many Muslim women work toward piety without ever feeling the need to veil, while others, over time do not feel they will progress without it.

But because of the morality system implicit in public reason and cases of legal accommodation there is no conceptual space for this to gain exemption, but for this to even be intelligible. As Mayanthi Fernando an anthropologist studying French Muslims argues, quote “Muslim French women’s understanding of the hijab as both an internally driven choice and a religious duty makes sense when one conceptualizes self-realization and religious normativity as linked. Within the secular-republican imaginary, however, where self-realization emerges *against* normative authority and autonomous choices are made in the *absence* of constraint, Muslim French women occupy a no-man’s-land of discursive and legal unintelligibility.” I think this idea of unintelligibility is important. I list three concerns in the paper, but I want particularly highlight one of these concerns here. This is a Foucaultian concern about the subject’s understanding of their own actions. When religious practitioners are forced to express themselves in courts and in the public sphere only through the language of obligation, what Ian Hacking calls a looping effect happens. People start believing that their practices really are obligatory in this propositional manner. Both Shahab Ahmed, as I have already mentioned, but also Tomoko Masuzawa argue that a protestantization of religion has happened because scholars have viewed religion through the prism of dominant Christian practices. And so religious thinkers from other traditions begin to view their own religions in these protestantized frameworks

Looking at court cases in Europe about accommodations, we should not just dismiss them as only racist or Islamophobic. Of course this is in play, but when we look at the justifications behind these judgments, they are articulated in the language that obligations, whether religious or not, should always trump religious practice. And religious practices, because they do not hit the threshold of obligation, are instead seen as mere preference. In Dahlab vs Switzerland, even the potential for the interference of the religious freedom of children in a classroom overruled the right to free practice of religion to wear the hijab for an elementary school teacher. That the European courts ruled in favour of a woman’s right to wear a hijab in the recent court case Asma Bougnaoui vs. Micropole I think confirms that it is not *just* crude Islamophobia or racism, but also this scale of obligation versus mere preference. The court argued that just because a customer had a preference to be served by a person without a hijab did not trump the woman`s right to wear the hijab. Yet, in a second ruling, released the same day, the limits of this right were again reinscribed. Here the right to wear the hijab was trumped by, quote, “ the objectively justified aim” of the employer to have a religiously neutral environment. I think this frank comment by Juliane Kokott, the advocate-general at the ECJ and the person who wrote the opinion on these judgments gives a good idea as to how tightly the moral system is tied with legal accommodation and that there is no conceptual space for practices of self realization and virtue. She states that “While an employee cannot ‘leave’ his sex, skin colour, ethnicity, sexual orientation, age or disability ‘at the door’ upon entering his employer’s premises, he may be expected to moderate the exercise of his religion in the workplace.” Notice the luck egalitarian premises implicit in this argument. The first category, sex, skin colour, ethnicity, sexual orientation, age and disability are not chosen and therefore the state should in someway compensate them for this, while religion becomes a wholely voluntary activity. Much like a buffett, many authors such as Brian Barry and Brian Leiter have made it seem that a single practictioner can pick and choose the practices they want, almost ex nihilo. This last point starts going well past the scope of this paper, but I have, in other work tried to push this implicit luck egalitarianism by troubling that disability is completely unwanted chance, but also that religion is so permissively voluntary, not to say that religion is chance therefore it should be exempted, but, inspired by Elizabeth Anderson, to go beyond having the choice/chance distinction as a normative transformer.