

# Principled Toleration and Respectful Indifference in the Liberal Polity: A Conceptual Landscape<sup>1</sup>

## Abstract:

This paper examines toleration at two levels. At the first level, liberal individual is concerned that the individual must be as free as possible to pursue their own goals and lifestyles. At the second level, liberal political theory is concerned with the value of liberal political culture and institutions and how to maintain and protect them. I argue that we can learn a great deal about the exercise of toleration and respect at the level of the liberal polity by examining them at the level of the liberal individual. Both tolerance and intolerance at the level of the polity must be *principled*. Principled tolerance and intolerance have the following features. First, the judgment whether to tolerate a particular belief or practice must be based on the value of toleration itself, not pragmatic political requirements. Second, it should be an issue of setting aside moral principles and convictions rather than dislikes, prejudices or fears. Third, it should respect the distinction between the public and the private, and should only recognise an issue as one of toleration if there is a public impact at stake.

## Keywords:

Toleration, moral principle, religious belief, liberal political theory

## 1. Introduction:

In this paper I set out to map the landscape of toleration in liberal theory, to highlight areas that may have been overlooked in previous accounts. Most importantly, I argue that we have to discuss the idea and practice of toleration at two distinct levels, that of the liberal individual and that of the liberal polity. These two maps, although they share some similarities, are also distinctive. We need these two maps because there are two levels of liberal theory. First, there is liberal individualism, which is a moral theory

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concerned with the freedom of the individual to pursue their own goals and projects as a self-legislator with equal standing with all other liberal self-legislators. Second, there is liberal political theory, which is concerned with the value and integrity of liberal institutions and liberal political culture. This opens the possibility of conflict and tension between these two levels, because individual freedoms must be curtailed to some extent in order to protect the value of liberal political institutions and culture. And so the liberal polity may refuse to tolerate practices which the liberal individual finds acceptable. There is, if you like, private and public toleration, and these have different dimensions.

At the level of the liberal individual, I will argue that what is required is *principled* toleration. Principled toleration at this level means: (i) setting aside convictions and principles for the sake of toleration rather than some other more pragmatic goal; (ii) setting aside *moral* convictions and principles rather than prejudices; and (iii) regarding only those issues that gives rise to demonstrable public harm as issues of toleration. However, what also emerges at the individual level is the importance of *indifference* rather than tolerance. In many important cases, the attitude one would expect from the liberal individual towards the beliefs and practices of others is not tolerance, but indifference. If one tolerates a certain belief and practice, it follows that one objects to it, but there are many beliefs and practices where one would consider toleration to be an inappropriate attitude, the expression of a prejudice rather than a moral conviction. Although a tolerant racist is preferable to an intolerant one, the right attitude towards the fact that someone belongs to a different 'race' is surely indifference. Liberal states have identified racism, sexism, homophobia and other attitudes as being inappropriate in this

sense. However, I will argue, what is required in these cases is *respectful* indifference, rather than ‘mere’ indifference, an indifference that respects the individual’s right to hold certain beliefs and practices, or *be* a particular kind of person, rather than simply a lack of care.

At the level of the liberal polity, I will again argue that tolerance must be principled. At this level, principled tolerance has the following features: (i) the judgment must be based on the value of toleration itself, rather than pragmatic political considerations; (ii) it must be the setting aside of public principles and convictions rather than prejudices and fears; and (iii) it must respect the distinction between the private and the public sphere, and only recognise an issue as one of public toleration if there is a public harm at stake. To this extent it looks much like principled toleration at the individual level, but what is distinctive is that, while at the individual level, the person who holds the beliefs and practices that the liberal individual decides to tolerate does not need to make a special case for toleration, at the level of the polity, a claim for exemption has to be made, in that an issue of toleration will be an issue of democratic legislation – the liberal individual cannot legislate for others, but the liberal polity must legislate for all. But just as public toleration must be principled, so must claims for exemption. That is, the claim that a particular belief or practice ought to be tolerated by the liberal polity in the face of democratic legislation against it must be a matter of moral principle and conscience. This means, of course, that we have to be able to tell the difference between principled claims for exemption and claims that are simply expressions of prejudices or tradition. This raises particular questions about religious claims for exemption, as these are often

expressed as issues of moral conviction when, to an external observer, they look like expressions of prejudice or traditional practices. I will argue that religious claims have to demonstrate that they are principled independent of their religious context. The key question for the liberal polity is, then, how to distinguish between genuine issues of moral conscience that deserve respect, and unreasonable prejudices that do not.<sup>2</sup>

## 2. The liberal individual and toleration:

At the level of the liberal individual, tolerance is best understood as a virtue and intolerance as a vice. Tolerance is an attractive characteristic from the liberal point of view, the kind of characteristic one would want to find in a liberal community.

Intolerance, on the other hand, is an unattractive characteristic.<sup>3</sup> For the liberal individual, there are two boundaries that need to be mapped. The first is the individual's boundary between those things they find objectionable and those they find unobjectionable (they may find many *things* objectionable or unobjectionable, but for the sake of this discussion we will focus on beliefs and practices). They may attach a positive or neutral value to those things they find unobjectionable, but attach a negative value to those they find objectionable.<sup>4</sup> The second boundary is the individual's boundary of toleration, between those things they find objectionable but are prepared to tolerate, and those things they are

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<sup>2</sup> To be clear, however, the fact that a claim for exemption is principled and therefore merits respect as an issue of toleration does not mean that the liberal polity must tolerate it. The point is that unprincipled claims of prejudice do not merit any kind of respect and should not be considered at all.

<sup>3</sup> Therefore one would expect a liberal community to promote the virtue of tolerance and discourage the vice of intolerance; but this is a matter for the liberal polity, not the liberal individual.

<sup>4</sup> The positive and neutral values indicate that there is a third boundary here, between approval and indifference. I will discuss this later in the paper.

not prepared to tolerate. Oddly, on this map the tolerant person is not someone who finds very little objectionable, but one who is prepared to tolerate much that they do find objectionable; and the intolerant person is not someone who finds a great deal objectionable, but one who is not prepared to tolerate much, if anything, that they object to.

This means that we can place two more characters alongside the tolerant and intolerant persons: the prejudiced person (the one who objects to a great deal whether they are prepared to tolerate it or not), and the indifferent person (who does not object to very much). This adds a layer of complexity, as the indifferent person can emerge as intolerant if they are not prepared to tolerate any of the things they object to, and the prejudiced person can emerge as tolerant if they are prepared to put aside their prejudices in the majority of cases. Also, the indifferent person can be an unattractive character if their indifference arises from a lack of any moral principles or convictions (imagine a liberal polity populated by completely indifferent people), and the prejudiced person may be an attractive character if they are prepared to set aside their moral convictions on a principled basis.<sup>5</sup>

On the other hand, indifference may be preferable to intolerance. Of course, if one is on the receiving end of a prejudice there is an important difference between being discriminated against on the basis of that prejudice and being tolerated by the prejudiced majority – but there is still something disturbing about the latter case: one may hold that

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<sup>5</sup> I am aware that I am blurring the difference between a prejudice and a moral conviction here, a distinction which will become central to the discussion later.

others ought to be indifferent towards one's beliefs and practices rather than tolerant of them. Indifference can, therefore, be a virtue. Although we wanted to say that the tolerant individual is an attractive character, there is a possibly negative aspect here, if the prejudices they are setting aside are such that we would say they ought not to hold them at all. The tolerant racist is, of course, preferable to the intolerant racist, but this is not a prejudice they should hold at all. There are, therefore, certain beliefs and practices – and other things – which people should not object to as such.

One requirement at the level of the liberal individual is that tolerance must be *principled*.<sup>6</sup> Tolerance can be principled in three ways. First, the setting aside of principles and convictions must have an ethical basis. We need to know that the tolerant person's convictions are being set aside because of moral principles. The exercise of tolerance is not always principled. Sometimes moral convictions can be set aside because of moral cowardice or opportunism or self-interested bargaining. Either that, or we refuse to call the setting aside of convictions on anything other than a principled basis the exercise of tolerance at all.<sup>7</sup>

The second way in which toleration must be principled is closely related to the first, in that we have said that principled toleration requires the setting aside of *moral* convictions and principles, and this means we have to distinguish between this and the setting aside of mere prejudices. It cannot be that we simply find a certain practice distasteful and

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<sup>6</sup> Brian Leiter also refers to principled toleration in much the same sense. See Leiter (2010), p.7 and pp. 9-10.

<sup>7</sup> See Leiter, pp.7-9.

would rather it didn't happen but are prepared to let it continue. We have to be able to articulate a *moral* argument concerning it for this to be a question of toleration. This connects with our concern that there are certain beliefs and practices which the liberal individual should have no objection to, and which therefore should not be issues of toleration at all. This is a very difficult boundary to draw and takes us to the heart of the issue, the difference between moral convictions and unreasonable prejudices, and the possibility of setting out some kind of objective criteria for this distinction. Without such criteria, the liberal problem of toleration seems incapable of resolution on any principled basis. Personally, I would place a person's 'racial' identity and sexuality on this list, and so do not find the tolerant racist or tolerant homophobe attractive characters. The liberal tradition recognises this distinction with the naming of certain prejudices – such as racism, sexism, homophobia and disablism – and through their naming signalling their unacceptability.

But how are we to theorise this boundary? There are two possible dimensions here, one to do with harm, the other to do with the private/public distinction. Firstly, it is difficult to see how one can object to any belief and practice unless it can be shown to be harmful. Remember that here we are talking about a certain kind of objection, a disapproval based on moral conviction, a disapproval so strong that we find some beliefs and practices intolerable. The tipping point between indifference and tolerance, and indeed often into intolerance, will be whether and the extent to which the belief or practice in question causes harm. The second way of understanding the boundary here is to make the distinction between the private and the public. As a liberal individual, I have no reason to

object to beliefs, practices or anything else that takes place in another individual's private sphere and have no effect any other member of the polity. However, the question of harm complicates this boundary, because one may have strong moral objections to people harming others even though that harm is consensual, and indeed strong moral objections to forms of self-harm which involve only the individual. All I can say here is that these cases are complex and difficult, and there is no clear answer to the question whether we, as liberal individuals, are obliged to tolerate consensual or self-harm. However, we can say that an extremely strong case would have to be made for intolerance in such cases.

And so what we expect from the liberal individual is principled toleration: principled because it involves the setting aside of convictions and principles for the sake of tolerance and not some other goal; because it is the setting aside of *moral* convictions and principles; and because there must be, in the vast majority of cases, a demonstrable public harm to make this a matter of toleration at all. The corollary is, of course, that liberal *intolerance* must be equally principled. I will explore what liberal intolerance might look like below.

### 3. The liberal individual and respectful indifference:

We observed above that indifference is preferable to tolerance in certain cases, and the strongest sense in which this holds is where those beliefs and practices have no harmful public effect – any harm is confined to the private sphere, if there is any harm at all. But even where indifference is preferable to tolerance, there is a preference for *principled* indifference, rather than indifference which arises because one has few moral convictions



and principles of one's own. If I am indifferent to a belief or practice in an unprincipled way, there is no reason to show it any degree of respect at all, and indeed my general lack of principles may lead me to do things that could potentially harm that to which I am indifferent. Suppose you possess a painting that you consider to be a work of art but to which I am indifferent. Because I am indifferent to it, what happens to it does not matter to me, and that includes what happens to it because of my own actions. If I need notepaper, I could use the painting to make notes on in indelible ink. However, *principled* indifference would mean that I recognise your view of it as constituting a reason to constrain my actions towards it. Setting aside the question of respect for property rights, I constrain my actions towards it simply on the basis of respecting your view of the value of the painting.

However, rather than talk of principled indifference, it might be better to describe this as *respectful* indifference, as indifference implies strongly that there are no moral convictions and principles at stake here. What is at stake here is not moral principle, but a duty of respect. In exploring this idea of respectful indifference I draw heavily on the work of Brian Leiter and the distinction he makes between thin and thick concepts of respect, which he in turn builds on Stephen Darwall's distinction between recognition (thin) respect and appraisal (thick) respect.<sup>8</sup> Recognition respect involves "giving appropriate consideration or recognition to some features of its object in deliberating what to do",<sup>9</sup> for example "by being willing to constrain one's behaviour in ways

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<sup>8</sup> Darwall (1977).

<sup>9</sup> Darwall (1977), p.38; Leiter (2010), p. 4.

required” by those features.<sup>10</sup> In short: “Recognition respect for persons ... is identical with recognition respect for the moral requirements that are placed on one by the existence of other persons”.<sup>11</sup> In other words, my recognition of their existence as being appropriate grounds for constraining my behaviour is sufficient for recognition respect.

For Leiter, this is a thin respect on two grounds: First, “it is agnostic about any other dimension of value that might attach to the particular manifestations of the features of the object to which the respect is owed...”. The only value attached to the object by this form of respect is that I must recognise its existence as a reason for constraining my behaviour towards it – I make no judgment as to its value in any other sense. Second, “...it is silent on the nature of the ‘moral’ constraints on behaviour that are demanded by the respect”.<sup>12</sup> It does not specify how my behaviour should be constrained by the demands of this respect – I have a reason to constrain my behaviour, but the way in which my behaviour ought to be constrained is not given by my respect for the object.

For Darwall, appraisal respect “consists in an attitude of positive appraisal of that person either as a person or as engaged in some particular pursuit”.<sup>13</sup> It is “like esteem or high regard for someone”, and is compatible with having no “particular conception of just what behaviour *from oneself* would be required or made appropriate by that person’s having the features meriting such respect”.<sup>14</sup> Leiter gives the following examples:

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<sup>10</sup> Darwall (1977), p.45; Leiter (2010), p.4.

<sup>11</sup> Darwall (1977), p.45; Leiter (2010), p.4.

<sup>12</sup> Leiter (2010), pp.4-5.

<sup>13</sup> Darwall (1977), p.38; Leiter (2010), p.5.

<sup>14</sup> Darwall (1977), p.39; Leiter (2010), p.5.

respecting someone's feelings is recognition (thin) respect – “you act in such a way as to show an appropriate moral regard for how your actions might affect them”; respecting someone's intellect is appraisal (thick) respect – “you admire and appraise highly the calibre of her mind”.<sup>15</sup>

If we return to my example of your painting, I give it *recognition* respect by recognising that its existence as a painting *you* value constrains my behaviour towards it, so I cannot scribble over it – this is the attitude I have called respectful indifference. I give it *appraisal* respect if *I* believe it to be a work of art, and *that* value gives me a reason to constrain my behaviour towards it – I am not indifferent to it at all, but attach a value to it. For Leiter, thin respect “makes no substantive *moral* demand on the kind of action that is appropriate...”.<sup>16</sup> The only requirement is that we honour whatever the moral requirements are that are placed on us by the existence of the other. “The substantive content of these moral requirements is open...”. Leiter agrees with Leslie Green that this thin version of respect is “morally otiose” – it is “only an exhortation to do the (other) duties that we already owe”.<sup>17</sup> So my recognition respect for your painting may amount only to the recognition that I must constrain my behaviour towards it according to the rules that already exist around respect for other people's property. In my earlier version of the example of the painting where I set aside the consideration of property rights and based my respect only on the recognition that you value the painting, I may have been

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<sup>15</sup> Leiter (2010), p.5.

<sup>16</sup> Leiter (2010), p.6.

<sup>17</sup> Green (2010), p. 213.

moving beyond the limits of the thin requirements of recognition respect. All that form of respect seems to demand is that I recognise the rules that apply to object already.

For Leiter, appraisal respect also “makes no substantive moral demand” on action, but for a different reason – “it demands only ‘esteem’ or high appraisal of certain features of persons, not that one act towards them in a certain way”.<sup>18</sup> However, appraisal respect can also result in “moral demands on action, when the highly appraised features are ones with moral value or that one has a moral obligation to support or protect”.<sup>19</sup> And so if I only have recognition respect for your painting, if you choose to destroy it I have no reason to intervene to protect it – the general respect for other people’s property places me under no obligation to intervene to *maintain* that property. However, if I have appraisal respect for your painting as an important work of art, I do have a reason to ensure that it is adequately protected because I attach value to it, such that if you do not have the means, or the inclination, to maintain and protect it, I should do so if I can.

For Leiter, toleration does not take us beyond the requirements of recognition respect. If I choose to tolerate a particular practice, then I must constrain my behaviour in such a way that there is room for it to take place, but there is no positive obligation on my part to sustain or protect that practice. Equally, if I am respectfully indifferent to it, I recognise its existence as a reason to constrain my behaviour towards it, but there is no further requirement on my part to sustain or protect that practice further. In that sense principled toleration and respectful indifference look the same in practice. The difference is that in

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<sup>18</sup> Leiter (2010), p.6.

<sup>19</sup> Leiter (2010), p.6.

the case of principled toleration I attach a negative value to the practice but am willing to allow it to continue and so do not interfere, while in the case of respectful indifference I attach neutral value to the practice but respect your right to continue it and so, again, do not interfere. The importance of respectful indifference at the individual level is normative, perhaps, rather than practical – it is the attitude the liberal individual *ought* to have towards many beliefs, practices and other things, such even principled toleration in these cases is to be deplored.

One implication of both principled toleration and respectful indifference is that, at the level of the individual, I am only obliged to protect that practice from any interference from me, not from others. However, does recognition respect (whether embodied in indifference or tolerance) require me to protect that practice from interference by others? I have a reason to modify my behaviour in respect to the object, but must everybody else share that reason? Certainly, I may think that they should, but I cannot *require* that they should – I cannot *require* that all other people's boundaries of toleration, nor indeed their boundaries of indifference, should fall in the same place as mine. Whether those boundaries are laid down in public practice or law is, of course, an issue for the liberal polity. To conclude the discussion of toleration at the level of the liberal individual, what we have learnt is the importance of respectful *indifference* as a virtue in the liberal polity, alongside, and indeed often more virtuous than, principled tolerance.

### 3. The liberal polity and toleration:

The practice of toleration at the level of the liberal polity has the boundary between the ‘public’ and the ‘private’ at its centre. A tolerant community is one that allows that a wide range of issues are matters of individual choice rather than collective decision – they are private, not public, matters. These are issues that are characteristically to do with individual ‘lifestyle’ choices, and in a liberal polity there is a list of such issues which are taken to be unproblematically private: that list normally includes decisions about what clothes to wear, what food to eat, what music one listens to or creates, what literature one reads or writes, choice of work and career, the choice of one’s partner and whether or not to marry them, how many children one has as a family. We should note, of course, that there is no clear private/public boundary here, in that we cannot draw a distinction between matters that have no effect on collective life and those that do – we know that potentially anything one does can have an impact on public life. However, these issues are still judged to be private in that the effect they have is negligible or where there is one it is benign.

There have been, and still are, societies which have taken a very different view, and which have been prepared to take collective decisions about what work people do, what literature they should read or write, whether or not they marry their partners, how many children they should have, what clothing they should wear, and so on. These societies have been, from a liberal point of view, intolerant ones, in which there has been very little space for individual choice. But we should keep in mind that the line between the private and the public has been drawn in different places in liberal societies. Certainly, our choice of partner has been highly controversial in traditionally liberal societies, with

recognition of the validity of same-sex partnerships only growing in scope very recently. And it is always possible that other issues on this list – for example, what clothes one wears – could be judged to have a public impact and so a matter for collective decision. Belgium voted to ban the wearing of full Islamic face veils in public places in April 2010, and France imposed a similar ban in April 2011.<sup>20</sup> And so while the space for private decision is genuinely wider in liberal polities than in other kinds of state, this space is always open to revision.

But while the public/private boundary has a place at both the individual and collective level, the concern at the individual level is the impact of beliefs and practices upon individuals, while at the collective level there is the additional concern of the impact of those beliefs and practices on political institutions and the political culture.<sup>21</sup> From the point of view of liberal political theory, we must ask whether those practices are compatible with a liberal political culture and the institutions that make it up. While the liberal polity may also be concerned about questions of tolerance over issues of morality (are there beliefs and practices which are simply too immoral for a liberal polity to tolerate?), and offensiveness (are there beliefs and practices which are simply too offensive to the general community for the polity to tolerate them?), the issue I want to

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<sup>20</sup> Even here, though, the public/private dimension to the issue remains significant in that the ban would only apply to public places (and there are differences over what counts as public places where such a ban would be justifiable).

<sup>21</sup> See Ceva (2010), pp. 13-14.

look at here is the question of this impact on the integrity of liberal political institutions and political culture.<sup>22</sup>

One issue that is of current concern for liberal polities is religious belief, and this is partly a concern about cohesiveness – to what extent can the polity tolerate religious diversity without undermining the integrity of liberal political culture? This takes us into broader areas of tension between cultural diversity and cultural identity, but religious identity has been taken to be particularly problematic because of the intensity of religious beliefs – they are, it seems from experience, more likely to pose problems than other forms of diversity.<sup>23</sup> From the point of view of liberal political theory, the questions must be: what kinds of religious belief and practice genuinely threaten to undermine liberal political culture and institutions? And to what extent is a liberal polity entitled to override individual religious freedom and autonomy for the sake of community integrity?

The latter question is a difficult one because community cohesiveness is not a specifically liberal value while individual freedom and autonomy are, and so where non-liberal values clash with core liberal values, we might make a reasonable assumption that in a liberal polity the non-liberal values should normally give way. In a genuine liberal polity there must therefore be a strong presumption in favour of religious and other forms of diversity, even where that diversity is, to some extent, divisive. Just as principled toleration at the level of the liberal individual entails that I tolerate practices that have

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<sup>22</sup> There are, of course, connections with the questions of immorality and offensiveness, but I will not directly address them here – see Cole (2005).

<sup>23</sup> Certainly, the United Kingdom government is concerned about preventing extremism in communities. See [www.bbc.co.uk/news/mobile/uk-13679360](http://www.bbc.co.uk/news/mobile/uk-13679360). Accessed June 9, 2011.



some degree of public impact on my life, toleration at the level of the liberal polity entails that it tolerate some degree or forms of cultural diversity which cause communal divisiveness – otherwise, what is there to tolerate? Here the tension between liberal individualism and liberal political theory is settled in favour of the individualist morality of freedom and autonomy.

However, there will be limits to toleration here, where the tension is going to be settled in favour of liberal political institutions and culture, and so some judgment must be made between those divisive cultural differences that are to be tolerated and those that are intolerable. This is an extremely complex judgment, but it will have something to do with the extent to which liberal political institutions and culture can cope with the damage caused by the divisiveness – we can assume from experience that they are robust enough to withstand some degree of cultural divisiveness, but there will be limits beyond which they begin to disintegrate in ways they cannot recover from. Where those limits lie cannot be determined by philosophical argument alone. For now, though, we can say that a liberal polity is tolerant to the extent that it allows beliefs and practices that are incompatible with liberal political institutions and culture.

We have seen that principled toleration would require the liberal polity to permit space for beliefs and practices that are actually incompatible with liberal political culture. We have also seen that there are limits to which the liberal polity can play host to such beliefs and practices, but have avoided trying to identify where those limits lie. The question for now is what constitutes toleration here, and again religious belief is a key example,

because there is a significant level of debate about the policy of exempting religious believers from legal requirements that are binding on other members of the liberal polity out of respect for their religious beliefs. There are such exemptions in the United Kingdom, for example those concerning the slaughter of animals for consumption, in that certain religious groups are permitted to slaughter animals in ways that would otherwise be illegal. Animals slaughtered in Jewish and Islamic procedures are not stunned before slaughter. Although there is dispute about whether the methods used are humane, there is little doubt that the majority of people in the United Kingdom object to animals not being stunned before slaughter, and so the exemption of these practices is a prime example of toleration, not respectful indifference.

What we have to ask, of course, is whether this is *principled* toleration. Above I identified three ways in which toleration must be principled at the level of the individual. Firstly, I distinguished toleration from ‘toleration’ based on moral cowardice or opportunism or self-interested bargaining. Similarly, at the level of the polity we would expect toleration to be principled in the same way, but what moral principles can underlie principled toleration at the public level? There seem to be three possibilities. First, we see the exercise of tolerance as a good in itself, in that it improves the moral character of the individual, and this overrides their moral objections to other practices or ideas, etc. This is something like the rationale for tolerance we find in Stoicism. Second, we see the exercise of individual autonomy as good for people, and so it is better to allow them to explore different avenues and pathways which we may consider objectionable, rather than intervening to prevent them from doing so. This is one rationale for tolerance we

find within liberal individualism. Third, while we have moral principles and convictions, we hold an epistemological scepticism about their basis, so that we are not in a position to know that the opposing principles and convictions held by others are mistaken, and it would therefore be unethical to impose our own principles and convictions upon them. Again, this is a rationale for tolerance we find within liberal individualism. All of these could apply to principled toleration at the level of the polity: first, that the exercise of tolerance is a key characteristic of a developed liberal polity, and is therefore something that should be developed for its own sake; second, that it is better for its citizens to exercise freedom and autonomy than be directed by the state; and third, that the state is not in a position to know what is best for its citizens in most cases.

The second way in which we said individual toleration must be principled was closely related to the first, that it requires the setting aside of *moral* convictions rather than basic prejudices – a moral argument is required. At the level of the polity this means constraint with respect to beliefs and practices that people simply find distasteful, and the demand for a moral case for intolerance. One way of giving this distinction a reasoned basis is to draw a distinction between the private and the public, and to say that the third requirement for principled toleration is that there must be a demonstrable public effect to make an issue a matter of toleration at all, and we have already seen that the question of toleration at the level of the polity is largely concerned with the boundary between the public and the private. And so what we expect from the liberal polity in terms of principled toleration is that it involves the setting aside of people's *moral* convictions and principles for the sake of maintaining and developing the characteristic of tolerance as an

aspect of liberal political culture and institutions; and that there must be, in most cases, a demonstrable public effect at stake.

We can now build up a picture of what principled intolerance looks like at the public level. First, it will be based on moral principles central to the liberal political culture, including the value of tolerance itself – there is a presumption against tolerating the intolerant practices of groups in the liberal polity. Second, the judgment will be based on the impact of beliefs and practices upon the liberal political culture – this reinforces the presumption against the intolerant practices of groups, as this would undermine the overall culture of tolerance which is a sign of a mature liberal polity. Third, it will be based on the impact of those practices upon individual members of the polity – they must be protected from being harmed by the beliefs and practices of other members, including intolerant beliefs and practices. That the majority believe that a practice is immoral or offensive is not a factor. They have individual reasons to avoid or argue against that practice, but the polity has no principled reason for acting against it. To ban or limit a practice because the majority find it offensive is certainly an example of intolerance, but it cannot be principled intolerance. And so we have a description of principled tolerance and intolerance at the level of the liberal polity.

##### 5. The liberal polity and exemptions:

Emanuela Ceva argues that there are two sets of conditions a claim for conscientious exemption must meet if the liberal polity is to grant it.<sup>24</sup> The first set of conditions is

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<sup>24</sup> Ceva (2010), pp. 12-13.

concerned with whether there is a genuine claim of conscientious exemption here which merits respect and should therefore be considered. The second set of conditions are concerned with whether the liberal polity can bear the cost of granting the exemption. This second set of conditions asks: (1) whether the exemption would undermine the general validity of the law and the pursuit of the values/ interests it was meant to protect; and (2) whether the exemption is sensitive to the threshold of collateral damages a society can tolerate. Applicants for exemption need to know whether they are refused because their request isn't morally justified or because "its satisfaction would impose unacceptable burdens on their social partners."<sup>25</sup> Here I want to focus on the first set of conditions, which determine whether the claim to exemption is morally justified in the first place.

According to Ceva, there are three conditions here: (1) The request cannot be for exemption from perfect duties of the claimant, which would lead to the violation of fundamental rights of others; (2) The request must not be opportunistic; (3) The request must have direct moral relevance for the claimant. Condition (2) means that "there should be publicly accessible reasons showing that the claimant's case is not merely an excuse to escape the costs of social cooperation, but involves her very moral integrity. What makes for a publicly accessible reason would depend on the public values informing the political life of the polity within which the claim for exemption is raised."<sup>26</sup> Such reasons would appeal to "generally accepted principles (e.g. non-discrimination) or wide spread –

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<sup>25</sup> Ceva (2010), p. 14.

<sup>26</sup> Ceva (2010), p. 12.

through controversial – moral views (e.g. protection of Life in all its forms.”<sup>27</sup> Ceva observes: “...a mere appeal to cultural membership will not do.”<sup>28</sup>

What follows from Ceva’s conditions is, I think, that for a claim of exemption to merit respect, it must itself be principled, and again what we mean is that it must be based on moral convictions and principles – it must be an issue of conscience. But how do we tell that a claim is a genuine issue of conscience? For Ceva, matters of conscience arise where a person’s “moral integrity” is at risk if they were to comply: “someone’s moral integrity is preserved when that person can act in accordance with her conscience.”

In a liberal polity, “...citizens should be allowed the largest possible room to give voice to their consciences and act in accordance with their utterances, within certain limits, as this is a fundamental condition for them to exercise their capacity for self-legislation (however rationally that is conducted).”<sup>29</sup>

Martha Nussbaum has identified moral conscience as “the faculty in human beings with which they search for life’s ultimate meaning,”<sup>30</sup> but Ceva says this only captures the religious dimension of conscience, and so is unnecessarily narrow. Conscience is, more broadly, the “faculty to discern what is morally right or wrong.” And so “when someone appeals to her conscience in public, she is making a statement of what morality demands of her...”<sup>31</sup>

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<sup>27</sup> Ceva (2010), pp. 12-13.

<sup>28</sup> Ceva (2010), p. 13.

<sup>29</sup> Ceva (2010), p. 6.

<sup>30</sup> Ceva (2010), p. 6. Nussbaum (2010), p. 19.

<sup>31</sup> Ceva (2010), p. 6.

Ceva agrees with James Childress' view that a violation of conscience would result in "a fundamental loss of integrity, wholeness, and harmony in the self."<sup>32</sup> She says, "...not all obstacles to self-legislation should be considered a sufficient basis for refusing compliance with a democratically deliberated law, but only those threatening the person's moral integrity."<sup>33</sup> Her example is of a person with an interest in wine tasting who can only get to the vineyards by driving themselves, but who is prevented from doing so because of the laws limiting alcohol consumption when in charge of a vehicle. Such a person would have to show "that driving around restaurants to drink fine wines is an inherent component of the conception of her own moral self and that not doing so would put her moral integrity at risk...".<sup>34</sup> This, then, is the key test we identified at the start of this paper: how to distinguish between claims to exemption which are expressions of prejudice or self-interest or simply of tradition, and those which are genuinely matters of moral conscience and integrity.

#### 6. Religious claims to exemption:

I want to conclude this discussion with some observations about religious claims to exemption in particular, and claims based on traditional practices in general. There are two questions here: (i) Do claims based on religious belief merit respect simply because they have a religious context?; and (ii) Do claims based on traditional practice merit respect simply because people have followed those traditions for a very long time? As we

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<sup>32</sup> Ceva (2010), p. 7. Childress (1979), p. 318.

<sup>33</sup> Ceva (2010), p. 10.

<sup>34</sup> Ceva (2010), p. 10.

shall see below, I think these questions are connected. On the first question, Martha Nussbaum believes that they do because it is religious beliefs that most completely capture the “faculty in human beings in which they search for life’s ultimate meaning.” Brian Leiter offers a powerful counter-argument, concluding that as religious beliefs, when subjected to ordinary standards of judgment, turn out to be culpably false beliefs,<sup>35</sup> there are no reasons that would “support the conclusion that religious matters of conscience warrant esteem or reverence.”<sup>36</sup> I find Leiter’s arguments persuasive, and believe religious claims have to be judged on the same basis as other claims – they have to be principled, based on moral grounds and open to critique on the basis of normal standards of rational debate. The crucial point is that those moral grounds have to be independent of the religious context, in the sense that they cannot simply be statements of religious dogma. To state that a religious believer should be free to, for example, discriminate against homosexuals because their religious text states this as a rule cannot be acceptable to the liberal polity as the basis of a claim for exemption.

This becomes clearer if we look at the second question, of the status of tradition, because very often religious claims for exemption are not to do with beliefs as such, but with practices. Here I follow Daniel Weinstock’s observation of the “...fact that religion has to do not just with individual belief but also with communal practice and ritual. People worship in groups. What’s more, for many religious persons, *practice is more important than belief*. That is, the question of whether the metaphysical claims made in the holy texts of their religions are true or not is far less important than is the requirement of

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<sup>35</sup> Leiter (2010), pp.24-29.

<sup>36</sup> Leiter (2010), p. 29.



remaining true to tradition, to taking part in a certain range of practices that bind the individual to community both synchronically and diachronically.”<sup>37</sup>

We have seen that a principled claim for exemption has to be based on independent moral grounds and open to rational questioning. A moral challenge to a particular practice cannot be answered by the statement: “We have always done it this way.” And yet very often, in the case of religious practices, there is no other answer available. This, of course, raises a challenge for all kinds of traditional practices and rituals, not just religious ones. In the United Kingdom hunting animals with dogs was banned in 2005, but opponents of the ban argued that it was a traditional part of country life.

Similarly, there was much controversy leading up to the passing of the Equality Act in the United Kingdom in April 2010. That Act made it clear that religious organisations such as adoption agencies could not, for example, discriminate against gay couples. I will not explore any specific cases here, but will make the observation that any claim to the right to discriminate against gay people on religious grounds clashes directly with principled toleration in a liberal polity. We identified three issues for the liberal polity when making judgments about exemptions: first, there is a presumption against tolerating practices which are themselves intolerant, as tolerance is a core value for the liberal polity and must, as it were, go all the way down; second, there is a presumption against tolerating practices that have a harmful impact on the political culture of the liberal polity

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<sup>37</sup> Daniel Weinstock, “Beyond Objective and Subjective: Assessing the Legitimacy of Religious Claims to Accommodation”, paper presented at RESPECT workshop on Toleration, Respect and Public Space, University of Copenhagen, June 21-23, 2010.

in terms of its values and institutions, such as moral equality; and third, there is a presumption against tolerating practices that will have a harmful impact on individual members of the community. Religious claims for exemption to discriminate against gay people seem to clash with all these presumptions.

But we have identified a fourth requirement, that any claim to exemption must itself be principled – that is, it must be based on genuine moral convictions and principles, not mere prejudices. The fact that a claim to exemption has a religious context does not help us to distinguish principled claims from prejudiced ones; nor, obviously, does the fact that a practice has a traditional context. Many of the prejudices that liberal societies have justifiably overcome and outlawed in their long and difficult struggle to become liberal societies have had a religious context and long historical traditions.

One difficulty here is that people with religious beliefs concerning homosexuality and lesbianism see those beliefs as moral convictions, as matters of moral principle and integrity, and therefore as issues of conscience. Here we have the central clash between objective and subjective standpoints. From the objective standpoint, the liberal polity has identified racism, sexism, homophobia and other ‘attitudes’ as unreasonable and unacceptable prejudices, and so the religious claim for exemption does not require respect. From the subjective standpoint of the religious believer, they are experiencing a moral command which conflicts with a democratically established law, and so their claim to exemption merits respect.

I have no test to offer which can tell us the difference between a moral conviction and an unreasonable prejudice, but what follows from that is not an impasse. We have distinguished between the standpoint of the liberal individual and the liberal polity, between private and public issues of toleration. It may be that the private standpoint of the liberal individual has to be tilted towards the subjective<sup>38</sup> but the public standpoint of the liberal polity has to be tilted towards the objective. It still has to arrive at a judgment about what kind of belief counts as a moral conviction, one which has to be respected (but not necessarily granted) as a claim to exemption, but the UK Equality Act itself contains a definition of what it terms a ‘philosophical belief’, the type of belief that merits respect and protection of the law, be it religious or otherwise.

The definition is such that: “...it must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others.”<sup>39</sup> It is difficult to see how any exemption claim by religious organizations that would give them the right to discriminate against homosexuals and lesbians in any of their practices could meet this threshold requirement.

References:

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<sup>38</sup> Even at the private level, practices which harm others cannot be tolerated, but if a religious believer chooses not to associate with gay people in their strictly private affairs, this does not constitute harm.

<sup>39</sup> [http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen\\_20100015\\_en\\_1](http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100015_en_1): section 10, paragraph 52, accessed June 7, 2010.

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