THE RIGHT TO TOLERATION

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ABSTRACT

This essay examines John Locke's argument for a right to religious toleration, which is the historical forerunner of modern liberal conceptions of a broader tolerance. Locke's approach to toleration is shown to give rise to rival and conflicting claims of right which can only be resolved through an appeal to the duty of civility.

I. INTRODUCTION

This essay examines John Locke's defence of the right to toleration. But why drag a seventeenth-century philosopher into a discussion of conflicting rights in the twenty-first century? Well, for one thing, Locke's seminal contribution to the liberal political tradition is a justification of the state in terms of its role as guarantor of individual rights. Locke is also famous for his defence of religious toleration, which he treats in terms of the right to liberty of conscience. While Locke does not concern himself with the difficulties arising from a possible conflict of rights, his theory compels us to think about the accommodation of religious diversity in the face of competing claims of conscience. And since, on the terms of his own argument, claims of conscience are put forward as a matter of right, the way Locke deals with these competing claims might well have something to tell us about how to handle rights in conflict. It is also relevant that Locke's philosophical construction of the state, rights, and toleration still inform our contemporary practices.

II. LOCKE'S RIGHT TO TOLERATION

According to Locke, religious opinions and divine worship *"have an absolute and universal right to toleration,"* and "Liberty of Conscience is every man's natural Right."

Lockean toleration is a negative right largely consistent with how we today think about religious freedom, as enshrined in the Canadian Charter of Rights and the First Amendment to the United States Constitution. For us, as for Locke, the right to liberty of conscience means that religious believers may entertain whatever conception of the divine seems true to them and engage in whatever manner of public worship they think appropriate without encountering coercive interference from the state or their fellow citizens.

Although several of Locke's arguments for toleration explicitly draw on his understanding of what is required of Christians in their conduct toward one another, the regime of toleration he proposes extends to Jews, Muslims, and "Pagans". To this extent, then, the Lockean right to toleration is deliberately inclusive. It acknowledges the social identity of minority religious groups and creates a space for them within a religiously pluralistic civil society. The antagonisms born of religious differences are muted by assigning politics and religion to separate spheres. Within the political sphere all persons share a common civic identity and a common set of "civil interests," which Locke enumerates as "Life, Liberty, Health, and Indolency of Body; and the Possession of outward things, such as Money, Lands, Houses, Furniture, and the like." Religion, on the other hand, is assigned to a non-public sphere where like-minded individuals are free to come together in voluntary associations – churches – for the purpose of worshipping God "in such a manner as they judge acceptable to him, and effectual to the Salvation of their Souls."

The Lockean right to toleration assures that the particularity of the individual's religious identity can be

preserved alongside her non-denominational civic identity. At the same time, it rules out the pursuit of religious ends by political means, thus neutralizing the threat posed by sectarianism. T.M. Scanlon captures Locke's meaning when he says of tolerance, "What tolerance expresses is a recognition of common membership that is deeper than [group] conflicts, a recognition of others as just as entitled as we are to contribute to the definition of our society."

III. CIVIL AUTHORITY AND CLAIMS OF CONSCIENCE

A parallel might be drawn here with John Rawls' idea of public reason. Locke's magistrate is required to confine his actions to measures that will protect and promote the civil interests common to all citizens. Accordingly, he must be able to describe his actions in light of that purpose in order to avoid having their legitimacy called into question. Inevitably, difficult cases will arise. Locke gives the example of a law forbidding the slaughter of calves imposed to replenish the nation's livestock after the supply of cattle had been greatly diminished due to some "extraordinary Murrain." He thinks this objective well within the bounds of the magistrate's just authority, but observes that it will have a differential impact on believers whose religion requires the weekly sacrifice of a calf as part of their worship service. Need these believers be accommodated by making an exception to the general law temporarily forbidding the slaughter of calves? Locke thinks not. He explains that "in this case the Law is not made about a Religious, but a Political matter: nor is the Sacrifice, but the Slaughter of Calves thereby prohibited." What matters to Locke in this example is not only the magistrate's language of justification but his intentions. By acting for a valid public reason, the magistrate shows respect for the believers whose weekly sacrifice is blocked by the law. It is, of course, possible to doubt the sincerity of the magistrate, and Locke is well aware of the temptation to make duplicitous use of political language. Accordingly, he cautions the magistrate "always to be very careful that he do not misuse his Authority, to the oppression of any Church, under pretense of the publick Good."

Might Locke have opted for accommodation in this example? There is no apparent reason why not. If the magistrate were to decide on reasonable evidence that a religious exemption from the ban would not injure the public, it is arguable that in light of the Lockean right to toleration he is in fact obliged to grant the exemption. To do otherwise would only encourage the suspicion that he had acted out of prejudice "under pretense of the publick good," which would justify conscientious disobedience on the part of the affected worshipers.

Whether or not in any particular case the public good truly requires the magistrate's action is always contestable, and since there is "no judge on earth between the Supreme Magistrate and the People" the impasse can only be broken by a resort to arms, the consequences of which are usually so horrific as to give both the magistrate and the people reason to pause.

IV. TOLERATION AND IDENTITY

Modern critics of Locke sometimes complain that the terms on which he allows religious and cultural minorities into the political sphere deny them the public recognition necessary for full inclusion. The critics claim, in effect, that religious and cultural minorities are allowed a universal civic identity by Locke (and later liberals) only if they hide their particular religious and cultural identities. This might prove less galling if the political sphere were truly a neutral zone devoid of religious or cultural referents, but the critics contend that invariably it carries the imprint of the majority. This imprint may be invisible to members of the dominant religious and cultural groups, but it rarely escapes the notice of minority group members and only serves to remind them of their outsider status.

This critique is not without merit, but arguably it misconstrues the purpose of Locke's carefully crafted separation of politics and religion. Assigning religion to the non-public sphere is not intended to hide it away in private, but rather to create a social space for the (unthreatening) public display of religious identity. The conditions for society's recognition of particular religious identities on equal terms with one another are made possible by the state's regard for liberty of conscience and the right to toleration, which make it impossible to exclude the members of minority religious groups from public schools or public office, for example, simply on account of their religion. Ultimately, it is to be hoped that general recognition of the right to toleration (and its enforcement by the state) will encourage the development of mutual trust, eventually leading to the dissipation of prejudice and full social acceptance of the minority by the majority.

V. LOCKEAN TOLERATION AND LIBERAL MULTICULTURALISM

Is the Lockean right to toleration a hollow promise for those who take *works*, the outward acts that characterize a life lived in accordance with one's religious beliefs, to be as or more important for attaining salvation than an inward *faith*? To put the question more concretely, are the rights of, say, a conscientious Catholic for whom there is

religious imperative to oppose abortion given short shrift by a modern Lockean polity that treats abortion as a matter of personal choice and requires her to tolerate the practice? It is likely that anyone who thinks of religion not as an easily compartmentalized set of personal beliefs (inward faith) but as a complete way of life for an entire community (outward works) will answer this question in the affirmative.

Locke might respond, as modern liberals do, by saying that everyone is free to conceive of their religion in any manner they please and to live their lives accordingly, so long as they do not intrude on the rights of others. Thus, the Catholic Church may forbid its own members from having abortions on pain of excommunication, but the church may not issue commands to non-Catholics. Catholics are at liberty, of course, to attempt to persuade non-Catholics that abortion is a sin. For Locke, this is how toleration operates. Respect for the religious point of view is institutionalized through a multi-faith dialogue where the object is to win hearts and minds by means of reasoned argument. But Locke conceives of this religious dialogue as being about speculative theological opinions, whereas the hard questions that give rise to so much religious strife in the present day concern practical moral opinions bearing on the conduct of life.

Locke seems to think that a broad societal consensus can be expected on moral questions. With the undeniable breakdown of that consensus, liberalism after Locke inclined toward greater acceptance of moral pluralism, which it sought to accommodate by enlarging the number of speculative and moral opinions assigned to the non-public sphere protected from outside interference. J.S. Mill, for example, expands the boundaries of personal liberty far beyond the range Locke would have found tolerable, and modern liberals go further still. As the state retreats from policing morals, persons and groups who, for religious reasons, take a strong interest in the moral quality of public life are likely to feel increasing aggrieved. This is the paradox inherent in Locke's construction of the right to toleration: in the name of conscience individuals and groups are expected to tolerate conduct they find grossly immoral, which is itself an affront to conscience.

VI. CONCLUSION: THE DUTY OF CIVILITY

Does Locke's doctrine have anything to offer us in the face of this dilemma? Locke recognizes that to the sincere believer nothing is more important than her religious obligation, a perspective he apparently shares. "The principal and chief care of every one ought to be his own Soul first," he writes, "and in the next place the publick Peace." But he immediately adds that "there are very few will think 'tis Peace there, where they see all laid waste." Locke's words are a caution to believers, who in his time were all too familiar with the devastation caused by wars of religion.

Chastened believers have ample incentive to embrace what Locke calls the duty of civility. He, in one place, describes civility as a duty consisting in "outward expressing of goodwill and esteem or at least of no contempt and hatred," and he ranks it second only to justice among the virtues which relate to society. The duty of civility receives support from Locke's insistence that beliefs grounded in religious faith are not subject to demonstration and hence cannot be shown to be true in a manner convincing to all. The lesson he would have us draw from this seems similar to what Rawls intends by "the burdens of judgment." Since, according to Locke, the beliefs people do hold are a result of their experience and associations, which vary from one person and one group of people to the next, it is only reasonable to expect a diversity of religious opinions. Thus, although "every one is Orthodox to himself," as Locke puts it, no one has a reasonable basis for declaring others to be heretical. Recognition of the Lockean burdens of judgment makes mutual toleration the default position for competing orthodoxies.

Accepting the duty to be civil will not prevent clashes between conscientious believers or the collision of competing rights claims, but it should help keep a lid on things and make it less likely that hard feelings will poison relations between the contesting parties. It should also promote a general willingness on the part of individuals and groups to accommodate one another insofar as this is possible without compromising a fundamental interest.

But like all of Locke's arguments on behalf of toleration, the appeal for civility is addressed to persons who already recognize the religious "other" as a fellow citizen possessing the same rights and deserving the same consideration as themselves. What is to be done, then, about the genuinely intolerant, those who, out of sincerely held religious beliefs, would deny religious freedom to others? Locke writes, "those that will not own *and teach* the Duty of tolerating All men in matters of mere Religion... have no right to be tolerated by the Magistrate."