

Introduction

WHY IS TOLERATION STILL A PROBLEM?

In this book I discuss the theory and practice of toleration, and ask whether liberal doctrine is sufficiently well equipped to address all those contemporary situations that give rise to issues of toleration. These issues arise whenever an individual or a group attempts to check or to interfere with the behavior or practices of others which they dislike or of which they disapprove. They also arise when an individual or group resists the interference and control of others regarding their own behavior. These questions acquire a political dimension when two opposing parties fail to find an accommodation, either by tolerating each other's views, or by means of repression. If neither party gives in, political authority is called upon to solve the conflict. Questions of toleration become directly political when the third party is a government or a political agent.

For this kind of issue, which we can recognize as pertaining to toleration, the liberal tradition has developed a well-defined interpretive framework and a highly refined normative doctrine. This has been implemented through the establishment of legal rights which have been constitutionally granted and which are firmly entrenched in the culture and practice of liberal democracy. Consequently, it is not clear why any politically relevant problem of toleration should arise in a liberal democratic regime. The first part of this book focuses on this question: why is toleration still a problem in the world of liberal democracy?

While the absolute states of the sixteenth and seventeenth centuries needed to formalize a principle of toleration as a solution to religious conflicts, in liberal democracies toleration is generally recognized as the ethically proper means of accommodating differences in values and lifestyles. Genuine (non-trivial) questions of political toleration – those which involve a political authority, which is faced with the decision as to which practices or behavior it should either ignore or positively protect – are

typical of totalitarian or authoritarian states, where dissent from authority can challenge the system as a whole. In any specific case of dissent, such a state needs to decide whether the best policy is repression or toleration.

Within liberal democracies, on the other hand, principles of political toleration should already be enshrined in the constitutional framework of the state. Political dissent is recognized as a fundamental and positive characteristic of democratic life, whereby the government is checked by an opposition. Whether or not to tolerate an opposition in principle is not an open question; rather toleration is a constitutive part of the rules of the game. The liberal state has been built around the ideal of toleration which emerged during the religious conflicts of the sixteenth and seventeenth centuries. Generally speaking, the idea that differences in matters of religion, lifestyles, moral and aesthetic values, and so on do not constitute legitimate possible objects of direct political intervention, but belong to the individual's sphere of liberty, is embodied in liberal constitutions and translated into a system of rights. The inclusion of the ideal of toleration in constitutional rights as a means of protecting individual freedom of conscience, expression, and association seems to render the very notion of toleration superfluous. If everyone is granted the right to entertain and to pursue his or her own conception of the good and its corresponding lifestyle, as long as no harm to any third party is produced, the state has no right to tolerate any different behavior, ideas or morality, since it has no right to "tolerate" (in the strict sense) what it has no entitlement to forbid in the first place.

As Thomas Paine remarked about the 1791 French constitution, when universal rights are recognized, there is no longer any reason to practice toleration:

The French constitution hath abolished or renounced toleration, and intoleration also, and hath established universal rights of conscience. Toleration is not the opposite of intoleration, but it is the counterfeit of it. Both are despotism. The one assumes to itself the right of withholding liberty of conscience, and the other of granting it. The one is the pope, armed with fire and faggot, and the other is the pope selling or granting indulgences. The former is Church and State, and the latter is Church and traffic.¹

A similar understanding of the connection between toleration and despotism is implied by Kant in *An Answer to the Question: What is Enlightenment?*, commenting on the attitude of Frederick the Great about religious

¹ Thomas Paine, *The Rights of Man*, Part 1 [1791], in *Political Writings*, ed. Bruce Kuklick (Cambridge: Cambridge University Press, 1989), p. 94.

freedom.² Kant points out that the enlightened king has acknowledged that it is his duty to refrain from any interference in the religious choices of his subjects and to grant them full liberty in this matter. In doing this, Kant remarks that Frederick has given up toleration, adopting instead the principle of free-thinking. Thus, both Kant and Paine state that the practice of toleration is always the counterpart of an arbitrary power, while the bill of rights of liberal politics provides a more proper solution to the problem of pluralism, insofar as it offers a universal answer and preempts questions of toleration.

In liberal democracies, infringements of toleration can occur, even frequently, but, regrettable as they are, they do not usually raise genuine theoretical and political problems, as the theory and the practice of toleration is generally equipped to answer them. Cases involving issues of toleration often arise in everyday interactions: in relations between neighbors, between fellow travelers on a train, or between colleagues in the workplace, for example. But such familiar problems do not fall into the category of political toleration. Apart from occasional infringements of the principle and politically irrelevant cases that arise in everyday life, there is *prima facie* no room for genuine issues of toleration in a world where it is already a shared value.

However, even though toleration appears to have become an inalienable hallmark of the liberal order, questions do still arise. In the last decade of the twentieth century, in particular, some important issues acquired a prominent position in liberal politics, engendering a corresponding theoretical interest in the topic of toleration. I define a genuine, non-trivial case of toleration as one in which the issue is not only perceived by the general public as highly controversial but as one which also requires the intervention of the state to settle it, either by means of checking intolerance or by defining the limits of toleration. In genuine cases, the intolerance which is encountered is not merely residual, according to liberal doctrine, as, for instance, in the case of personal disapproval of unorthodox sexual behavior which does not harm a third party. In such instances, the liberal theory of toleration provides a pretty straightforward solution, no matter how much it is resisted in practice,

² Immanuel Kant, *An Answer to the Question: What is Enlightenment?* [1783], in *Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1991): “A prince who does not regard it as beneath him to say that he considers it his duty in religious matter, not to prescribe anything to his people, but to allow complete freedom, a prince who thus even declines to accept the presumptuous title of tolerant is himself enlightened” (p. 58).

and intolerance is to be imputed to bigotry and a failure to live up to liberal principles. By contrast, when genuine, non-trivial cases are to be addressed, the usual solutions, drawn from liberal views of toleration, are largely inadequate and seem unsatisfactory no matter what decision is reached – that is, either alternative – taking a tolerant stance and imposing limits on toleration – seems unsatisfactory. Examples of genuine cases include such controversial matters as the wearing of the Islamic headscarf in public schools, the admission of gays into the army and regulations regarding speech that incites violence or hatred. Given that the theory and the practice of toleration are solidly entrenched in liberal politics, why is this so? Are such contemporary instances simply failures to live up to the ideal, or, rather, do contemporary expectations of toleration stretch the limits of what is tolerable?³ Or is toleration an impossible, elusive virtue, which basically has no meaning outside interpersonal relationships?⁴ Alternatively, it may be simply an outdated means of coping with the opposing views and different levels of acceptance of social differences that are present in contemporary liberal democracies.⁵

These hypotheses have all been considered in contemporary discussions on toleration and pluralism within moral and political theory. Different though they are, the explanations that emerge basically agree on one point: they apparently assume the inability of liberal toleration to deal with contemporary controversial cases, either because they are deemed incompatible with the limits of toleration, or because they fall outside its usual domain.

I shall advance a different answer, and one that could be the starting point for a fundamental revision of liberal toleration, which would adapt it to deal with contemporary genuine cases. My argument will be concerned primarily with the interpretive framework underlying all versions of liberal toleration, which, in my view, provides an insufficient understanding of what is at stake in contemporary cases. The normative solution turns out to be inadequate, not so much because of any shortcomings in the normative argument itself, as because it is the answer to a different question.

³ See, for example, Mario G. Losano, “Contro la società multietnica,” *Micromega*, December 1991, pp. 7–16; Alon Harel, “The Boundaries of Justifiable Tolerance: A Liberal Perspective,” in D. Heyd, ed., *Toleration: An Elusive Virtue* (Princeton: Princeton University Press, 1996), pp. 114–16.

⁴ See Bernard Williams, “Toleration: An Impossible Virtue”, in Heyd, ed., *Toleration: An Elusive Virtue*, pp. 3–18.

⁵ See Ermanno Bencivenga, *Oltre la tolleranza* (Milan: Feltrinelli, 1991); Joseph Raz, “Multiculturalism: A Liberal Perspective,” *Dissent*, Winter 1994, pp. 67–79; Barbara Herman, “Pluralism and the Community of Moral Judgment,” in Heyd, ed., *Toleration: An Elusive Virtue*, pp. 60–80.

THE LIMITS OF LIBERAL TOLERATION

Liberal theory understands toleration in terms of disagreement and conflict about values, religion, culture, etc. It is a conflict produced by differences which ultimately pertain to individual choice. For this kind of conflict, usually described as unadjudicable and non-negotiable, the political solution provided by toleration consists in acknowledging that individual choice is sovereign in certain matters where uniformity is neither possible nor necessary, and perhaps not even desirable. In other words, toleration amounts to granting every citizen a free choice concerning religious, moral, and personal choices, and exercising a “public blindness” when it comes to forming policy.⁶ In this way, toleration sits comfortably with pluralism, based on the coexistence of freedom of choice and non-discrimination.

I will propose an alternative interpretation of the circumstances in which toleration becomes a pressing issue. Although opposing opinions in conceptions of the good or in world-views exist in the most controversial cases at the present time, they are not the only conflictual aspect, nor are they the most salient. Though we actually recognize such cases as being about toleration because they involve attempts to control unpopular behavior which is considered incompatible with an orderly social life, what gives rise to most genuine contemporary issues of toleration are, in fact, differences between groups rather than between individuals. This is crucial. Group differences normally have an ascriptive nature, in that, unlike the cases discussed by classical theorists of toleration, they do not involve choice. Moreover, members of groups whose differences raise issues of toleration have usually been excluded from full citizenship and from the full enjoyment of rights, either because they are latecomers on the scene, or because they were previously oppressed and/or invisible. Within the pluralism of groups, cultures, and collective identities, the salient conflict does not concern moral disagreement, at least not primarily, but rather concerns asymmetries in social standing, status, respect, and public recognition, which then sustain ideological and cultural contrasts.⁷

⁶ This is the liberal argument for toleration as a political principle; but toleration is also defended by a different liberal argument, at the social and interpersonal level, as a social and moral virtue. See for example, Bernard Williams, “Toleration, a Political or Moral Question?,” *Diogenes*, 44, 1996, pp. 35–48 and chapters 1 and 2 below.

⁷ That conflicts around recognition of identities are crucial in contemporary democracy is underlined by Alessandro Pizzorno, *Le radici della politica assoluta* (Milan: Feltrinelli, 1993), pp. 187–203, who presents an interesting typology of social conflicts. In a different way, Charles Taylor also

In other words, it is the exclusion or the unequal and incomplete inclusion of various groups into democratic citizenship which sharpen cultural differences.⁸ Issues of toleration then break out when cultural differences, perceived by the majority as being at odds with societal standards, are publicly exhibited, implicitly claiming legitimacy. In the stand-off which usually follows, toleration is generally invoked as a first step towards inclusion, as a form of public recognition of the collective identity of a marginalized, oppressed, or invisible group.

If what is really at stake in contemporary issues of toleration is equal respect and social standing for minority groups, rather than equal liberties for individuals, then the issue of public toleration must be addressed not simply in terms of the compatibility between liberal institutions and various cultures or practices, but in terms of contests over the inclusion of distinct identities and their bearers in the polity via the public recognition of their differences. This revised understanding of contemporary issues of toleration does not, however, resolve the problem of compatibility, which plays the role of a secondary constraint, rather than of the main condition for toleration.

This interpretation of the nature of the problem will gradually emerge in the course of the reconstruction of the liberal doctrine of toleration, which I undertake in the first part of this book, when we see how it fails to address contemporary cases. Viewing social differences merely as different beliefs and opinions to be considered neutrally in the public sphere, as liberal theory does, fails to recognize any asymmetry between them. All differences, being individual attitudes and preferences, are, from the political standpoint, treated equally. The problem is that, reversing Orwell's well-known phrase, some differences are more different than others. Some differences – notably race, ethnicity, sexual orientation, and culture – are markers of oppressed or excluded collective identities, to which various kinds of disadvantage are attached, amongst which non-membership or second-class membership in the polity are especially prominent.

underlines the central role of recognition in contemporary politics. See Amy Gutmann, ed., *Multiculturalism and "The Politics of Recognition"* (Princeton: Princeton University Press, 1993). On a line of inquiry similar to that of Pizzorno, see M. Gianni, "Le 'fait' du multiculturalisme: Quelques implications concernant la théorie normative de la citoyenneté," mimeo, Geneva, 1994.

⁸ That the notion of citizenship cannot be limited to its formal, legal meaning, but implies something more substantial, such as actual functioning as a citizen and the enjoyment of rights, is a view shared by Giovanna Zincone, *Da sudditi a cittadini* (Bologna: Il Mulino, 1992), pp. 187–8, by Judith Shklar in *American Citizenship: The Quest for Inclusion* (Cambridge, Mass.: Harvard University Press, 1991), and, more recently, by P. Johnston Conover and D. D. Searing, "Citizens and Members: Dilemmas for Accommodation for Cultural Minority," mimeo, Bordeaux, 1995.

Once the issue of social differences as markers of special disadvantages is grasped, some would claim that it can be dealt with by some form of compensatory distribution, thus dispensing with the need for toleration altogether. In this way, contemporary issues of toleration would be reduced to a matter of distributive justice. However, the liberal theory of justice would have to face a thorny problem, because the subjects of distribution are not individuals but groups, whose members do not share the disadvantages equally.⁹ But leaving this issue aside, the problem underlying contemporary cases of toleration would then be recaptured within a well-known line of inquiry of liberal thinking, i.e. the distributive paradigm. The latter may be hard pressed when dealing with groups instead of individuals, but it has already confronted the controversial issue of preferential treatment,¹⁰ and is, in principle, equipped with conceptual tools capable of dealing with differences (for example, the well-known difference principle advanced by John Rawls).

Equating contemporary questions of toleration with issues of distribution, dealt with by the appropriate extension of the distributive paradigm, would leave liberal toleration intact as the solution to religious, moral, and metaphysical pluralism. Moreover, it would avoid questioning the principle of state neutrality and it would neutralize the risk that particular memberships and collective identities might trespass into the public domain of citizenship. This latter should remain the area of common ground for citizens, the ground, indeed, of democratic legitimacy, of the overlapping consensus and of public reasons for the liberal democratic order to be preserved. And if the distributive paradigm could be stretched far enough to compensate for asymmetries in public respect, social standing, and opportunities linked to membership of disadvantaged groups, then the liberal ideal of toleration would be properly fulfilled. On the one hand, full freedom of expression for individual and group differences in terms of religion, culture, morality, and lifestyle would be granted and, on the other, people would be freed from the burden of their differences and from the disadvantages suffered as members of certain groups. From this viewpoint, John Rawls's political theory would appear to be the most advanced one available: it establishes a link between toleration and justice and proposes that questions of toleration can be answered by the straightforward application of distributive principles.¹¹

⁹ See Douglas Rae, *Equalities* (Cambridge, Mass.: Harvard University Press, 1981).

¹⁰ See M. Cohen, T. Nagel, and T. Scanlon, eds., *Equality and Preferential Treatment* (Princeton: Princeton University Press, 1977).

¹¹ John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971), ch. 4, §§ 32, 33, 34, 35, pp. 201–21 (hereinafter abbreviated to *TJ*).

Yet this reduction of toleration to distribution leaves something out. Although social differences are considered,¹² it is only as disadvantages. This is probably not the best strategy for addressing the inequalities in respect and consideration that are experienced by different groups. Moreover, and more importantly, the distinction between what is defined as “different” and as “normal” is completely ignored. In fact, not only do some differences carry more burdensome disadvantages than others, but in a given society only certain human traits, habits, opinions, practices, and ways of life are specifically considered “different,” and only a few of them mark out their bearers as having a “different” received identity. For example, “whiteness” is not considered a “difference,” and being white, like being Christian, heterosexual, etc., is not seen as being “different” or “other.” What is defined as different is in fact what is perceived as such from the standpoint of the majority in a society. They have the power to define people, cultures, languages, or practices as “different,” implying that they themselves are normal. And whether one belongs to the “normal” group or to another group results in something more than an unequal distribution of resources or opportunity; it defines one’s ability to be either a full or a second-class citizen.¹³ In other words, the distinction between what is normal and what is different in a given society is crucial, defining the inclusion and exclusion of its members. Inclusion and exclusion here do not refer simply to the enjoyment of legal rights, but to public consideration as members of the political and social community. This consideration should be accorded not despite one’s origin, culture, skin color, or sexual preference, but precisely because of such features.¹⁴ Being the bearer of a different identity which is socially invisible, despised or stigmatized constitutes a special barrier to becoming a functioning citizen and a social actor. As I have mentioned, it is not just a matter of enjoying fewer resources and opportunities, though this is often the case, but a matter of having fewer capabilities to make use of them.¹⁵ It means having lower aspirations and expectations than

¹² In this way, liberal theory, which typically disregards social differences, extends beyond its usual boundaries, but always with a view to eliminating differences in matters pertaining to politics and public policy. See Ronald Dworkin, “Liberalism,” in *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985), pp. 181–204.

¹³ The concept of capability has been advanced by Amartya Sen as a necessary supplement to the notion of acquisitions, be they resources, opportunities, or goods, in order to define the individual’s well-being and his or her functioning. See A. K. Sen, “Well-Being, Agency and Freedom,” *Journal of Philosophy*, 82, 1985, pp. 169–221.

¹⁴ See A. E. Galeotti, “La differenza: politica, non metafisica,” in S. Maffettone and S. Veca, eds., *Filosofia, politica, società* (Rome: Donzelli, 1995), pp. 19–35.

¹⁵ Sen, “Well-Being, Agency and Freedom.”

others.¹⁶ Those whose collective identity is despised, or who are subject to prejudice and stereotyping, usually experience a lack of confidence or self-esteem and various forms of self-hatred which, *ceteris paribus*, make it much harder for them to become fully functioning social agents and citizens.

If having a different identity is equated with failing to reach a certain threshold of developing capabilities, then, quite apart from any actual scarcity of resources or opportunities, this is a problem that cannot be addressed simply by making adjustments in the distributive structure of society. The distributive paradigm is designed for a fair social allocation of opportunities and resources, of rights and goods; in this case, however, what is at stake is the negative social perception of certain collective identities marked as different, a perception which affects the hopes and aspirations of the corresponding group's members. The majority's perception of social difference is politically relevant in two senses: first, it constitutes a particular disadvantage for those who are different, making it harder for them to acquire resources and opportunities, and as a result it causes social injustice. Second, it excludes minorities from certain pre-conditions for full participation in democratic citizenship. The feeling of shame, humiliation, and self-hatred experienced in connection with their differences, reinforced by the required public invisibility of their identity, prevents people from developing an adequate level of self-respect and self-esteem,¹⁷ both of which are necessary for developing a voice and for making it heard, as well as for enjoying rights and for participating fully in the polity.¹⁸

In conclusion, the reinterpretation which I am proposing of the circumstances in which genuine questions of toleration arise resists the widespread contemporary attempt to reduce questions of toleration to questions of distribution,¹⁹ and requires, rather, a general revision of the concept of toleration.

¹⁶ Owen Fiss, "Groups and the Equal Protection Clause," *Philosophy and Public Affairs*, 5, 1975–6, pp. 107–77.

¹⁷ A mention of Rawls's inclusion of self-respect and self-esteem among the primary goods to be socially distributed is in order here. *TJ*, p. 62 and pp. 440–6.

¹⁸ On this point, see the argument by Susan James in "Cittadinanza femminile e indipendenza," in A. E. Galeotti, ed., *Individui e istituzioni* (Turin: La Rosa, 1992), pp. 175–205.

¹⁹ Somewhat similar anti-reductionist positions are held by Iris Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), who criticizes the dominance of the "distributive paradigm" in political theory and highlights the problem of oppression and domination as non-reducible to distributive devices, and, more recently, by Nancy Frazer, "From Distribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Era," *New Left Review*, 212, 1995, pp. 68–93.

TOLERATION AS RECOGNITION

The second part of this book offers a general reconsideration of toleration, starting from the understanding of pluralism and diversity which I have briefly sketched above. Toleration will appear to be founded on considerations of justice, though not distributive justice, representing the first step in a strategy for the full inclusion of members belonging to oppressed and marginal minorities. In order to play that role, toleration will be conceived of as a form of recognition of different identities in the public sphere. In this way the conception of toleration I propose in chapter 3 implies a double extension of the liberal notion: first, a spatial extension from the private to the public domain, and, second, a semantic extension from the negative meaning of non-interference to the positive sense of acceptance and recognition.²⁰ At first glance, both extensions look troublesome for liberal theory, because they seem to call into question the central notion of a neutral and impartial sphere. Yet such liberal worries will be shown to be misplaced insofar as toleration as recognition turns out to be compatible both with a revised notion of neutrality and with impartiality.

Briefly, the outline of the argument for toleration as recognition is the following. If we take pluralism to be the presence of several groups and cultures within the same society – occupying unequal positions in relation to social standing, public respect, social and political power – circumstances in which toleration is required are reconceived as being produced by the majoritarian (negative) perception of traits, habits, and practices of minority groups which are singled out as “different” and excluded from what the majority defines as standard forms of behavior. Such situations of cultural domination then develop into contests over the public toleration of differences. This occurs when the appearance of minority groups in some public/political space is perceived as vociferous and provocative, and hence as an invasion of the political domain by particular identities and a plea for special consideration which cannot be ignored. In such cases, I defend toleration of differences in the public sphere not on the grounds of an argument showing the compatibility of the recognition of differences with neutrality, but on the grounds of justice. Indeed, the public exclusion of differences is unfair, because it

²⁰ On the shift from the negative to the positive meaning of toleration, see Otto A. Apel, “Plurality of the Good? The Problem of Affirmative Tolerance in a Multicultural Society from an Ethical Point of View,” *Ratio Juris*, 10, 1997, pp. 199–222.