

LIVING TOGETHER DIFFERENTLY

INTRODUCTION

The thesis I wish to propose is relatively simple, perhaps even simplistic. It is not even all that novel, though I do hope to parse some of the details, to provide a “thickness” that will, hopefully, add something to our understanding. The general idea is that precisely that public reason on which our constitutionalism is based, has also left us bereft of a sense of belonging. By a sense of belonging I refer to claims that can be made on us, or that we can make on others, that appeal to no sense of abstract justice or right, but solely on a shared sense of solidarity, trust and mutuality.¹ To give a sense of what I mean, I would like to quote the words of the local Boston ward-leader Martin Lomasny, which he related to Lincoln Steffens at the beginning of the 20th century: “‘I think,’ said Martin Lomasny, ‘that there’s got to be in every ward somebody that any bloke can come to—no matter what he’s done—and get help. *Help, you understand; none of your law and your justice, but help.*”²

This was famously quoted by Robert Merton to explain the perseverance of the political machine in American political culture.³ Legalized assistance, doled out by cold, bureaucratic organizations such as welfare agencies, settlement houses, legal aid clinics, public relief departments, etc., all were seen as involving a loss of self respect. In an impersonal society the political machine provided, in Merton’s terms, for humanized and personalized manners of assistance that did not degrade the recipient. What the quote gets at is the chasm between enacting a regime of abstract rights and life in a human community of mutual care and shared belonging.

The human needs for empathy, trust and solidarity are of course recognized today as in the past, but they are—to great extent—accepted aspects of the private realm, while the public arena is ruled by the dictates of an increasingly abstract reason. Consequently, the division

¹ On such claims see MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (2d ed. 1998).

² *THE AUTOBIOGRAPHY OF LINCOLN STEFFENS* 618 (Harcourt, Brace & Co. 1931) (emphasis added).

³ ROBERT K. MERTON, *ON THEORETICAL SOCIOLOGY* 129 (1967).

of public and private realms is, in many western societies, parallel to a division between truth and trust, reason and empathy, justice and mercy. If we just left our analysis at this level, it would be all too reminiscent of Marcusean like critiques from the 1960's and 70's (which actually, may not be a bad thing). But of course the extremely complicating variable in today's world is how religious communities have come to represent that side of the equation associated with trust, empathy, and mercy. And whatever else they are, religious communities are decidedly not universal, which is precisely where they come up against the rules of an abstract and universal reason.

And here I would like to recall the words of two nineteenth century thinkers who had something of value to say about religion. Long ago, we were taught that: "Religious distress is at the same time the expression of real distress and a protest against real distress. Religion is the sigh of the oppressed creature, the heart of a heartless world, just as it is the spirit of a spiritless situation. It is the opium of the people."⁴

Now, I think Karl Marx was right. In fact, he was more right than he himself realized. For he believed that the abolition of particular historical conditions would lead to the abolition of the "illusion" of religion. He did not realize that religion and religious distress is the human sigh par excellence, the sign of a distress that is rooted in our very existence, not one that can be transformed from within history. And in our current conditions, at least part of that distress is rooted in the aforementioned divide between the terms of truth and the terms of community, between the demand for justice and the demand for mercy.

The other quote I wanted to recall was the definition of religion posited by Emile Durkheim, the founder of the discipline of sociology. For Durkheim: "A religion is a unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden—beliefs and practices which unite into one single moral community called a Church, all those who adhere to them."⁵

Every student of the social sciences learns this quote by heart and I think it is quite relevant to our current project. For if constitutionalism is predicated on secularism and the workings of a public reason then the sacred has little claim on the public realm (and when it makes such claims, it is reviled as being fundamentalism). If this is the case however, it is difficult to make a claim for moral community—or again, in the terms posited above; for maintaining the terms of empathy, trust and solidarity among those whose relations are structured by the self-

⁴ K. MARX & F. ENGELS, ON RELIGION 42 (2d ed., Foreign Languages Publ'g House 1957) quoted in BRIAN MORRIS, ANTHROPOLOGICAL STUDIES OF RELIGION: AN INTRODUCTORY TEXT 34 (Cambridge Univ. Press 1987).

⁵ EMILE DURKHEIM, THE ELEMENTARY FORMS OF RELIGIOUS LIFE 44 (Karen Elise Fields trans., Simon & Schuster 1995).

same legal order.

I think this is the core of the conundrum we find ourselves in. We have an idea of the public order which is 1) secular, 2) predicated on the idea of the morally autonomous individual, and 3) oriented towards the preservation of different sets of individual rights rather than the realization of an idea of the *Good*. At the same time we have more and more communities within the nation-state made up of individuals who do not understand themselves to be morally autonomous (but see themselves as enacting different sets of God given commandments), who are not at all secular and who have very clear ideas of a public *Good*—indeed of a divine *Good*—that trumps the legal recognition and assurance of individual or citizen rights.⁶

In other words, we have come increasingly to find that the secular public sphere is not devoid of its own claims to the *Good* and that these claims are in fact, among the most contested ones in the contemporary world. Thus, and to take but one example, the secular-liberal vision of society rests on a particular understanding of mankind as made up of autonomous, self-defining moral reasoners. Precisely this idea of moral autonomy however is contested by billions of church, mosque, temple and synagogue goers all over the world. For these religiously committed individuals, people are not morally autonomous, but rather live under heteronomously enacted and revealed laws. The secular, liberal claims for moral autonomy are not as neutral as they present themselves to be.

Beyond this problem with current visions of the public square is the fact that removing competing claims to the *Good* really serves more to displace the problem than to solve it. For, and as we see especially in many cities in Britain and the continent, this situation leaves us with a ‘thinly’ defined public sphere to which the commitment of many individuals and communities is highly mediated. On the other hand and hidden within or at the boundaries of this public sphere are very ‘thick’ moral communities, many with highly rigid definitions of the *Good* as well as clear boundaries of membership and loyalties.⁷ Removing moral claims from the shared sphere of our interaction does not in fact seem to work, in terms of leaving us with a ‘usable’ space for our common life. In fact, it seems to leave us with two separate spheres of shared interaction: the one, defined to great extent by the state and its institutions is where we interact according to abstract and increasingly impersonal rules of justice that are, however, far removed from the

⁶ Adam B. Seligman, *Secularism, Liberalism and the Problem of Tolerance: The Case of the USA*, *THEORIA*, Apr. 2008, at 17; ADAM B. SELIGMAN, *MODEST CLAIMS: DIALOGUES AND ESSAYS ON TOLERANCE AND TRADITION* (2004).

⁷ See, e.g., Rowan Williams, Archbishop of Canterbury, *Civil and Religious Law in England: A Religious Perspective*, Foundation Lecture at the Royal Courts of Justice (Feb. 7, 2008), available at <http://www.archbishopofcanterbury.org/1575>.

second, more intimate and manageable sphere of public trust where we grant one another a certain degree of moral credit, predicated on our shared communal, religious, ethnic or racial pasts. The discourse of this second realm is the discourse of trust and solidarity, of care and compassion, of loyalty and commitment. The discourse of the first is that of rights and state sanctions.

It is the albeit sometimes inchoate but strongly felt awareness of these different realms and the impossibility of forging a true civil society from such divergent sets of social spaces that, I believe, has led us all to an appreciation of the problems of constitutionalism in an increasing, post-secular age.

TRUTH AND CONFIDENCE

To broaden our conception of the issues involved, I would like to juxtapose two models of social interaction: trust and confidence.⁸ The distinction between them is aptly reflected in an oft quoted phrase of Vladimir Lenin. Lenin is famously said to have remarked: “Vertraun ist gut, Kontrol noch besser”.⁹ That is: trust is good, but control is much better. In this saying we find what I think is a distinction critical to understanding of the types of relationships that are currently developing both within and between communities: that is, the distinction between trust and confidence (control in Lenin’s terms). I will posit, very schematically, that control or confidence is present when the social actors know what to expect in a situation. Trust, in contrast, is what is needed to maintain interaction when such knowledge is lacking.

Confidence, and the knowledge necessary to confidence, can be based on many different things. It is, most often, predicated on the ability to impose sanctions and the knowledge that one’s partner to an interaction also knows that sanctions will be imposed if he or she fails to live up to the terms of an agreement. Sanctions may be formal or informal; they may be based on an intricate web of kinship obligations or on the verities of contract law. They may be immediate or inter-generational, symbolic or material. In all cases, confidence and the ability to predict alter’s behavior is based on knowledge that our interaction and/or exchange is set within a context, within a system that—qua system—will impose sanctions in the case of an abrogation of agreements (this is true whether agreements are based on principles of a market contract between free agents or on status responsibilities among kin group members). Hence when I say that I

⁸ See generally, ADAM B. SELIGMAN, *THE PROBLEM OF TRUST* (1997); in particular, chapters One and Three.

⁹ Adam B. Seligman, *Trust and Sociability: On the Limits of Confidence and Role Expectations*, 57 *AM. J. ECON. & SOC.* 391, 391 (1998).

“trust” the doctor, it is not quite correct. Rather, I have confidence in her abilities, in the system that awarded her the degree framed and displayed on the wall (and I may have greater confidence if the degree is from Cornell University and less from if it is from a West coast mail order address), as well as in the epistemological assumptions of American medicine. Of course I may also lack such confidence and take my daughter to Lourdes instead or trust (i.e. have faith in) the Lord if, for instance, I am a Christian Scientist. Similarly, when one of the important theorists of trust, Virginia Held, says that she “trusts” the plumber to do a “non-subversive job of plumbing” that is also not quite true.¹⁰ For she knows that if he does a “subversive” job she will not only not hire him again, and tell her neighbors not to hire him, but she will also complain to the local better business bureau. She may even refuse to pay him. In short, she can impose sanctions, formal and informal. She knows this, he knows this, she knows that he knows, he knows that she knows that he knows, and so on. Their interaction and exchange is entered into by mutual interest and maintained by mutual confidence in the system within which the exchange takes place. Now if she were to rush off to meet a colleague and had to leave her baby with the plumber until her husband came home, that would be a very different story, one involving both parties in a relationship of trust.

Confidence, then, is predicated on our assumed knowledge of what will be, and so is our ability to predict future behavior (whether of a positive or negative nature). Moreover, confidence, in the broadest sense, as Niklas Luhmann pointed out, mediates danger.¹¹ It organizes our relationships with those we do not know, and who, therefore, are assumed to be dangerous. Its mechanisms (which are, for the most part, the mechanisms of law), are mobilized to structure our relationship with the unknown other rather than with the near stranger (in Simmel’s sense) who nevertheless abides amongst us.

In this sense, traditional societies organized around kinship bonds were societies with very high levels of prediction, and so high levels of confidence. To say that traditional societies (or even, I would hazard, contemporary Japan) are societies with high levels of trust is, I would argue, a misnomer. Rather, these are societies with high levels of confidence based on well known and mutually reinforced kinship obligations. Predictability is high, variability is low. The system (of obligations, responsibilities and mutuality) is clear and visible and hence confidence in behavior is remarkably high. The corollary to this, by the

¹⁰ Virginia Held, *On the Meaning of Trust*, 78 *ETHICS* 156 (1968).

¹¹ NIKLAS LUHMANN, *TRUST AND POWER*, (John Wiley & Sons 1979). See also, Niklas Luhmann, *Familiarity, Confidence, Trust: Problems and Perspectives*, in DIEGO GAMBETTA, *TRUST: MAKING AND BREAKING OF COOPERATIVE RELATIONS* (1988); NIKLAS LUHMANN, *RISK: A SOCIOLOGICAL THEORY* (1991).

way, is that whatever is outside the system is totally unknown and hence dangerous. Boundaries are clear and relatively well marked, and when situations arise that do not fit into the system categories—such as friendship between individuals in a system that can only “think” in terms of ascriptive, primordial categories—these are immediately translated into terms the system can accommodate, hence the phenomenon of blood-brotherhood, where friendship is symbolically transmuted into a primordial tie.

Trust, however, is something very different. Trust mediates not danger, but risk. It is what is called for when there is no adequate basis for confidence but interaction is nevertheless enacted. When it is impossible to predict either behavior or outcomes (for example, when house owner and plumber step outside their their contractually defined roles) some degree of trust is called for. It is thus present when we interact with the “stranger in our midst” or even with the familiar person, but in an unfamiliar manner. Trust is necessary when the other, or the actions of the other, are unknowable. And the other is unknowable when we cannot impute or predict behavior, when there is no underlying structure which would allow such prediction. In this sense, modernity—or perhaps only its promise—can best be understood in terms of providing the conditions for the development of trust in more and more realms, reframing our understanding of the other as a potential danger to a potential risk. Urban life is, by definition, a life with strangers who—though unknown—are not seen as dangerous. More generally, the slow development of the nation-state as a form of moral community allowed the concomitant growth of such terms of trust within its boundaries. The salience, if not near monopoly of this form of moral community was clearly evinced in the World War I where, with only one exception, all European socialist parties (which claimed an alternative form of moral community, class-based and international in scope) voted for war appropriations and so remained loyal to the nation-based community.

Thus, within the nation-state the terms of collective membership, i.e., citizenship and a shared legal order, provide the baseline of confidence through predictability. It is this baseline, which ideally was seen to provide the conditions through which trust could emerge between strangers sharing a common legal, moral, social and economic order. In fact, to great extent we can understand the prevalence of the “Jewish Question” throughout the 19th century Europe as turning around precisely these issues—with assimilation, understood by all, as the move of this community from relations of confidence to those of trust with others groups sharing civic space. The failure of assimilation is of course the failure of this move.

Thus, we see that, modernity not to say urbanity, is precisely the

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opposite of a primordially defined life of traditional society. It is life among strangers, among those you do not know and those who do not know you; among those who, if not known, are nevertheless not necessarily dangerous (as they share the same legal order). Interaction is risky, of course, and trust, as we noted following Luhmann, mediates risk, not danger. Unable to assume familiarity (though we constantly attempt to do so) and rooted in a “system” of much greater cognitive lability than one based on kinship, within the contemporary nation-state, we nevertheless enter into myriad of interactions with others on the basis of something akin to trust.

This then is both the ideal model, but also the problem. For what is emerging in many European and North Atlantic communities today is a bifurcation of the terms of trust and confidence. Certain ethnic, linguistic, religious and ethno-religious communities are turning inward, sharing the terms of trust only within their micro communities (again reminiscent of debates around the 19th century Jewish communities) while invoking a wholly different set of orientations, attitudes and dispositions towards the members of other communities—who are, nevertheless, their fellow citizens. In many cases this is complicated by the fact that the State itself treats certain ethnic, linguistic, religious and ethno-religious communities as trusting partners while, in its interaction with other such communities within its national boundaries, invokes a very different set of moral rules and expectations. What emerging is thus on the one hand a model of trust, human empathy and understanding that is circumscribed and often defined by the terms of religious belonging standing very much in contrast to statist assumptions of abstract legal reasoning, and security concerns oriented not towards the construction of shared public goods, but to the mediation of potentially dangerous actions on the part of the citizenry.

Let us review the two communal models we have presented here:

Trust	Confidence
Shared dispositions	Multicultural values
Moral community	Community of rights bearers
Value of peace	Value of justice
Familiarity	Strangeness

Sameness	Difference
Shared moral dispositions	Disparate moral values
Shared experience	Dissimilar experience
Moral credit granted to communal members	No credit granted, knowledge demanded
Others experienced as risk	Others experienced as dangerous
Risk leaves room for doubt	Danger requires security
Our group	Other group

Increasingly, in the contemporary world, communities of trust are markedly diverging from communities of confidence. In the latter, the values, principles of social organization, orientations towards the other, self-understandings and fundamental terms of organizing collective experience are very different from those of a community of trust.

Harkening back to our earlier claims on the increasing divergences between truth and trust, reason and empathy, justice and mercy that is between the claims of a moral community and those of justice, it would be useful to conceptualize this distinction in the terms posited by Robert Cover, as a growing divergence of the worlds of Nomos and Narrative from those of legal authority. Cover's seminal essay showed us how legal orders are positioned within much more extensive narrative frameworks of communal meaning and belonging that make up an embracing nomos of which law is but one element. He taught: "No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture."¹² Yet the nomos of moral individualism and a secular public space, the narrative of autonomous moral decisors and of liberal humanism is increasingly alien to many large groups making up civil society within the Western European nation states. Sharing different narrative or nomic universes, the establishment of trusting relations between such groups becomes impossible and social interaction between them rests solely on the legal order, that is, on the basis of a type of confidence guaranteed by the State. Trust is reserved for those within the communal boundaries who share epics and

¹² ROBERT COVER, NARRATIVE, VIOLENCE AND THE LAW 95-96 (Martha Minow, Michael Ryan & Austin Sarat, eds., 1995).

scriptures that are alien to the legal orders of the State.

The real problem with this bifurcation of our social world, however, is not that we live in two universes. In truth, we live in many more. The real problem is that the first part, the world of trust and of moral community is predicated on sameness, on familiarity, and on a world of shared assumptions. The problem with this model is that sameness is always illusory, always partial, incomplete and given to disruption. Nothing in the world is really “the same”—even the snowflakes, we are told, are in small ways each different from one another.

If we predicate our communities of empathy and trust on sameness—whether of a shared epic, or a shared history—we will always be disappointed. We will always find one group or another existing somewhere on the margins or borders of this ‘sameness’ who—especially in times of trial and tribulation—are seen to betray this sameness, to violate our shared moral code and to betray their real colors of strangeness and difference. Indeed, over 60 years ago Sigmund Freud wrote of the “narcissism of the small difference”—how we perceive the threats to our identity not in the totally different and far-off other, but in the near-other, he or she who is similar in so many ways, but not in this one attribute (whatever it may be) which then achieves an iconic standing as representing all that is different and threatening and so must be destroyed.¹³

As long as trust is restricted to those who are the same, we will continually be patrolling the borders of this sameness to check for deviations and differences. The boundaries will be points of continual contestation, of fear and of opprobrium. In times of crises (when the next bomb goes off in the London transport, or the next Imam is arrested in Leicester, or even perhaps when the economy slumps and I can no longer pay my mortgage) those who are a bit like us but also a bit not like us, will come to take on a new aspect, not at all like us. Rather they will be looked upon suspiciously, as possibly (perhaps even probably) dangerous and as such we will invoke the laws of justice and the sanctions of the State and its security forces, rather than the moral credit of our shared communal experience. As we know, this was the experience of Jews in the 19th and 20th century Europe. In some ways, it is repeating itself, with the Muslim citizens of European societies today.

At the heart of these issues then is the problem of difference and of living and sharing public space with individuals and groups who are, in certain, critical and important ways different and whose difference makes us uncomfortable. How to do this, in a manner that is not simply

¹³ Sigmund Freud, *Civilization and its Discontents*, in THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD, VOL. XXI, 114.

understood in terms of the privatization or trivialization of all differences (which is, to great extent, the classic liberal solution), must thus be the crux of any new ideal of post-secular constitutionalism.

TOLERANCE

Critical in this move is the concept of tolerance as a necessary virtue for life together with those who are different and with whom we disagree. It may be well to recall that the concept of tolerance was used in medieval cannon law to refer to the status of both Jews and prostitutes.¹⁴ It would have been better, so the thinking went, to rid society of both classes of people but the negative effects of their removal were seen to outweigh the benefits. In the case of prostitutes, their removal was seen to endanger the family and open the way to all sorts of adulteries, infidelities and other sins of the flesh, while the removal of the Jews would have rid society of that group whose recognition of Jesus as Christ was necessary for the second coming. This sense of a be-grudging tolerance as but a second best solution has remained with us and with all who reject such virtues as too insipid for the type of pluralistic multi-ethnic, multi-religious, diverse and global world we are living in.

In spite of this I would make the case for tolerance as a necessary virtue for a democratic citizenry, and a difficult and demanding moral political virtue it is at that. This is because it rests on a sort of epistemological modesty and an eschewal of final explanations and any claims to ultimate knowledge. Faith (or trust) is not knowledge (or certitude) and human reason has to accept its own limits. These limits extend not only to matters of the Deity, but even to our judgment of many matters of this world and our neighbors' affairs. Moreover and to make the point ever so much stronger, one need not accept the principles of philosophic liberalism, revolving around the idea of the self as a morally autonomous decision-maker in order to practice as a liberal. Political liberalism does not depend on philosophic liberalism. There is a huge difference (as even Rawls was forced to admit) between philosophical liberalism and political (or shall we say, pragmatic) liberalism.¹⁵ Too often we assume that to practice the latter one must have signed on and become a true believer in the former. This is not the case. One can be an orthodox Jew, literalist Muslim, pre-Vatican II Catholic, and so believe in heteronymous commandments (and hence not in the liberal, autonomous moral decision-maker) and still act out a

¹⁴ Istvan Bejczy, *Tolerantia: A Medieval Concept*, 58 J. HIST. IDEAS 365, 370-71 (1997).

¹⁵ See, e.g., JOHN RAWLS, *POLITICAL LIBERALISM* (1993); but see JOHN RAWLS, *THEORY OF JUSTICE* (Harvard Univ. Press 1971).

pragmatic liberalism without buying into its philosophical presuppositions. Religious and ethical beliefs of the good life do not stand in any one to one correlation with the moral norms of reciprocity and human interaction. One can derive laws of human reciprocity and civic responsibility from the Babylonian Talmud as well as from Thomas Jefferson.

What I am arguing for is the realization that the problem at hand is not theoretical or philosophical, indeed may not even be purely political, but is a problem in the realm of individual behavior and attitude. At the end of the day, tolerance implies living with, abiding, or—in the medieval usage—suffering, the presence of that we find objectionable. If something or someone were not objectionable, there would be no need to tolerate its presence. It is very important to be clear on this point. Tolerance presents us with a double burden. It demands that we accept the presence of that which we find objectionable and in so doing, it demands that we suffer our own discomfort at this presence. It demands of us to live in some form of cognitive dissonance. We need then to reframe our understanding of tolerance and the suffering involved as not simply suffering the presence of which we find objectionable, but as bearing our own discomfort. We must learn that just because something makes us uncomfortable does not mean it is wrong, or evil or barbaric or should be outlawed. We are after all not gods, not even prophets. Simply stated. Yet not so simply practiced—let us try to understand why.

First and foremost, as already stated tolerance assumes the existence of difference. For tolerance to need to be evoked as a mechanism of social interaction we must find ourselves in the presence of something that is both different and objectionable. If it were just different, but not objectionable there would be no cause for tolerance (someone's rather odd taste in bathroom fixtures say). The objectionable is, moreover, almost always seen as the different.

If we make use of Freud's notion of the "narcissism of the small difference", i.e., that he or she who is slightly different from me is, in a sense, a continual threat to my identity and sense of self—constantly calling into question the distinguishing characteristics of my own sense of self, precisely because we are so alike in all other ways—we see how difference is almost always seen as containing some objectionable element. We almost always project a negative valence to the difference, precisely because that difference brings into question our sense of self-worth.

When faced with the "small differend" we thus tend in fact to one of two moves. The first is to turn the small differend into a rather large one—i.e., what is often called today "othering" the other—pushing him or her or this or that group beyond the boundaries of shared humanity (a

process which defined to a great extent traditional Christian attitudes towards Jews, many current attitudes towards Muslims in the West, the orientations of some Christian evangelicals in the USA to gays and lesbians, Sunni Muslims to Alevies, and so on). At this stage of course tolerance is ruled out as unnecessary, as the other is so totally other, dangerous and beyond the common pale that there is no cause to tolerate. It is no longer a matter of someone or some behavior being objectionable—but rather, the boundaries between us and them have, in fact, become absolutized into boundaries of good and evil, humane and barbaric and so no tolerance is called for (clearly tolerance has limits, if it is not to fall into total relativism). Tolerance in this case is defined away as the person or persons who are seen as different, not simply as objectionable, but as downright dangerous.

This, as I say, is one common move. The other, equally common, is to obviate the need for tolerance in a different direction. In most cases we tend to elide the problem of tolerance with an appeal to some essential, underlying or overarching similarity with what is different. We tend to trivialize the difference and posit some essential shared characteristic that in effect makes us one. So here too, there is no need to tolerate, for we have done away with what is different and trivialized what we saw as objectionable. Once again, then, we have absolved ourselves of the need for tolerance as we have done away with difference.

There are two problems with this move: first, it usually comes in tandem with the first. So that when we define our common bond with one group of people it is usually through defining a third group as beyond that common bond. A unites with B by defining themselves in opposition to C. To a great extent this seems to be what is happening now in the relations of Jews and Christians vis a vis the Muslim world. We all did this as children and it is a staple of group psychology.¹⁶ It is of course extremely dangerous, if for no other reason than that it demands that continual production of C group. So that there is a continual impulse to redefine some difference in a sub-group of A or B so different that it can no longer be part of the conjoined group and it is pushed out beyond a common, shared definition of solidarity. To no small extent, this is the history of heresy and sectarianism in the great world religions.¹⁷

There is however yet another reason that this process cannot be stable (leaving aside the normative or ethical aspect) and that is because each and every one of us wants recognition and respect precisely in where we are unique, singular and different. By defining us in terms of

¹⁶ See, e.g., SANDOR L. GILMAN, *DIFFERENCE AND PATHOLOGY: STEREOTYPES OF SEXUALITY, RACE AND MADNESS* (2d ed., Cornell Univ. Press 1985).

¹⁷ KAI ERIKSON, *WAYWARD PURITANS: A STUDY IN THE SOCIOLOGY OF DEVIANCE* (1966).

an overarching similarity or sameness, we define away what is unique and particular to each. This uniqueness and particularity however is precisely what each of us wishes to be recognized in and through. It is in our difference, or 'specialness' that we wish to be recognized, not our sameness. Appeals to sameness, to our shared values or shared humanity as a basis of tolerance thus, in effect, do away with tolerance while leaving us bereft of that sense of unique personal worth that is so critical to our idea of ourselves in the world.

However simple an idea, the reality of tolerance is in fact extremely problematic—devolving itself into either affirmations of sameness, which obviate the need for tolerance by positing the essential identity of all relevant social actors, or by positing the absolute and dangerous nature of alter (or alters) to whom the proper response is not tolerance but some form of extermination (either physical or symbolic). In both cases we are seemingly running away from the extremely difficult demands of tolerance—that double burden noted above.

Given this difficulty, it may be that if we intend to realize our dreams of a pluralistic civil society the specific institutional rules of social organization (freedom of organization, of conscience, universal franchise, rights, etc.) acting as some sort of third party enforcer are insufficient, and what needed is an appreciation of tolerance as a virtue that must be inculcated at the most fundamental levels of socialization. What wanted and needed is precisely a *practice of tolerance*, which can itself be rooted in very different *traditions of practice*. We must take seriously the possibility that other virtues and ways of living—beyond Western constitutionalism—and hence not necessarily equating with the moral autonomy of the individual, may also provide for the ability to tolerate, abide by and even protect difference of a constitutive nature. In fact, they may be more essential to the working of such tolerance than the liberal/individualist model. If there is a way forward into what some have termed a post-Christian as well as post-secular sociopolitical reality, it can only be along these lines.

One component of such an approach, I would argue, is eschewing any final explanation and agreeing to set apart broad, inclusive and generalized explanations—sacred or secular, transcendent or transcendental, subnomos or autonomous—as conditions for sharing civil space with individuals or groups who are strangers to us. We must begin to localize our ideas and circumscribe our explanations towards what is most or more immediate without engaging our own particular collective philosophy of history, man, God and existence. We must learn to live, if not without the latter, but at least without the latter forming the ground of each and every interaction involving the other. By distancing these grand or meta interpretive grids from every environment-which-is-in-need-of-an-explanation, we create a space

where alternative and competing practices among members of differing and even mutually exclusive interpretive communities can construct a common life (even while remaining mutually exclusive in their truth claims and all that follows from such). We learn to act (according to our newly formed conjectures and judgments) rather than react (according to our received prejudices and cognitive grids).¹⁸

Therefore, what I am suggesting here is a model of interaction that is predicated on neither trust nor confidence. On one hand we eschew all attempts to reduce the other to the same or the familiar he or she who shares our dispositions (which provides, as we have seen, the basis of trust). On the other hand, we reject the security of confidence which, while maintaining the ‘otherhood’ of alter, reduces our interaction to abstract legal-rational categories and criteria. We may term it ‘Constitutionalism without nomos.’ In their stead, I am suggesting an idea of embodied knowledge, that is, knowledge focused on particularities and hence what is, in essence, experience.

Experience, as the American pragmatist philosopher, John Dewey has taught us, is the central component in thinking. “‘To learn from experience’,” he tells us, “is to make a backward and forward connection between what we do to things and what we enjoy or suffer from things in consequence. Under such conditions, doing becomes a trying; an experiment with the world to find out what it is like”¹⁹ In this process, the intellect cannot be separated from experience and the attempt to do so leaves us with disembodied, abstract knowledge that all too often emphasizes “things” rather than the “relations or connections” between them.²⁰ In so doing it is of precious little help in our attempt to connect the multitude of disconnected data that the world presents into a framework of meaning. For the meaning rests not on the knowledge of “things,” but on the relations between them. These relations, in turn, as Dewey so brilliantly argues, can only be assessed through experience—because only through experience do we bring the relevant relations between things into any sensible sort of juxtaposition. Thus meaning, emergent from experience can only be supplied by the goals towards which we aspire—as indeed, experience, as opposed our simple passive subjugation to an event—or narrative—is always in pursuit of a practical aim. In Cover’s terms this move can perhaps be conceived as the continual construction of ad hoc, shared narrative frameworks, predicated on the progress of the shared experience.

In a practical sense what this implies is that we must thus eschew

¹⁸ Adam B. Seligman, *Pedagogic Principles and Reflections Developing out of ISSRPL Practice*, ISSRPL OCCASIONAL PAPER SERIES, Oct. 2008, at 1, available at <http://issrpl.org/vision/images/issrplpaper.pdf>.

¹⁹ JOHN DEWEY, *DEMOCRACY AND EDUCATION* 134 (Dover Publ’ns 2004).

²⁰ *Id.* at 137.

the seduction of wishing “full knowledge” of the other (such as provided by either the shared dispositions of trust or the abstract legal-rational order of confidence) before we engage in joint projects and share a civic life with them. There never will be such full knowledge. It is the privilege of God alone. Each and every one of us brings infinite possibilities to our encounters with other human beings. These cannot be circumscribed by the idols of the tribe, or the marketplace or, for that matter, by our grandmothers’ stories. It is neither by expanding the boundaries of trust, nor by transforming them into the security criteria of confidence, but by radically recalibrating them that we can learn to live together differently. The constant search for infinitely calculable degrees of moral sameness is dangerous. Such an exercise will always leave us with a not too negligible human remainder whose position outside the boundaries will be a constant threat to all. The challenge of really living with difference demands great moral courage. It demands us to act and to take stands in situations of moral ambiguity and in circumstances of less than full knowledge, of strangeness and otherness, and of ignorance. This is the moral courage of tolerance, beyond either trust or confidence.

CONCLUSION

The idea of trust and of moral community is one predicated on sameness, familiarity, and our assumptions of knowledge of the “other”. Standing against that is a model of confidence predicated on otherness, strangeness and lack of familiarity. In the 19th and 20th centuries the worlds encompassed by these difference terms were understood in categories such as *gemeinschaft* and *gessellschaft*. At that time the assumption was that the course of historical progress necessarily led to the first being replaced with the second. What we are seeing now is rather their coexistence at the same time in the same State. This is the challenge facing so many politicians and policy makers in Western European and North Atlantic countries—and indeed the world over.

To meet this challenge, we must, at one and the same time, be willing to question the ideal qualities of each. We must address the idea of a moral community predicated on sameness and familiarity (which must come to include Jews, Muslims, Shiks, Gays and all sorts of communities of difference within such a moral community). However, we must also do so, by abjuring the constraints of a cold, calculating and instrumental reason—of a claim to an absolute and perforce abstract truth, which tends in turn to militate against the development of feelings of empathy, shared solidarity, trust and the needs of mercy and understanding (which, as we have seen, simply retire “underground” as

it were to be expressed in private, in encoded and emic languages that others have no access to and which thus, in turn, make a joke of any notion of shared community).

How to do so is not easy matter. Moreover, it can be accomplished only in practice and not in theory. Here, I dare say, the realm of the law is probably of more help than that of political philosophy or of the social sciences. For it is in the law that the necessarily pragmatic approach can be developed which would allow the slow, piece-meal construction of such new ad hoc, shared, if provisional understandings that may provide a new model of living together differently.