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TOLERATION, OFFENSE, AND LOGIC

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“What is tolerance,” Voltaire asked? Then, answering himself: “...it is the consequence of humanity. We are all formed of frailty and error; let us pardon reciprocally each other’s folly—that is the first law of nature.”

I would hope that toleration is possible and even likely, especially in our time. For ours is a time when differences are no longer merely among the sections of the United States, as they were in our early history, but are now international in scope and diversity; we are now engaged with other nations and groups and religions whose basic world views are startlingly different. Awareness of these cultural differences, as Samuel Huntington predicted, must be a discontent of globalization. Voices of the Age of Reason still inspire us. John Locke’s *Letter Concerning Toleration* brought an ancient question into the mainstream of modern political thought. John Mill’s *On Liberty* articulated a liberalism of thought and discourse, and, in more recent times, John Rawls’ Political Liberalism identified toleration as a distinctive feature of the liberal tradition. Yet, while Enlightenment voices may still inspire, they seem to have lost some of their former ability to guide, especially now, when we have become increasingly more aware of how different, even dangerous, other persons and other societies can be.

Challenged by a growing awareness of disagreement, we need a more substantive understanding of toleration. Knowing that an action, situation, etc. has originated with a free agent and that all free agents are sovereign over their minds and bodies does not satisfy, if those who are affected by, and enduring such free and sovereign actions still find them abhorrent. Freedom is a formal requirement only, one that says nothing about the substance of the objectionable action, situation, or belief. I take it to be uncontroversial that reasons for rejection are possible; the question then emerges of when reasons for rejection become more compelling than the reasons for acceptance and non-interference. Toleration rests on some reasonable way of distinguishing the tolerable from the intolerable, and I want the idea of toleration to be reasonable, if not always uncomplicated; its reality, undoubted. Unless there is some plausible way of distinguishing the tolerable from the intolerable, neither truly exists.

I am assuming here that actions may be distinguished along a continuum with three main loci: those that are tolerable and encouraged; those that are tolerable only; and those that are intolerable. It is the boundary between the first two and the third that are my interest, viz. where do we draw a line between the tolerable and the intolerable? In an effort to answer this question, I propose to trace in outline a deliberation process, or logic, for toleration that could conceivably be used to identify, to whatever degree possible, this line of demarcation. Such a line will rest on normative considerations, whether moral, religious, or even aesthetic, but reasonability will serve here in their stead. By ‘reasonability’ I mean a commitment to offering justification in as non-arbitrary a way as possible, and, given the finitude of human reasoning, maintaining an openness to revision. Reasons are twofold: the offended party must have reasons both for rejection and for acceptance/non-interference, i.e. toleration. When the reasons for rejection trump the reasons for acceptance, then the offended party finds the offense intolerable. Contrariwise, the offended party becomes tolerant when reasons for acceptance trump reasons for rejection. This distinction defines the two sections of my deliberation process. I use Joel Feinberg’s analysis of the concept of offense to move forward to criteria for reasonability.

Disagreements in a society are neither sought after nor encouraged; rather, they are unfortunate, in that the institutions, public policy, and laws of that society require a consensus among the individuals

within the society. Absent some consensus and resolution of important disagreements, cohesion is endangered, cohesion whose desirability needs little argument or explanation. John Stuart Mill notwithstanding, with his advice that we seek out those who disagree with us, and allowing that the well-intentioned in a society will take his advice and give the opposing views a dispassionate and inquiring audience, at the end of the day this objective and open-minded inquirer may be unconvinced by his opponent's view and continue to hold his own with even more conviction. Reasonable dialogue and accommodation are positive values, though their ability to change anyone's mind cannot be taken for granted. Disagreements are possible. The state of being a matter of disagreement is a broad range of opinion and it may include phenomena of which I may be ignorant; or, it may be such that I am indifferent to them. I may be willing, for example, to dialogue with a producer of child pornography films but, in the end, be even more convinced that pornographic films made with child actors are intolerable.

The question of whether or not toleration is called for is a basic one. If I knew nothing about such films, the question of my toleration of them is never raised. A and B may be in disagreement and yet not know it. Here the question of toleration is moot, for the notion of toleration can scarcely be applied to A and B who assume agreement. Knowledge is a necessary condition then. This does not imply that A may not think differently in the future. His possible or future knowledge does not enter into his deliberations here and now; his present knowledge and values are what matter. Similarly, with indifference. For instance, B watches too much television, in A's judgment, but A is indifferent to B's TV watching. If I knew of pornographic films but was indifferent to them, the question of toleration is not raised. Indifference should not pose as toleration, if only because toleration should be a guiding principle in civil society, and indifference is not the achievement that toleration is. Toleration is a deliberate, considered, and well-intentioned stand for which indifference is unqualified. So, indifference must not be allowed to pose as toleration. At the outset, then, we can take it for granted that toleration assumes knowledge of some disagreeable state of affairs (S) or speech act (S') and, further, that toleration is not the same as indifference. As a citizen I am not indifferent to these pornographic films. For what may be a number of reasons they matter to me, because, in some way they run counter to my interests.

If A does know of the disagreeable state of affairs (S) or speech act (S'), and if, in addition, A is not indifferent to S and S', then we can say that S matters. Furthermore, for decisions about tolerance (i.e. whether to tolerate or not) to be relevant, S or S' must matter in a negative way. There are many reasons that may explain why S matters, too many to predict or list, emerging as these do from one's perceptions of his needs, his values, his sensitivities, both for himself and his society. If, then, S or S' is a matter of disagreement that runs counter to A's interests, the question of response or remedy presents itself. How far may A go in protecting his interests?

We can eliminate from our purview those areas of socio-political life in which the state has a compelling interest, areas where the state, at least in our political tradition, is considered to be justified in limiting the liberty of its citizens. Murder is a good example. Murder is not to A's interest. Even if there may be little chance that A will be a murder victim, he is still concerned about the levels of safety and well-being in his society and is further concerned about how society might evolve over time if murderers were to go unpunished. For these reasons A can not tolerate murders or murderers. A's opposition must be restrained here; he can take no action against the murderers, for these are the responsibility of the state. The state's compelling interest must protect citizens from harm caused by other citizens. Mill's Harm Principle is at work; and, even while A is intolerant of murderers, he takes no action to apprehend or punish them.

There may be many reasons for state coercion and compulsion, such as those that one finds in Joel Feinberg's list of *liberty-limiting principles*. (Feinberg 1985: *passim*). Among these the Harm Principle is the least controversial. Taking a cue from his listing, we find the offense principle next in order of controversy. Its very status as arguable, then, makes it an appropriate locus for considering

toleration. Examples of offense are easy to find, e.g. ethnic, religious, and gender slurs. Freedom of speech is often the opposing principle to offense, and controversies still abound over their relative weight. But the matter is further complicated by what may be called psychological considerations. The more thin-skinned individual will take offense more often and more deeply than the thick-skinned.

Mere disagreement between **A** and **B** is not strong enough a relation with which to examine toleration. If **A** is a Platonist, and **B**, an empiricist, they will disagree, but their disagreement would never provoke the intense passions and even violence against which Locke warned us. Disagreement can be dispassionate and civil. For a mode of disagreement that could be thus provocative, offense works better. Furthermore, if the messiness of offended mental states were to be defined as “offense-taken” rather than as “offense-given” and “offense intended”, decisions about toleration are complicated accordingly. Offense, therefore, can serve us well in tracing out a deliberation process for toleration. It is this question of offense to which Joel Feinberg, in his work on the moral limits of law, attaches great importance.

We find his analysis of the concept of offense early in his 1985 work *Offense To Others*. In a most general sense, offense is “...a miscellany of disliked mental states.” (Feinberg 1985; 1). Two broad categories are distinguished. One is labeled *offensive nuisance merely*: being offended, as opposed to being harmed, is being made to experience an unpleasant mental state while resenting both the unpleasantness itself and the agent responsible for the unpleasantness. The second is *profound offense*. The former is relatively trivial; the latter, serious and shattering. The former is directly perceived and is wrong only because it offends. The latter may be only a matter of “bare knowledge” and offends because it is wrong. For the purposes of delineating toleration, both are helpful. The difference between them is relevant at only one point, viz. on the matter of the substance of the offense, as we see below.

When **A** is offended by **B**, **A** suffers some disliked mental state, e.g. disgust, shame, shock, embarrassment, annoyance, hurt, anxiety, boredom, anger, fear, humiliation. In addition **A** attributes such mental states to wrongful conduct by **B** and resents **B** for being the source of these mental states.

An objective observer has only **A**'s testimony about **A**'s mental states in this contentious instance of the classic problem of other minds. Neither **B** nor the objective observer can say to **A**, “No, you are not experiencing a mental state of humiliation, shame, etc. but are only throwing these words around to annoy the rest of us.” We have to say, then, that **A** is offended and not merely saying that he is. If **A** happens to be unusually sensitive or especially susceptible to offense, more so than most people, it is possible that the seriousness of the offense will be downgraded by **B** and the objective observer, an aspect of the issue that affects whether or not **B** even expects to be tolerated by **A**, as we see below.

The question of what toleration by **A** would look like is varied, in that the definition of toleration itself is varied. Some will understand toleration very broadly, e.g. accepting people and permitting their practices even when we strongly disapprove of them (Scanlon 2003:187). This most formalistic understanding allows no discrimination of the content or substance of the situation or speech act. But people do in fact find many situations and speech acts intolerable, and so a theory of toleration that can not account for judgment, discrimination and assessment of the content is unhelpful. When Scanlon himself calls tolerance “a puzzling attitude,” we can see why it has to be so for him. We are not passive and accepting of all states of affairs and all speech acts. **A** could negate, prohibit, interfere with, put a stop to **B**'s offense; **A** refuses to do so or refrains from doing so. (Cf. Fiala 2005:13; Horton 1996 in Heyd 1996:28; Tuckness 2002:288; Cohen 2004:68)

What we have thus far is this:

B is responsible for a state of affairs (**S**) or a speech act. (**S'**)

S or **S'** offends **A**.

A resents **S** or **S'** as well as **B** as the responsible agent of **S** or **S'**.

A has the power to interfere (negate, prohibit) **S** or **S'**.

A does not exert that power.
Therefore A may be described as 'tolerant'.

Each of these elements raises interesting questions. A may be abnormally sensitive, and his estimation of what is offensive may be unrealistic and, so, unhelpful in clarifying a theory of toleration. Admittedly no one theory can be sufficiently nuanced to cover all cases. A theory of toleration, though, as an important adjustment in human society that has to serve the mainstream may have to ignore those who are abnormally sensitive. The question of how to identify "abnormally sensitive" has to be answered elsewhere by others. Let it suffice for now to say, loosely, "degrees of sensitivity that are not found in the majority of people."

In his distressed mental state, A looks for the responsible source of his offense; if the source is B, then B is the object of A's resentment. If no one is responsible, then A has no one to blame. B's desires, intentions, or reasons would have to be cited as adequate causes of his actions. An overwhelmingly disagreeable stench in nature may have no responsible agent. A will not resent and blame the skittish skunk or the deer corpse covered with maggots. This decision about responsibility, according to this formula, is A's to make, and the open-ended character of responsibility increases his task. If B is a group of individuals, A has a more complicated task of assigning responsibility. Traditional philosophizing on the notion of responsibility, ever since the days of the Nicomachean Ethics, has articulated responsibility in individualistic terms rather than collective. Decisions by corporations, by governmental bodies, and by any institution are instances in which decisions about how to "divide up" responsibility are appropriate. Despite the open-ended quality of the notion of responsibility, we can still say that toleration (T) entails an acceptance of the very notion of responsibility (R): toleration, only if responsibility; no responsibility; therefore, no toleration. T only if R; Not R; therefore, not T. Even if B placed the skittish skunk at A's front door, if A does not accept the notion of responsibility, A's ability to blame B is compromised. *Not-T* means that the very question of toleration does not even arise, if the source of the offense is not autonomous and free. That the source of offense be autonomous and free effectively restricts the whole question to human, social interchange.

When we look at the power to interfere we recognize it as a necessary condition of toleration: A is tolerant *only if* A has a power to interfere with the S or S' originating with B. "Power" has so many meanings that, at best, it may have to be described in broad strokes, power being as varied as individuals are. Only A himself knows his own capacities. A may directly protest the present outrage to B or interfere so as to prevent subsequent offenses. A may embarrass B, threaten or bribe or attack him; any response that serves to prevent B from repeating the offense may be on A's agenda. Paradoxically A refrains from using his power. Only he knows whether or not he has the power to interfere, obstruct, negate, etc., but it is the non-use of such power that has been included as a condition of toleration. But what if A refrains from interfering out of fear, e.g. fear of reprisal, of violence, or fear that B may do something worse next time? Fear hardly qualifies as tolerant restraint but could be mistaken for it. Only A, then, would know if he were tolerant or fearful. As restraint or control (C), i.e. the non-use of power, is a necessary condition of toleration (T, only if C), we cannot argue from its presence, i.e. treat control as a sufficient condition of toleration. Only the absence of C (e.g. A responds to B's ethnic slur by punching him.) could function as a premise, because we may only deny necessary conditions; we may not affirm them. But denying the existence of C would be pointless, since it would establish the absence of toleration: *T, only if C; Not C; therefore, Not T*. The notion of power, then, is not helpful to deliberating the question of toleration; all that we can say is that A's power is a necessary condition.

The interpretation of A's control brings us to B's response. Is it necessary that B know that he is being tolerated? B may not even know that he has offended A. If B does know that A is tolerating him, and if toleration is mere toleration, B may be of two minds. Being tolerated is good, because B

need not fear any anger, violence, reprisals, etc. from A. Being tolerated is not good, because B knows that his actions or speech are not respected; he now suspects that, were he to repeat such disagreeable acts, A's toleration may give out next time. A's reasons are not unassailable, because his objections to S may be wrong or inappropriate. B probably understands this best. On balance, being tolerated is better than not being tolerated, but B does not want either. The homosexual community, for instance, is not content with being tolerated but will claim that the heterosexual majority is wrong for objecting in the first place. There are conceivably many actions, situations, etc. where taking offense may well be wrong, and so toleration is not appropriate. Reasonability would demand of A that he, if required or expected to do so, open his reasons for rejecting S to scrutiny. Toleration is an in-between condition that puts B on warning: knowing that one is being tolerated has that much to recommend it. What if A's reserve or restraint is such that he contains his strong feelings and objections so well that B never knows either that he has offended A or that A is tolerating him only? Do A's strong feelings and objections qualify as action, or, must A's mental states necessarily find external expression so that B may know how things stand? Not knowing that one is being tolerated, so seamlessly has A restrained himself, gives B the bliss of ignorance; still it would be an ignorance that achieves less in a comprehensive sense of good social order. Knowledge that one is being tolerated need not be necessary but it seems better on balance than lack of knowledge; chances are good that B would want more than toleration.

Our skittish skunk and his stench are surely offensive. The sight of human bones in Nazi gas ovens is offensive. Photos of corpses in Darfur are offensive. The whole spectrum of possible offenses extends at one end from mere nuisances whose toleration demands little of us to the horrific which can scandalize, enrage, or disable. Feinberg's identification of *profound offense* requires us to raise the question of the substance of what is a candidate for toleration, or, if it is possible to make a distinction between the tolerable and the intolerable. Is there a point at which A is justified in *not* tolerating S or S'?

The traditional enlightenment or liberal criteria for the tolerable are formalistic. (Locke 1975:42-43; Rawls 1993: 72-81) Locke's primary rationale for toleration is the autonomy of the agent B. A, if he is to be tolerant on this basis, judges that the offending S or S' is foolish, false, or evil and yet allows it to continue. He must suspend consideration of the substantive issue, i.e. the content of what is objectionable, and look only to its origin in a free agent. In this traditional understanding, the origin of the offense in a rational agent is more important than the offending S or S'. To be considered tolerant, then, on Lockean terms, A must ignore the substance or content of S or S' and be satisfied merely with the knowledge, or even the assumption only, that B performed S or articulated S' autonomously. Similarly, John Stuart Mill writing on liberty: *Over himself, over his own body and mind, the individual is sovereign*. Such sovereignty has three loci: the inward domain of consciousness; liberty of tastes and pursuits; and liberty of combination among individuals. Neither Locke's nor Mill's formulation is completely satisfactory for several reasons. We may be indulgent enough to overlook Locke's own intolerance toward atheists and Catholics, in that we may see that he believes them to be, even if wrongly, threats to good social order in England. His great and comprehensive goal is such order: toleration is called for by the need to establish good social order. But what is good order, and who shall decide the criteria? Hardly a libertarian, Locke was a supporter of the *status quo* inaugurated by the Glorious Revolution under William and Mary. Other times, places, nations need a basis for toleration that is not so specific and dated. Each nation or group of nations in our day needs to form other definitions of 'good order'. 'Good order' is a placeholder term, a formalism that will always require contextual definition. If 'good order' is contextually understood, then too is toleration a matter of shifting, even subtle contexts.

This criticism again formalism applies also to Mill, i.e. the contention that toleration of S or S' is appropriate when S or S' originate in a free agent. If, for example, S' has been freely expressed by B, then A has the obligation to tolerate S'. This simply cannot stand. Both Locke and Mill have

identified freedom as a sufficient condition and have been thus understood. This free expression is, rather, a necessary condition. (A tolerates S', only if S' has been freely expressed by B.) Making free expression a *carte blanche* for toleration is the error of treating what is a necessary condition as if it were a sufficient condition. Freely-made decisions by B do not inevitably invite toleration by A, for there is much that individuals and societies do not tolerate. If S' were freely expressed, and the usual reading of Locke and Mill is correct, then we would have to tolerate any and every freely-expressed speech act. In practice, we do not do this. Lying in court testimony is not tolerated; or false swearing, or lies, or deception; or the infamous N word, so offensive that people are loathe even to speak it. Locke did not respect the free expression of atheists and Catholics, a position that implies that good social order was a higher priority for him than free speech. Mill too gives a double message. Having proclaimed the sovereignty of every individual, he issues a disclaimer: sovereignty does not apply to the immature, or those who require protection; or to "...those backward states of society" that need the benefits of rule by the British Empire. "Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement..." (Mill, accessed 6-10-08) In Mill, Locke's sense of good order has been translated into colonialism and mercantilism; toleration gives way before "the white man's burden."

The formalistic criteria for toleration, then, are of some help. We learn that the freedom of the agent is a necessary but not a sufficient reason to tolerate the agent's offense and also come to realize that "good order" in society must have a contextual definition. With Feinberg's concept of *profound offense* we move forward to a question of substantive criteria for toleration.

The wrongness that identifies a profound offense also identifies the realm of the intolerable. For example, consider the photo of the starving child in Sudan being followed closely by a vulture. It is reasonable and defensible for A to find this scene and the deadly plight of the child "serious and shattering," to use Feinberg's words. There is an expansive character to the offense, in that it has the character to offend a majority of people; dismissing it as cultural diversity would be, I believe, another offense. The scene need not even be witnessed: just reading or hearing about it can evoke the same response. In short, A is justified in being offended; it is reasonable to be offended by the scene and by all that it implies about the whole society. B, in this case, the regime's leaders and power brokers, may or may not be caring whether A finds them intolerable. It is A's judgment to make. If he had the power to intervene, would he do so? Criteria in A's deliberation process would be such as these, as inspired by Feinberg (1985: 58-59)

- B's actions were freely done. They should be, *per* Enlightenment tradition.
- His actions have social value. Utilitarian thinking helps here: for the sake of a good that is greater than my feelings of offense, perhaps I should mute or transmute such feelings.
- There were no alternative means to achieving B's good goals. We may have to live with unhappy feelings for the sake of good goals.
- B's motives were not malicious. Kantian thinking helps here: B had a good will, or, I am at least willing to give him the benefit of the doubt.

A alone, the offended party, makes the determination on each of these criteria and so on how, here and now, to deal with the profound offense that B has perpetrated on him.

If the deliberation in this paper is appropriate, the demarcation line between the tolerable and the intolerable lies at the point of profound offense. Up to that point the offended party may, and probably should, be willing to judge the lesser offenses as reasonable conduct and thus tolerable. The situation, action, or belief of B will be either a profound offense and intolerable, or it will be reasonable and tolerable. This distinction opens the option that judgments about what is intolerable be

made in a manner that encourages reasonability and scrutiny. The situation where offense is taken though offense was not intended is minimized; for instance, raw comedy and crude speech may be tolerable. People do actually hold some situations and speech acts to be intolerable, and a definition of toleration must account for this reality. This analysis allows individuals and groups to give a reasonable account for their lack of toleration. Partiality to one's own principles is allowable. What good comes, after all, as Bernard Williams wrote, of destabilizing an individual's attachments and commitments? (Williams 1981: 18-19). Here too attention is paid to varying social contexts and their shaping and coloration of actions, because judgments about reasonability are influenced by cultural identity. Here we are wary of a Rawlsian-type claim that *comprehensive doctrines*, whether religious, moral, or philosophical, must be removed from the public forum.

The next step in our deliberation process will have to face the question of whether or not to interfere: if S is intolerable, and A is justified in being profoundly offended, what action is appropriate? Or, more basically, what constitutes action? That is work for another time, and so our deliberation process is incomplete until *action* can clarify *interference*. Voltaire was almost right. Frailty and error in human experience are clear enough. Whether pardon and toleration are synonymous is questionable. Whether this purported "law of nature" may be challenged remains a good question.

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