

The Scope of Tolerance and Its Moral Reasoning

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Abstract

This essay aims to consider the scope of tolerance and its moral reasoning. I first discuss the reluctance of prominent philosophers to prescribe boundaries to liberty and tolerance. I then focus attention on Rawls' discussion on tolerance, which I find quite disappointing, yet argue that his line of reasoning on the question of tolerating the intolerant contributed to the very fashionable consequentialist approach. After criticizing the consequentialist reasoning I introduce an alternative approach: the principled reasoning. I explain that much of the liberal reasoning is inspired by the

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Introduction

Tolerance is not to be equated with indifference. Tolerance is composed of three main components: (1) a strong disapproving attitude toward a certain conduct, action or speech; (2) power or authority to curtail the disturbing conduct, and (3) moral overriding principles which sway the doer not to exert his or her power or authority to curtail the said conduct. From this formulation it is clear that tolerance cannot be considered as indifference, for the doer *does* have strong reservations regarding the conduct. He or she cares greatly about the issue but nevertheless applies self-restraint. Tolerance could not also be equated with the concept of neutrality because in contemporary liberal thinking neutrality is perceived as a specific requirement of justice and, in this respect, its meaning is akin to that of impartiality. As stated, tolerance, on the other hand, assumes that the agents are very partial regarding the phenomenon they consider.

This essay aims to consider the scope of tolerance and its moral reasoning. I first discuss the reluctance of prominent philosophers to prescribe boundaries to liberty and tolerance. I then focus attention on Rawls' discussion on tolerance, which I find quite disappointing, yet argue that his line of reasoning on the question of tolerating the intolerant contributed to the very fashionable consequentialist approach. After criticizing the consequentialist reasoning I introduce an alternative approach: the principled

reasoning. I explain that much of the liberal reasoning is inspired by the fear of sliding down the slippery slope, and finally turn to discuss the moral grounds of tolerance.

Prescribing Boundaries?

Liberal philosophers are hesitant when addressing the question of the proper boundaries of tolerance and liberty. A perusal of the writings of John Milton,² John Stuart Mill,³ John Dewey⁴ and John Rawls⁵ indicates that tolerance and freedom are regarded as values, virtues, as the right lofty ideals for developed and humane societies. These and other philosophers wish to discuss principles, not the exceptions to them. This is not to say that they do not acknowledge the need to place limits on tolerance and freedom; but usually their discussion is devoted to the placement of principles and these are, in the context of democracy, tolerance and freedom. Relatively little attention is paid to the clarification of the exceptions to the principles and to the outlining of

². John Milton, *Areopagitica: A Speech for the Liberty of Unlicensed Printing* (Cambridge: Deighton, Bell & Co., 1973). Milton Writes (p. 35): "And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?."

³. J.S. Mill, *Utilitarianism, Liberty, and Representative Government* (London: J.M. Dent & Sons, 1948), Everyman's Edition, and "Law of Libel and Liberty of the Press," in Geraint L. Williams (ed.), *John Stuart Mill on Politics and Society* (Glasgow: Fontana, 1976), 143-169.

⁴. John Dewey, *Freedom and Culture* (New York: G. P. Putnam's Sons, 1939).

⁵. John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971).

boundaries. Several explanations can be suggested to explain this tendency, some are time bound or specific to a historical-cultural context; others are more general in nature, touching upon the roots of liberal outlook. Among all philosophers, John Stuart Mill is most associated with the themes of tolerance and liberty. *On Liberty*, published in 1859, is probably quoted more than any other writing in praise of freedom and tolerance. A careful examination of the book shows that it deals with the boundaries to these principles in a rather hasty manner, two or three times throughout the book, when one of the limitations is mentioned only in a footnote. The most well known limitation relates to incitement statements and is illustrated by a short discussion about an excited mob gathering outside the corn dealer's home:

... even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard.⁶

In the footnote Mill writes that it is not the concern of *On Liberty* to discuss the question of whether a doctrine that allows the murder of a tyrant is moral. However he holds that "the instigation to it, in a specific case, may

⁶ John Stuart Mill, *Utilitarianism, Liberty, and Representative Government*, p. 114.

be a proper subject of punishment, but only if an overt act has followed, and at least a probable connection can be established between the act and the instigation.”⁷

Thus, we do not find in Mill’s writing a systematic discussion of the boundaries to free expression. Instead, Mill provides *ad hoc* proposals as solutions to special cases. Mill lived in an era in which it was customary to write in a decisive style. Writers expressed their opinions in a self-confident manner without the hair splitting and meticulousness engaged in today. The thinking was that for the ideas to be understood correctly they must be presented in an acute and clear language. More specifically in regard to Mill, he was an elitist who did not much trust the masses. He doubted their ability to understand complex messages and asked that the people understand the general principles. To this end, it was first and foremost necessary to generate the principles. Once these are absorbed and understood it will be possible to discuss the exceptions to the principles. This is why there is an emphasis in his writings on the principles of tolerance and freedom and the exceptions to them appear so seldom.

In his *Autobiography*, Mill described *On Liberty* as a philosophical essay containing *one* truth.⁸ In the Introduction to *On Liberty* Mill describes that truth as being embodied in *one* single principle. The masses (or rather, even

7. John Stuart Mill, *Utilitarianism, Liberty, and Representative Government*, p. 78. For further discussion, see R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL: University Press of Florida, 1994), chapter 7.

8. J. S. Mill, *Autobiography* (Oxford: Oxford University Press, 1971), at 150.

the masses) could understand one single principle. Notice the language he adopts:

The object if this Essay is to assert *one very simple principle*, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection...⁹

Indeed, one who reads Mill's books cannot avoid the feeling that the number "one" is Mill's favorite. This language that is intended to emphasize one principle repeats itself in an early article in which Mill seeks to anchor freedom of expression. In the article "Law of Libel and Liberty of the Press" he writes:

There is *one case*, and *only one*, in which there might appear to be some doubt of the propriety of permitting the truth to be told without reserve. This is when the truth, without being of any advantage to the public, is calculated to give annoyance to private individuals.¹⁰

⁹. John Stuart Mill, *Utilitarianism, Liberty, and Representative Government*, pp. 72-73 (emphasis mine, RCA.).

¹⁰. J. S. Mill, "Law of Libel and Liberty of the Press," in Geraint L. Williams (ed.), *John Stuart Mill on Politics and Society*, 160-161 (emphasis mine, RCA.).

It does not matter that Mill actually thought that there was more than one principle for restricting the search for truth, as I show elsewhere.¹¹ What was important is to emphasize that restrictions are absolutely exceptional. In most cases people should adhere to the Free Speech Principle, in service of truth.

Jeremy Bentham and Mill's father, James Mill, who molded John Stuart's thinking to a great extent, also adopted a similar language that emphasized a single principle. They suggested an understanding of governments' actions by focusing on one simple principle: people will always act in accordance with their interests and, of all interests, the utilitarian interest rules supreme. People wish to increase gains, to enrich happiness and to decrease pain.¹²

Rawls on Tolerance

In the 20th century it was John Rawls who influenced liberal philosophy more than any other philosopher. His book, *A Theory of Justice*, is considered by many as one of the few books that will earn a prominent place in the philosophical literature and be remembered along with the writings of John

¹¹. R. Cohen-Almagor, "Why Tolerate? Reflections on the Millian Truth Principle," *Philosophia*, Vol. 25, Nos. 1-4 (1997): 131-152.

¹². For further discussion, see Charles W. Everett, *Jeremy Bentham* (London: Weidenfeld & Nicolson, 1966); H.L.A. Hart, *Essays on Bentham* (Oxford: Clarendon Press, 1982); John Dinwiddy, *Bentham* (Oxford: Oxford University Press, 1989); R. Cohen-Almagor, "Ends and Means in J. S. Mill's On Liberty," *The Anglo-American L. Rev.*, Vol. 26, No. 2 (1997): 141-174.

Locke, Immanuel Kant and John Stuart Mill. John Rawls dedicated only six pages to the discussion on boundaries to tolerance and liberty, which do not do justice to this intricate topic.¹³ In those pages Rawls forsakes the detailed principled conception that guides the discussion on the foundations of a just society. Rawls pursues a line of argument that avoids addressing why must we act with tolerance toward those that are intolerant as long as they do not pose a risk to our existence?¹⁴

Rawls's reasoning goes like this: he explains that his concept of justice is independent from and prior to the concept of goodness in that its principles limit the conceptions of the good that are permissible. His ideal polity would not be congenial toward those who believe that their personal conception of the good involves forcing others to abide by it. It would exclude some beliefs, such as those that entail coercion of others. The justification for excluding controversial beliefs lies in the social role of justice, which is to enable individuals to make mutually acceptable to one another their shared institutions and basic arrangements. This justification is accompanied by an agreement on ways of reasoning and rules for weighing evidence that govern the applications of the claims of justice. Thus, for instance, Rawls argues that liberty of conscience is limited by the common interest in public order and security, and that this limitation itself is derivable from the contract point of

¹³. John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), at 216-221.

¹⁴. See also Arthur Fish, "Hate Promotion and Freedom of Expression," *Canadian Journal of Law and Jurisprudence*, Vol. 2, No. 2 (1989): 111-137, esp. at 136-137.

view.¹⁵ Hence, Rawls does not exclude religious groups with strong beliefs who may demand strict conformity and allegiance from their members, but he could not endorse the formation of a theocratic state, for some people lack such intensity of religious belief. The limitation of liberty is justified only when it is necessary for liberty itself, to prevent an invasion of freedom that would be still worse.¹⁶ No particular interpretation of religious truth can be acknowledged as binding upon citizens generally, nor can it be agreed that there should be a single authority with the right to settle questions of theological doctrine.¹⁷

Rawls emphasizes: “Justice does not require that men must stand idly by while others destroy the basis of their existence”.¹⁸ Since we should not forgo the right of self-protection, the question in Rawls’ view is whether the tolerant have a right to curb the intolerant when they are of “no immediate danger to the equal liberties of others”.¹⁹

Rawls elucidates the question by providing an example, arguing that if an intolerant sect appears (Rawls does not say how) in a well-ordered society (i.e., a society that accepts his two principles of justice), the others should keep in mind the inherent stability of their institutions. The liberties of the intolerant may persuade them to a belief in freedom. Rawls explains that this

¹⁵ . John Rawls, *A Theory of Justice*, at 212.

¹⁶ . *Ibid.*, at 215.

¹⁷ . *Ibid.*, at 217.

¹⁸ . *Ibid.*, at 218.

¹⁹ . *Ibid.*

persuasion works on the psychological principle that those whose liberties are protected by, and who benefit from, a just constitution will, other things being equal, acquire an allegiance to it over a period of time. He maintains, "So even if an intolerant sect should arise, provided that it is not so strong initially that it can impose its will straightaway, or does not grow so rapidly that the psychological principle has no time to take hold, it will tend to lose its intolerance and accept liberty of conscience".²⁰

Rawls's assumption is that it is for society's benefit to allow broad scope for tolerance and encounter such a phenomenon because it would strengthen the beliefs of its members in the face of the threat. But, Rawls warns, we should be sure that the force of the threat is not too great. Hence, as previously stated, tolerance should take place as long as it is safe for it to win over the threat, and not at all events. If the threat seems serious, then justification for intolerance might be in order.

Rawls concludes that the freedom of the intolerant should be restricted only when the tolerant sincerely and with reason believe that their security and that of the institutions of liberty are in danger. Knowing (how do we know?) the inherent stability of a just constitution, members of a well-ordered society have the confidence to limit the freedom of the intolerant only in the special cases (how do we define "special cases"? What constitutes a "special" case or makes a case "special"?) when it is necessary for preserving equal liberty itself.²¹

²⁰ . *Ibid.*, at 219.

²¹ . *Ibid.*, at 220.

There are many difficulties with this line of argument, which is quite striking bearing in mind the detailed, painstaking reasoning that is so powerfully espoused in the rest of the book. The argument evinced here is that Rawls simply misses the point. Instead of discussing the *ethical* question of the constraints of tolerance, he largely shifts the discussion to the practical consideration of the magnitude of the threat. Rawls pursues a line of reasoning that avoids the philosophical issue, which is the essence of the question of what we may consider as constraints on tolerance and liberty. He does say that we should adhere to tolerance in order to preserve equal liberty, but he does not explain from an ethical perspective why we should withhold tolerance (unless one finds it convincing that we should also withhold tolerance in order to preserve equal liberty). Rawls prefers to concentrate on considerations of circumstances and the extent of the threat. From a philosopher of the stature of Rawls I would expect a more sturdy exposition than saying that we should adhere to tolerance as long as it is likely to win over the threat.²²

Now, the Rawlsian theory is applicable to well-ordered societies, i.e., to just liberal democracies. What about unripe democracies that are not so well

²². In his comments on this piece, Geoffrey Marshall writes that Rawls' reasoning seems odd because we do not in general think that we should leave free or tolerate harmful acts until they get to the rather drastic point of threatening the fabric of equal liberties. Marshall maintains: "We prohibit lots of things and limit lots of freedoms just because they cause damage, even if trivial, and nowhere serious enough to be a threat to any system of rules or liberty."

ordered? Well, here the confusion grows. Rawls does not say how those societies should deal with intolerant challenges. We may assume that he would not expect liberal persuasion to work on the "psychological principle", simply because this principle is yet to be crystallized. And obviously, to wait till the tolerant sufficiently believe that their security might be in danger might be an imprudent policy, leaving the tolerant with little or no democracy. The Rawlsian conceptualization is so vague, so general, that we are left with limited tools for thinking when coming to prescribe the boundaries of tolerance.

Beyond Rawls

Rawls's theory has inspired liberal thinking. Arguably, his line of reasoning on the question of tolerating the intolerant contributed to the very fashionable consequentialist approach. As Jerry Cohen suggests in his comments on this piece, nothing follows from any of Rawls' principles of justice except in the light of factual claims about consequences of policies. Consequential reasoning is popular among justices and philosophers, especially in the United States. What is striking about this approach is that consequentialists are willing to endure the costs of offensive speech *now* because of speculative fears of the consequences of restriction. Hence, American liberals justify the Skokie decision of the Illinois Supreme Court which permitted the Nazis to march in the Jewish neighborhood,²³ saying that it helped the cause of

²³. *Village of Skokie v. The National Socialist Party of America* 373 N.E. 2d 21 (1978).

fighting racism in the United States and increased the awareness of the general public regarding the holocaust, yet at the same time they show little or no consideration of the actual harm that might have been inflicted on the holocaust survivors of Skokie if the Nazis had taken the option granted them to exercise (or rather to abuse) their First Amendment right and march through this Jewish suburb of Chicago. Liberals warn that if we restrict speech, this might lead to an increasing tendency towards law and order legislation (Anthony Skillen)²⁴; to the creation of undergrounds (Norman Dorsen)²⁵; abuse of power on part of the government (Thomas Scanlon,²⁶ Frederick Schauer)²⁷; or to a less tolerant society (Lee Bollinger).²⁸ Tolerance is needed to advance ourselves, to develop reasoned discussion and arguments, and to progress society.

Furthermore, not only is very little attention given by some of these philosophers (Skillen, Dorsen) to the actual harm that is inflicted upon people by the offensive speech, but philosophers who do acknowledge the harm that might result from the speech in question do not evince great concern to

²⁴.Anthony Skillen, "Freedom of Speech", in Keith Graham (ed.), *Contemporary Political Philosophy* (Cambridge: Cambridge University Press, 1982): 139-159.

²⁵.Norman Dorsen, "Is There A Right to Stop Offensive Speech? The Case of the Nazis at Skokie", in Larry Gostin (ed.), *Civil Liberties in Conflict* (London: Routledge, 1988): 122-135.

²⁶. T. M. Scanlon, "Freedom of Expression and Categories of Expression", *University of Pittsburgh Law Review*, Vol. 40, No. 3 (1979): 519-550.

²⁷. Frederick Schauer, *Free Speech: A Philosophical Enquiry* (New York: Cambridge University Press, 1982).

²⁸ . Lee C. Bollinger, *The Tolerant Society* (Oxford: Clarendon Press, 1986).

explain the circumstances and conditions that constitute exceptions to free speech. Like Rawls's, their terminology is obscure and the discussion disappointing. For instance, Scanlon in "A Theory of Freedom of Expression" does acknowledge the harmful effects of certain forms of speech and devotes the last two pages of his essay to the "near catastrophe" exception to the Free Speech Principle. However, Scanlon fails to explain adequately what exactly he means by this.²⁹

In 1979 Scanlon wrote a second article, which supplements and accommodates the first essay of 1972. Here Scanlon speaks of a "good environment" for expression, explaining that the central interest (especially of the audience) is in having a good environment for the formation of one's beliefs and desires.³⁰ Yet Scanlon does not address the question of how we should behave when society is saturated with constant threats and offensive language that create a poor environment for the democratic forces to work - if we resort to Rawlsian terms - on the psyche of people and generate tolerant behaviour in regard to unpopular views. Some may argue that the environment in Israeli society after the signing of the Oslo Accords in September 1993 was a poor environment indeed, even a bad environment, entailing constant incitement against the government and especially against Prime Minister Rabin. In this context we should understand the flurry of calls

²⁹.Thomas Scanlon, "A Theory of Freedom of Expression", in R.M. Dworkin (ed.), *The Philosophy of Law* (Hong Kong: Oxford University Press, 1977): 153-171. Reprinted from *Philosophy & Public Affairs* (1972).

³⁰. T. M. Scanlon, "Freedom of Expression and Categories of Expression", esp. at 527.

to “get rid” of Rabin. The forces working for tolerance and stability apparently were not strong enough to overcome the forces of intolerance and destruction (the “democratic catch”, i.e. that the very principles underpinning liberal democracy – liberty and tolerance – might bring about its destruction). On the other hand, it was a perfectly conducive environment for the crystallization of Yigal Amir’s beliefs and for the formation of his understanding of the right ways available to him to further his ends, as well as the means designed to forestall the peace process.³¹

Indeed, generally speaking liberals (many of whom are consequentialists) prefer to speak of the general rules - liberty, tolerance (Alf Ross,³² Alexander Meiklejohn,³³ Franklin Haiman,³⁴ Fred Schauer, Lee Bollinger), rights (Hugo Black,³⁵ Aryeh Neier³⁶), equality (Ronald Dworkin),³⁷

³¹. Cf. R. Cohen-Almagor, “Boundaries of Freedom of Expression Before and After Prime Minister Rabin’s Assassination”, in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000), pp. 79-98.

³². Alf Ross, *Why Democracy?* (Cambridge, Mass.: Harvard University Press, 1952).

³³. Alexander Meiklejohn, *Political Freedom* (New York: Oxford University Press, 1965).

³⁴. Franklin S. Haiman, *Speech and Law in a Free Society* (Chicago and London: University of Chicago Press, 1981).

³⁵. Hugo L. Black, "The Bill of Rights", *New York University Law Review*, Vol. 35 (1960): 865-881.

³⁶. Aryeh Neier, *Defending My Enemy* (New York: E. P. Dutton, 1979).

³⁷. Ronald M. Dworkin, *A Matter of Principle* (Oxford: Clarendon Press, 1985).

truth (John Stuart Mill),³⁸ justice (John Rawls). They do not feel comfortable addressing the issue of exceptions.

Consequentialist v. Principled Reasoning

Fred Lawrence writes that “any definitive attempt to distinguish a purely consequentialist approach to free expression from a purely non-consequentialist theory is doomed to failure”.³⁹ I think that at least Dave Kretzmer and Justice Eliyahu Matza will disagree with this statement. In his article of 1987, Kretzmer offers moral reasoning which could be termed “principled” (as opposed to consequentialist), calling to exclude racist speech from the protection of the Free Speech Principle.⁴⁰ In turn, Justice Matza in the *Ido Elba* Supreme Court case opined that racist incitements hurt the character of the State of Israel as a Jewish democratic state, further arguing that the State of Israel was founded upon general as well as Jewish moral values and it could not afford, nor could it consent, for the sake of its integrity and future, to treat the foul phenomenon of racist incitement mercifully.⁴¹ Both Kretzmer

³⁸. J. S. Mill, *Utilitarianism, Liberty, and Representative Government* (London: J. M. Dent, 1948, Everyman’s edition).

³⁹. Frederick M. Lawrence, “The Collision of Rights in Violence-Conducive Speech,” *Cardozo L. Rev.*, Vol. 19, No. 4 (March 1998) , 1333, at 1346.

⁴⁰. David Kretzmer, "Freedom of Speech and Racism", *Cardozo Law Review*, Vol. 8 (1987): 445-513.

⁴¹. Criminal File 2831/95. *State of Israel v. Ido Elba*, especially paras. 24 and 61.

and Matza assert that the very nature of racist expressions provides justifiable grounds to deny their protection.

I personally do not advocate this standpoint. I am not convinced that attacks on your race are more offensive than attacks on certain beliefs, such as one's beliefs on abortion, euthanasia or pornography. In the United States physicians performing abortions have been murdered by "pro-life" activists. While acknowledging that one cannot be held responsible for one's race in the way that one is responsible for one's ethical convictions, I still do not see why dignity or equal respect and concern are more at stake in the one case than in the other. I also do not think that racism is more of a moral or political issue than pornography or issues that concern life and death. All are grave issues that affect the shape and character of society. Sometimes (but not at all times) racist expressions should be excluded from the protection of the Free Speech Principle, for instance when it is calculated to harm a designated group of people who cannot avoid being exposed to the serious offence which could be equated to physical harm (like the Jews at Skokie);⁴² but we should not outlaw racist provocations merely because of their content without regard to the speakers' intentions and the given circumstances.

Having said that, elsewhere I offered a principled outlook regarding the disqualification of lists.⁴³ It is one thing to express an opinion and quite another to pass laws that transform democracy into an antidemocratic entity.

⁴². R. Cohen-Almagor, *Speech, Media and Ethics* (New York and Houndmills: Palgrave, 2005), chap. 1.

⁴³. R. Cohen-Almagor, *Speech, Media and Ethics*, chap. 3.

Greater scope for expression should be allowed than for the freedom to be elected and enjoy the capacity of passing laws. The power to legislate could immediately transform a society from a democracy, which allows the expression of detestable opinions, to a society that imposes uniformity and coercion. Ergo I offer an ethical perspective explaining why we should withhold tolerance when antidemocratic movements that resort to violence wish to be elected for parliament. On this issue my view differs significantly from those of John Rawls, Thomas Scanlon and Frederick Schauer, among other philosophers. While they prefer to concentrate their discussions on the practical consideration of the magnitude of the threat, I address the ethical question of the constraints of tolerance. The fundamental question is ethical rather than practical. Hence, as a matter of moral principle, violent parties which act to destroy democracy or the state should not be allowed to run for parliament.⁴⁴

One final note has to be made in this connection. One could argue that in a sense principled reasoning is also consequentialist: those who criticize consequentialism think that permitting certain expressions (Kretzmer, Matza) or practices like running for parliament might result in harmful consequences. But then everything is consequential and the point becomes trivial. The starting point of principled argumentation is moral. We offer some guidelines as a matter of principle, not necessarily out of fear of the consequences. I think that, as a matter of principle, a democratic parliament has no place for those

⁴⁴ . Cf. Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL.: University of Florida Press, 1994), esp. chap. 11.

who wish to destroy the parliament or the state by violent means. A zero sum game exists between democracy and such movements. Acknowledging the “democratic catch”, democracy should not allow violent movements scope to further their aims via parliamentary means. Undoubtedly these movements do not accept the basic principles that underlie every democratic society, i.e., the principles of respect for others and not harming others. Those who betray these principles should not enjoy the capacity to use them in the name of liberal tolerance and freedom to undermine the legal basis of democracy. Hence on this matter we need not resort to the method of balancing, weighing one against the other free speech considerations and public order or security. We can state categorically that just as we see democracy and terrorism as counter forces that negate one another and which could not co-exist, so we should view democratic parliament and violent movements whose members aim at the destruction of democracy as mutually exclusive.

Fearing Sliding Down the Slippery Slope

It seems that what unites liberal philosophers on this issue is the fear of sliding down the slippery slope, namely that deciding on exceptions to the principles of tolerance and liberty might open the door to further exceptions. Indeed, setting boundaries is not easy. The task is difficult and sisyphian, requiring us to define the exceptions narrowly without opening the door for different interpretations. Furthermore, any proposed restriction is bound to be controversial, because liberals are united in their opinion about the importance of tolerance and liberty but there is no consensus about the

exceptions to those principles. One who proposes a certain restriction to tolerance and liberty might be considered illiberal by others claiming that the restriction is too sweeping, too dangerous. Therefore liberals are often reluctant to address this ungrateful task.

Also, liberals are lacking confidence as to the right course of action. The democratic phenomenon as we know it today is relatively young and therefore suffers from inherent deficiencies. Modern democracy was crystallized only after World War I.⁴⁵ From a historical perspective, democracy is merely an infant. It lacks the experience of dealing with those who wish to exploit tolerance and liberty to bring the destruction of democracy.

Democracy is conceived in positively charged terms, as the preferred form of governance. When a concept is elevated to a value, a positive thing that is an ideal for humanitarian and advanced societies, as in the works of John Dewey and other philosophers, it is very difficult to set limits to it.⁴⁶ Liberals feel uncomfortable with the task of setting boundaries because of the sincere desire to be as democratic and liberal as possible, to show that democracy tolerates everything, or almost everything, and that in this it is different from other forms of governing. The problem is that many liberals do not acknowledge that democracy is *not* essentially different from other

⁴⁵. Cf. James Bryce, *Modern Democracies* (London: Macmillan, 1921), Vol. I, at 4.

⁴⁶. John Dewey, *Freedom and Culture*, esp. at 127. See also Peter Nicholson, "Toleration as a Moral Ideal," in J. Horton and S. Mendus (eds.), *Aspects of Toleration* (New York: Methuen, 1985): 158-173.

governing forms in one critical characteristic: any form of governing is characterized by the fact that the foundations that make it up are also those that can bring about its destruction. This is easy and clear to comprehend when we deal with governing forms that are based on coercion. When capable, the oppressed people will try to break free from their chains. This rationale -- that the foundations that underlie the system are also those that can bring about its destruction -- is true for democracy as well. Democracy that is based on tolerance without proper boundaries endangers its existence. Freedom is not lawlessness and tolerance is not anarchy. We must prescribe the foundations of democracy. We must acknowledge "the democratic catch," that the underlying principles of the system might endanger it and bring about its destruction.⁴⁷

Moral Overriding Principles

I see it crucial to speak of *moral* overriding principles as distinct from general overriding principles. Let me explain the difference by considering two examples:

Ronny is notoriously unpunctual. Every appointment that he makes is qualified by the remark, "I'll be there on time, give or take half an hour; what's half an hour among friends?". Now Ronny has a relatively new girl friend, Sasha. As ever Ronny was late for their previous meetings and found

⁴⁷. For further discussion, see R. Cohen-Almagor, *Boundaries of Liberty and Tolerance*, esp. pp. 3, 80; *Speech, Media and Ethics*, esp. pp. xv, 16, and also *idem* (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor, MI: University of Michigan Press, 2000), pp. 1-2.

that, unlike his other friends, Sasha strongly resented his behaviour and qualifications. She wants to see him on time, period. She has also warned him that she will break off with him if he comes late to their next meeting.

Ronny is on his way to meet Sasha. He departs his home early, quite certain that this time Sasha will be happy. He is going to be in Sasha's place earlier than expected. Then Sasha will realize that the relationships mean a great deal to him. On his way he passes through the park and he sees two teenagers attacking a girl, stripping her clothes and about to rape her. Ronny has grave reservations about rape; he detests such a violent, gross behaviour. Moreover, he is a big lad, in a perfect shape, and with powerful arms. He knows that he could subdue those two teenagers if he embarked on a fight with them. However, he also knows that it will take him some time to subdue them, and consequently he will be late, yet again, for his date. Sasha has clearly told him that she has no interest in hearing further apologies, explanations and excuses, however perfectly logical and convincing these might be. She will not tolerate any late arrival. Ronny continues on his walk and allows the rape.

The second example has to do with the decision of the anti-Nazi allies not to bomb Auschwitz. In 1944 the allies knew what was going on in the extermination camps; they knew the exact location of the camps, and had the bombers to bomb the railroads. Nevertheless, they failed to do it because they used their bombers for other purposes; because they did not want to kill civilians and victims of the Nazis, or for other reasons deemed to be substantial.

The question before us is the following: Could we say that Ronny, in the first example, and the allies in the second, were tolerant toward the detestable conduct in question? If we do then we imply two things: that the term “tolerance” is *not* value loaded and could be used with regard to what is conceived to be a negative behavior; and that any overriding considerations will do to characterize not putting into effect authority or power to forestall a most detestable conduct.

To my mind, this usage of the term “tolerance” in these examples and in any like context is unconvincing. I think toleration has to involve only positive connotations. We cannot be said to tolerate something because of *any* reason that comes to mind. Ronny and the decision makers in the allies’ headquarters cannot be said to behave indifferently because Ronny had strong feelings against rape, and the allies presumably had strong feelings against mass murder. Ronny was not tolerant because in addition the overriding principle, which he employed - not to be late to his date - was not moral. Rather it was a partisan, egoistic, convenient consideration that served him better. I tend to think the same about the allies’ policy during the Second World War not to bomb the Nazi death camps. Both Ronny and the allies did not tolerate transgressions against humans: they were simply preoccupied with other matters.⁴⁸

⁴⁸ . For further deliberation about the concept of tolerance, see the following excellent collections: John Horton and Susan Mendus (eds.), *Aspects of Toleration* (New York: Methuen, 1985); Susan Mendus and David Edwards (eds.), *On Toleration* (Oxford: Clarendon Press, 1987); Susan Mendus (ed.), *Justifying Toleration* (Cambridge, England: Cambridge University

That is to say that the overriding considerations that are applied by the tolerators should be directly connected to the phenomena that outrage them. Actors can be said to behave in a tolerant fashion only when they apply moral considerations that are relevant to the detested phenomena, convincing them to exhibit restraint. In the above examples, restraint was the result of lack of action but the behavior was repugnant.

One final comment is relevant. Tolerance may evolve from two main sources: expediency, in terms of self-interest, and respect for others as human beings. I exclude the first from being considered as a tolerant act, because tolerance is concerned mainly with consideration for others. When persons adopt overriding principles which support positions in favor of granting equal rights to groups which are discriminated against in society, they might be inclined to adopt latent tolerance and make marginal improvements on behalf of that discriminated group, rather than trying to rebel against society. This is merely a sociological observation. Tolerant people living in a coercive and intolerant society might feel there is not much point in risking their position in society by rising to fight for the rights of that group. Although it is, in a way, a case of self-interest, this reason for tolerance differs from the “pure” cases of self-interest because the main reason in tolerating the other, or in tolerating a conduct, is still respect for the other’s rights. This rather diluted form of tolerance stems from the view that not much point exists in taking an

Press, 1988). See also Susan Mendus, *Toleration and the Limits of Liberalism* (London: Macmillan, 1989). For discussion of tolerance between people, see Michael Walzer, *On Toleration* (New Haven and London: Yale University Press, 1997).

overt stand against society, knowing that the forces of intolerance are powerful enough to exclude the tolerator, in some way or another, from the society.

Conclusion

Putting up with people or activities does not necessarily mean that the agent is a tolerant person. People can perform acts of toleration on prudential grounds, but this does not necessarily make them tolerant beings. When we genuinely tolerate persons or conduct we do it *not* in order to maintain or ensure stability, tranquility, or any other desired value, but rather because we respect others as human beings who should enjoy the ability to exercise choice and lead their lives as free, autonomous people, so long as they do not harm others. The consequences of tolerance may as well be peace and order in society, but the emphasis and reasoning are totally different.

I leave you with a point to ponder: In his comments on this essay, Geoffrey Marshall makes a radical suggestion, saying that it would be a good thing to forget altogether the term “toleration”. He rightly notes that tolerating people’s activities just means leaving them free from restraint, so asking about toleration is no different from asking what limitations on freedom are appropriate. We would not think of asking the general question whether intolerant people should be left free. We do not have any general notion of leaving people free to do what they want irrespective of what their conduct is, or what its consequences are, and undoubtedly intolerant people do not constitute any group that requires special consideration. Once we have

worked out the proper distinctions between speech and action, and types of speech-act that are protected by the Free Speech Principle and types that are not protected, the intolerant are bound by the rules as to speech and action as much and as little as anyone else. Of course the fact that they are intolerant may be the reason why they perform more actions and engage in more speech-acts that get punished than tolerant actors and speakers, but no special theory is needed to deal with them.