TOLERANCE, TRADITION AND MODERNITY

Adam B. Seligman*

My daughters go to an intentionally pluralistic Jewish Day School. This means that there are children from Orthodox, Conservative and Reform Jewish families who attend the school, as well as [leave as is, correction changes meaning]children from families who have very little religious (as opposed to cultural or historical) identification as Jews. Even though the school has won an award for pluralism from the Jewish community, no one is quite sure just what that means. Consequently, every couple of months we have endless discussions long into the night concerning the sense and meaning of pluralism. During one of these discussions, I presented some of the ideas developed in the following pages and was immediately subjected to a barrage of criticism. One parent was quick to point out that tolerance of difference was not at all what was needed. Instead, he argued that difference needed to be embraced and engaged so that we could grow and develop together with those who are different. Tolerance. he claimed, was much too modest a virtue, not robust enough. and ultimately lacking in moral fiber.

This was at the beginning of the evening, before many of the different views, complaints and grudges had been aired. By the end of the evening, however, after quite a few parents had given vent to their feelings on how the curriculum did not adequately express their religious commitments and needs, this parent (and others) came to think that maybe tolerance was not such a bad thing after all. Perhaps a minimalist virtue was in fact precisely what was called for. As these parents came to realize just how long the way was to actually embracing difference, they came around to the idea that until such time as this could be realized–if it could be realized at all—it might not' be such a bad idea to promulgate the virtue of tolerance.; While it seemed a second-best solution, it was one that seemed realizable and would contribute to the conduct and culture of the school.

To different degrees and in very different circumstances, many today feel that the classic liberal, Western European and North Atlantic model of tolerance and pluralism, or what passes for tolerance and pluralism, does not actually hold in the societies we belong to. It was the idea and hope of the organizers of this meeting that perhaps a shared reflection on these circumstances might help each of us towards new understandings of both tolerance, pluralism and the possible resources

102   *CARDOZO LAW REVIEW*   [Vol. 23:X

for such, in societies characterized by ethnic and religious conflict.

Toleration, as Bernard Williams once remarked, is an "impossible virtue."[1] It is impossible because it involves accepting, and abiding or accommodating views that one rejects. It calls us to live in cognitive dissonance and presents contradiction as a sought after goal. We are obliged to "bear" what in fact we find unbearable. Of course, if we did not find this, that, or the other word or deed objectionable, there would be no call to tolerate them. The whole issue of tolerance only arises when some act or speech is deemed objectionable. Viewed from one perspective then, tolerance is indeed a virtue so demanding as to be "impossible" of realization, perhaps even logically untenable, involving us in the laws of contradiction.

From another perspective, however, tolerance is far from being sufficient a virtue. It is deemed too vapid, too thin, and far from adequate to the construction of a civil order or civil society of mutual appreciation and recognition. Tolerance, with its historical associations of suffering the presence of what is detestable (in the eyes of God and mankind), in this reading, is too feeble a thing to promote. Pluralism and the celebration of difference and otherness, is what is called for rather than the insipid call to tolerance.

Complicating this picture even further is that whether we view tolerance as either impossible or insipid, argument can be made that in neither case does it take us very far. For almost all would agree there are actions (and perhaps words as well, though that is much debated at present) that are beyond any moral compass and should not be tolerated. Many of the horrors of the twentieth century encompassing genocide and other crimes against humanity, would fall under this rubric. Accordingly, if certain sets of acts clearly are beyond what can be tolerated, we are left with the need to define the boundary of what can and cannot be tolerated. It is far from clear what criteria would be used to define this boundary; such a task seems then but to push the problem of tolerance up one analytic level, but not to solve it.

Despite these problems and the logistical conundrums to which they give, I will make the argument for tolerance, as indeed a minimalist position, though for all that one not easy to attain (though not impossible either). In addition, I will claim that what passes for tolerance (let alone more robust virtues) in contemporary modern societies is often not tolerance at all, but rather some mixture of indifference, Real Politik, and the denial of difference (that is the denial that there is really something else, other, different and thus perhaps threatening that I must engage with in a tolerant manner).

The denial of difference comes in many forms, most often as what

---

[1] BERNARD WILLIAMS, TOLERATION: AN IMPOSSIBLE VIRTUE 18-28 (David Heyd ed., 1996).

may be termed the aesthetization of difference (differences are a matter of tastes, not morals, and as there is no accounting for tastes, no real tolerance of difference is called for, rather a recognition of each individual's "right" to their own opinion). The aesthetization of difference is often accompanied by a trivialization of difference. Here the differences, or the arenas of difference, are not deemed important enough to merit a principled tolerance. Your rather poor taste in neckties is not something that demands of me a tolerant attitude, though I find it both offensive and in bad taste. Precisely because this is a matter of taste (aesthetics), and of no great significance (trivial), tolerance does not effectively enter the picture.

These moves of aesthetizing or trivializing difference are of course ways to avoid having to engage with difference, or what has so fashionably come to be called alterity. By trivializing what is different, one makes a claim to the essential similarity or sameness of the non-trivial aspects of selfhood and shared meaning. What makes us the same (as Jews, Episcopalians, Americans or radical feminists) is much more essential to our definitions of who we are than what divides us (your horrendous taste in bathroom fixtures). This is a form of denying difference rather than engaging it. Furthermore, we do this all the time—it is of the very stuff of our social life.

In a certain sense such denial of difference (relegating it to the aesthetic or trivial) is itself a form of indifference towards what is other and different. By framing our difference from alter's position or action in terms of tastes or the trivial, we are not forced to engage with it and can maintain an attitude of indifference. I may find your religious beliefs foolish and your sexual appetites objectionable, but neither are illegal nor hurtful to others. They do not effect me in my relations to you—as, say, member of the same university department—so in the long run, these decisions are a matter of indifference to me.

As we push this argument one step further we come to realize of course that indifference, at least in liberal-individualist societies, is not simply a psychological state or a form of social etiquette. It is in fact ensconced as a fundamental aspect of the social order, in the form of our legal and principled separation of public and private spheres. For what is deemed private is removed from public scrutiny and ceases to become a subject for tolerant or intolerant attitudes on the part of others in society. Defining a realm of privacy is tantamount to defining a realm of principled indifference where issues of tolerance are not to be broached and are indeed rendered irrelevant. Not surprisingly, the freedom of conscience—which was in fact the freedom of religion— went hand in hand with its privatization. We must note as well that the privatization of religion, together with a politics of rights rather than a politics of the good and a secularized public sphere, are all in some

sense the hallmarks of a liberal vision of modernity (though this is less so in more republican versions of the Enlightenment project).[2] Moreover, and according to popular wisdom, if only those intractable and fundamentalist Jews, Christians, Muslims, Hindus or Sikhs could accept these principles which are only reasonable, and so accessible to all, we would have solved the problem of tolerance and the sooner the better. Of course here precisely is the rub; accepting these principles essentially means also accepting a certain liberal, post-Protestant vision of selfhood and society that is not shared across the globe and human civilizations. Only think for a moment of the Islamic idea of "tawid", of unity or oneness, to recognize how arrogant any claim is to the unproblematic assimilation of these conceptions world-wide.

More to the point, these different liberal attitudes, while seen uncritically to be of a tolerant nature, are in fact less than tolerant in that they disengage with difference rather than practice the "impossible" virtue. They are perhaps in fact, more than anything, a way to elide the whole problem of tolerance in modern society rather than realize it. Critically, they would not necessarily be effective in societies that did not share liberal individualist assumptions on self and society, and it is in fact far from certain that they will continue to work in those that do. For what is understood as tolerance in modern Western European and North Atlantic societies has much to do with the liberal synthesis as this has evolved in these societies (with all their differences) over the past two hundred years.

Foremost in their construction was, as just noted, the public/private distinction. If not really indifference, the liberal distinction between public and private realms, is among other things a distinction in realms and types of toleration—certain beliefs and/or practices are deemed private and as suchbeyond the realm of what even enter a calculus of tolerance. Here then, not quite indifference *simpliciter* more a principled indifference. For one has no *right* to intervene in private matters, or even to judge them. In this reading, all conflicting views are reduced to an almost aesthetic realm of different matters of taste (or as the current popular imagery has it of life-styles - as they say so tellingly in the USA "different strokes for different folks"). As is clear from the above, I would in fact query if this is tolerance at all. If liberalism is neutral towards different conceptions of the good can we then say it is tolerant of them? Principled indifference is not the same as tolerance.

Similarly, the politics of rights over good, and of individual autonomy over shared public conceptions of the good, often leads to tolerance not in principle, but simply as a temporary expedient, until such non-autonomy valuing sub-groups come to share the assumptions of

---

[2] *See* Jose Casanova, Public Religions in the Modern World (1994).

liberalism.[3] The much vaunted toleration of liberalism may then well be more complicated and problematic than we often take it to be, tending in fact to constantly be in the danger of slipping into either indifference or intolerance.

However, there is one critical basis of toleration within the liberal tradition—the basis of individual autonomy. Toleration as a practice flows from autonomy as a virtue or a good. This is fine, except that at this point the supposedly liberal indifference to idea of the good becomes untenable. As Bernard Williams has stated: "only a substantive view of goods such as autonomy [can] yield the value that is expressed by the practices of toleration."[4] Moreover, and more crucially, the positing of a good always involves us in that familiar situation of a "conflict of goods," which as we have just seen liberalism cannot really avoid, though this is one of its central premises.

A liberal foundation for tolerance seems then to be either;
a) not tolerance at all but indifference, or
b) to involve us in a contradiction—that between the practice of tolerance predicated on a politics of rights rather than the good, and the very principle of individual autonomy as a prime good upon which such toleration is to be based.[5] This principle, however, is contradictory for it involves a refusal to advance a politics of the good while at the same time resting on at least one very clearly defined principle of the good, that of individual autonomy. The very practice of toleration from this perspective thus contradicts the basis of the practice itself, or at the very least leads us into a discussion of conflicting goods that we had hoped to avoid. Moreover, within such a conflict of goods, a good other than that of individual autonomy may become accepted as of greater value as "trumping" autonomy (say the view that abortion is murder and the prevention of murder trumps individual choice, is of greater good).

While saving liberal individualist from its inherent contradictions is clearly an important task, I am unfortunately not the man for the job. Rather than pursue a course I cannot see to its end, I would prefer to reformulate the problem—to step back a bit from our own rather individualist readings of tolerance and look at the problem through somewhat different lenses, those of more traditional societies. It may be useful to recall here that in medieval cannon law, tolerance was practiced towards two groups of people—Jews and prostitutes—and I wish to emphasize the group aspect.[6] Both were groups who were indeed tolerated, and for whom tolerance was seen as a second best

---

[3] *See* SUSAN MENDUS, TOLERATION AND THE LIMITS OF LIBERALISM 108 (1989); *see also* JOHN HORTON, TOLERATION AS A VIRTUE.28-44 (David Heyd ed., 1996).

[4] WILLIAMS, *supra* note 1, at 25.

[5] *See* HORTON, *supra* note 3, at 28-44.

[6] *See* István Bejczy, *Tolerantia*: A Medieval Concept, 58 J. HIST. IDEAS 365-84 (1997).

solution. Better would be to do away with them, but the consequences would have been too detrimental to society. Ridding society of prostitutes was seen as an invitation to greater adultery, sodomy and other sins of the flesh; of course ridding society of Jews would have meant doing away with the one group whose recognition of Jesus as Christ in the second coming was a major element in the eschatological scenario. Hence, both groups had to be tolerated. Further, the very negative associations we have with the word toleration, whose cultural baggage includes some very horrible episodes in the historical relations of Jews and Christians.

The point I wish to stress here, however, is that tolerance is very much about groups and about group identities. Tolerance, as understood and as practiced, even as not practiced, was a matter of attitudes and behavior towards corporate groups and so towards individuals as members of those groups, rather than towards individuals in their unique individuality. Given the terms of membership and identity in pre-modern and in religiously organized societies, this of course not surprising. We should recall that "rights" were, in this world, not anything accorded to individuals, but to corporate groups. Such were the categories of medieval law and society and it is only sensible that such were the terms of tolerance in these societies. While there is nothing startling or original here, it should give us pause for thought, for what I want to claim is that tolerance—and intolerance for that matter—does inherently have to do with groups and with individuals as existing within groups, rather than with individuals as autonomous, self-regulating moral agents, endowed with individual rights, and acting as such on the public stage.

Thus, my point is not that pre-modern societies were *more* or *less* tolerant than modern ones, in any quantitative sense, but rather their form of social organization was one that made the whole problem of tolerance relevant. Modern societies have elided the whole problem of tolerance rather than solved it. Where and when this works, fine;where it doesn't, however, one cannot simply add "modernity" to the mix, like salt in a vegetable soup. Moreover, and a good deal more to the point, modern identities are themselves changing and the type of individual selves which were long seen as the necessary concomitant to the nation-state are also changing, as is the nation-state itself.[7] Sub-national and trans-national identities are growing apace andreligious, ethnic and ethno-religious identities are making new claims on individuals' sense of self and society. Given these developments, the quintessentially modern moves that obviated the problems of tolerance and intolerance no longer quite hold. For these reasons we must mine other sources and

---

[7] DANIEL LERNER, THE PASSING OF TRADITIONAL SOCIETIES: MODERNIZING THE MIDDLE EAST (1958).

perspective. Here, however, let us work out some of the analytic aspects of this issue not fully addressed above.

First, I think it is important to point out that tolerance is a very circumscribed virtue. It is not the solution to all evils—it is not a panacea. Nor is it without boundaries. Clearly some types of behavior are intolerable, though as we said, it is not absolutely clear how one would go about defining what is beyond that pale. Certain religious and philosophical categories come to mind—ideas of natural law or in Jewish context, the Noahide commandments, present some useful general orientation.[8] However, within these limits there is certainly great room of disagreement for disgust andrejection of much of what one considers as wrong, misguided, immoral, reprehensible—hence for the need to tolerate what one believes to be wrong and that which makes one uncomfortable.

Certainly one cannot be expected to tolerate a clearly defined threat to who one is, to one's identity. When that threat is directed at one from outside, let us say through the barrel of a rifle, one cannot be tolerant. There is no serious analytic problem there. But what if what is considered a "threat" comes from a different direction, from inside. Let me present the example of the West Roxbury Numismatic Society: having met for decades discussing, analyzing and trading coins, suddenly a few of our members begin to bring in stamps, refusing to even look at a coin, and proceeding to take up meeting space and time with matters philatelic. Must we tolerate them? Do they not equally present a threat to who we are,: the West Roxbury Numismatic Association? Surely we do not have to exterminate our budding stamp collectors, only politely tell them to leave and perhaps join the Philatelic Society that meets down the street. We may tolerate their existence in the greater Boston area, but not as part of our identity, of who we are.

The relatively simple point I am trying to make with this example is that groups have boundaries, and cannot exist without these boundaries. . One cannot make claims to any type of identity without that identity being defined, which in some sense involves it being bounded and circumscribed as well. To ask a group to tolerate what threatens that identity, is to ask the group to dismantle itself—to make itself cease to be. If anything is a model of intolerance it would be this eradication of existence. Tolerance then is a virtue that has everything to do with boundaries and margins. It does not have to do with all-out

---

[8] Suzanne Last Stone has used these and other Jewish concepts in her contributions to the development of an ongoing, contemporary Jewish political ethics. *See* Suzanne Last Stone, *The Jewish Tradition and Civil Society*, *in* ALTERNATIVE CONCEPTIONS OF CIVIL SOCIETY 151-71 (Simone Chambers & Will Kymlicka eds., 2002); Suzzane Last Stone, *Tolerance versus Pluralism in Judaism*, 2 J. HUM. RTS. (forthcoming Spring 2003) (Special edition: Essays on the Religious Roots of Tolerance, edited by Adam B. Seligman).

threats to who we are—whether those threats come from outside or from inside, whether they are physical or symbolic in nature. Rather, tolerance has to do with behaviors and/or beliefs that exist on "the margins" of the group's identity. Again we may think of Jews and prostitutes in medieval Canon law as presenting good examples of precisely this type of marginality (along with lepers, sometimes Muslims, beggars, strangers etc.). All existed on the borders or margins of society—not beyond and not fully within.[9]

If we follow this logic to its conclusion we reach a very interesting finding: the thicker the boundaries, the greater number of individuals, behaviors and attitudes will reside on that boundary; the thinner that boundary, the fewer. Hence, the thicker the boundary the more issues of tolerance and intolerance are raised, becoming relevant, and the greater chances one will come into contact with behaviors and beliefs that one finds objectionable (without them necessarily threatening one's identity, though perhaps causing one to make endless calculations as to the existence or non-existence of such a threat). And of course it is once again clear why tolerance was such an important theme in societies with strong group identities—these are societies with very thick boundaries, with very wide corporate identities and group definitions that necessitate such tolerance however often and tragically it may be defined by its empirical absence or failure.

My point here is that modern societies (defined let us say by *the Deceleration de droits d'lhomme et citoyen* and the American Constitution) do not so much make societies more tolerant, but rather do away with group boundaries. In a sense this has been the project of modern states, and in their liberal form even more than in other more romantic-national forms. Recall the classical enlightenment response to "the Jewish Question," given by Count Stanislav de Clermont-Tonnerre in 1789: "We must refuse everything to the Jews as a nation, and accord everything to the Jews as individuals."[10] This became perhaps the paradigm statement of attitudes toward the other—his and her constitution solely as individual entities rather than as members of corporate groups. Article I of the Declaration of the Rights of Man and of the Citizen (August 26, 1789) of the French National Assembly states: "All men are born and remain free and equal in rights: *social distinctions can not be found but on common utility.*"[fn] This is a total reconfiguration of the meaning of group boundaries along the lines of utility functions rather than constituted selves– no wonder social choice

---

[9] *See* DAVID NIRENBERG, COMMUNITIES OF VIOLENCE: PERSECUTION OF MINORITIES IN THE MIDDLE AGES (1996).

[10] On this move and its more contemporary implications, see Michael Shurkin, *Decolonialization and the Renewel of French Judaism: Reflections on the Contemporary French Jewish Scene*, 6 JEWISH SOC. STUD. 156, 158 (2000).

2002]   *DESKTOP PUBLISHING EXAMPLE*   109

theory is such an attractive model in the social sciences.

Within the public sphere, boundaries are, in these societies, parsed into razor thin edges;individuals interact not as members of groups, but as bearers of rights (citizen right, social rights, human rights and so on). In the public sphere, group identities have been replaced by individual identities, and the problem of tolerance of difference has been replaced by the legal recognition and entitlements of rights. This is what I mean when I say that modernity has elided the problem of tolerance, and obviated the necessity to be tolerant, rather than make people tolerant. It has replaced tolerance with rights.

Critically, this development has more than political dimensions. It is also the basis of social and economic life in most Western liberal societies, and as such a critical aspect of globalization. This is the difference between what Ernest Gellner termed multi-stranded and single-stranded relations. In the first, "a man buying something from a village neighbor in a tribal community is dealing not only with a seller, but also with a kinsman, collaborator, ally or rival, potential supplier of a bride for his son, fellow juryman, ritual participant, fellow defender of the village, fellow council member." [11] This situation is very different from the "single stranded" relations we enter into when purchasing a commodity, wherein our calculations, on the whole, are orientated around purchasing the best possible commodity for the lowest price.

This difference has huge implications for matters of tolerance as well. Let me illustrate with a brief example. My relations with my car mechanic are single stranded—he fixes the catalytic converter and I pay him a few hundred dollars. That is all there is to the relationship. When he has completed his job and I have paid him, the relationship is over, and there is nothing "left over." We need not be tolerant of one another, and our interaction before, during and after, is controlled solely by matters of legal rights—to property, equality of access to market resources and exchange and so on. The relationship I share with my acupuncturist, however, is somewhat different. She is a member of my synagogue, and I see her every Saturday. A number of times in the past I came to her home at very odd hours of the morning and night to help her husband fulfill religious obligations when his father died. She and her husband have been to our house for dinner, I give references to her son, a student of philosophy at Princeton University, and she gives my family a discount for her treatment—in some cases my wife gives her yoga lessons in lieu of cash payments. In short, our relationship is complex andmulti-stranded with broad boundaries. Suppose her son was not a wonderful, pleasant and bright young man, but rather a foul-mouthed, insensitive and boring lout. In such a circumstance I would

---

[11] ERNEST GELLNER, PLOUGH, SWORD AND BOOK: THE STRUCTURE OF HUMAN HISTORY 44 (1989).

110   *CARDOZO LAW REVIEW*   [Vol. 23:X

still have to tolerate his presence because my relationship to his family is made of "thick stuff," rather than a single stranded act of exchange guaranteed by legal rights.

Tolerance is all about the type of relations that exist on these thick boundary lines of identity—identity that must, by definition, be a group identity of sorts. However, much of the economic and political thrust of the modern world order is about replacing group identities with individual ones, replacing tolerance with rights, and replacing a relatively small number of multi-stranded relationships with an almost infinite number of single-stranded ones. In the process, tolerance goes from being a community-centered act to an individual, almost psychological attribute or personal characteristic.

Of course there is nothing wrong (practically or morally) with "solving" the problem of intolerance by removing the social conditions that make tolerance necessary. On the contrary, when it is possible it seems to work well. Nevertheless, my feeling is that the conditions that defined the "high-modernity" of the Western European and North Atlantic nation-state—which allowed this particular solution, or rather elision of the problem—are currently changing. Return to group based identities and to religious commitments in many parts of the world, the growth of trans-national identities predicated on religion, as well as ethnicity and nationhood not dependent on Statehood, are all calling into question the type of individual identities that stood at the core of the revolutionary idea of citizenship. The globalization of economic relations has not, however, led to a restructuring of collective ideology along the lines of mid eighteenth century Glasgow or Boston.

I think that when we look at the rising popularity of certain right-wing parties in Europe, at the anti-immigrant and anti-Moslem sentiment, and for that matter at anti-Semitic sentiment in Europe, we are very much looking at this phenomenon. Indeed, this is not at all solely a European phenomenon. The reaction to globalization is no less global than its source, and the strong resurgence of national, ethnic and mostly religious identities–often of a very particularistic and circumscribed nature, leaving little room for openness, trust,mutuality and tolerance to those beyond their boundaries—is a phenomenon to be understood in these terms.

When the citizens of Lodi in North Italy pour pig urine on a site designated for a mosque, when ethnic Tartars living in St. Petersburg understand Islam to be an integral part of their ethnic identity, when the mainstream of Israeli political discourse has come to include the option of a "transfer" of its Palestinian citizens (of the State these fifty-four years) as a legitimate option, when religion continues to provide the source of conflictual identities from the Sudan to the Gujarat State in India, and from Bosnia to Britain, then I think we need to seriously

rethink our understanding of the terms of trust identity and tolerance in contemporary societies.[12]   Even from the USA I can offer many examples of this trend. One of the most interesting is the growth of mega-Churches in the South and West that include in their precincts, banks, shops, health-spas, pre-K services for children and so on. All the accruements of secular, modern societywithout having to go out and interact with those who are different and other.   A new form of voluntary social ghettoization is thus developing, screening us from the need to live together with those who are different from us, and hence from the need to tolerate what we find objectionable.

To the extent that these developments are indeed challenging existing ideas of citizenship and tolerance within the confines of the nation state, we will have to reinvent a language of tolerance not predicated on liberal and modernist ideas of the self and of the interaction between selves. To do so, I believe we will need to have recourse to religious foundations for tolerance—a theme to which a number of papers in this conference are indeed devoted and from which we have much to learn.

---

[12] *See* La Republica, October 15, 2000 (discussing the incident in Lodi where Italian citizens desecrated a cite   reserved for Mosque); Vostochyi ekspress weekly from 17 May, 2002 (analyzing the Tartars' identification with Islam); Ha'aretz May 21, 2002 quoting former Prime Minister Barak (discussing the Israeli discourse regarding the transfer of Palestinians).