



# Ethics in Brief

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## Understanding Liberal Regimes of Tolerance <sup>1</sup>

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Recent heated debates over the meaning of 'tolerance' and 'discrimination', arising in relation to Christian Unions, Catholic Adoption agencies and so on, are badly clouded by misconceptions of what the two terms imply. The debate is not fundamentally about 'tolerance versus discrimination' but about which 'regime of tolerance' each side favours. An individualistic regime of tolerance favours equal treatment among individuals, while a pluralistic regime offers equal treatment among associations. Much greater clarity is needed over whether, and where, our society should favour individualism or pluralism, and over what the costs of each direction will be.

### **Introduction: 'regimes of tolerance'**

The notion of a 'regime' of tolerance sounds paradoxical. The term 'regime' conjures up images of an authoritarian state deploying heavy-handed tactics – or more subtle techniques of persuasion – to suppress free speech. The term 'tolerance,' by contrast, evokes pictures of open streets in which contending political groups vie freely for a hearing. The imputation that *liberalism* is a 'regime of tolerance' is doubly counter-intuitive: isn't liberalism *defined* essentially as a system of placard-waving tolerance, laid-back openness and boisterous intellectual freedom?

I want to suggest that every political system, not only authoritarian ones but liberal ones as well, are 'regimes' which facilitate a particular zone of toleration and simultaneously demarcate clear legal boundaries to such toleration. Such boundaries are acts of intolerance, but every regime has to set them. This isn't to say that the difference between Britain and, say, North Korea is merely one of degree. Liberal states operate on what has been called a 'presumption of liberty,' seeing constraints on citizens as needing justification. Authoritarian states operate on the presumption of citizens' conformity to government expectations, regarding liberty as requiring justification. But even liberal regimes – even relatively *just* liberal regimes – have to set legal boundaries to what is tolerable. Criminal laws protecting people against acts of violence such as murder or rape are only the clearest examples of how a free, open, 'liberal' society, must be legally intolerant of many kinds of act if it is to establish a minimum baseline of justice in society.

### **Menus of toleration**

All political systems, then, are both tolerant and intolerant, but of *different things*: each system offers a distinctive 'menu of toleration.' It matters *enormously* which things are on the menu and which are not: that's how we distinguish liberal from authoritarian regimes. But the debate on what the menu should contain is not helped when we simplistically bifurcate political systems, or social institutions, into those which are 'tolerant' (us) and those which are 'intolerant' (them).

The question is: *what is tolerable?* This depends in part on the particular institutional context in view. Parents may lay down clear rules on respectful language on the part of their children, with punitive sanctions attached. But such domestic rules would be wholly inappropriate in a parliamentary chamber and would stifle debate unacceptably – as they do in authoritarian regimes where it is illegal to speak 'disrespectfully' of the head of state or governing party. The scope of tolerance is sphere-specific. And different political systems will define those spheres differently, each thereby sustaining a *particular regime of tolerance*. Christian political thought has come to favour the kind of liberal (or 'constitutional') regime marked by wide religious toleration<sup>2</sup>, ample freedom for civil society associations to manage

their own affairs without intrusion or domination by public authorities, and extensive freedom for individuals to hold and voice their convictions. But liberal regimes of tolerance today are throwing up some inner contradictions, and some minority groups in such societies are increasingly crying foul at what they perceive are unjust curtailments of their freedom of action or expression. I suggest that this is because liberalism itself is undergoing an important internal 'regime change.'<sup>3</sup> The earlier liberal regime converged extensively with (because it was indebted to) a Christian conception of constitutionalism. The new regime is taking upon itself a new mandate, one which is undermining some of the commitments of its predecessor. Notably, it is attempting to refashion formerly independent civil society associations in the image of the universal public principles applying to liberal governments. It is determinedly promoting what has been called a 'logic of congruence'.<sup>4</sup>

### **Toleration and religion**

Let me explore this tension further in relation to religious associations. One of the reasons why such associations are under increasingly critical scrutiny today is because governments, at all levels, have expanded the scope of their regulatory claims over what are defined as 'public sector' institutions, such as health care or social service providers, and educational establishments. One of the most rapidly-expanding areas of regulation concerns anti-discrimination policies. Almost all public institutions are now acquiring, often under legal compulsion, detailed official guidelines or codes of practice intended to prevent discrimination in hiring, promotion, treatment, service provision, etc., on grounds of race, ethnicity, religion, gender, sexual orientation, and so on. The idea of uniform codes of practice in public institutions is not in itself wrong, and Christians should not be heard to be calling for complete autonomy from legal regulation for religious associations. Some codes are essential to ensure just treatment: we wouldn't want one hospital to treat applicants of all races fairly in its hiring processes but another one down the road to get away with covert racism.

But the current trend toward the ever-wider and ever-deeper penetration of such codes is producing troubling outcomes. A particularly instructive one arises from the intersection of public institutions with private ones. Consider a religious student association on a public university campus. It is a voluntary, self-governing society. It is not owned by the university, or by the Student Union. It merely avails itself of facilities (meeting rooms, publicity outlets, subsidies, etc.) under the immediate control of the Union, and under

the final authority of the university. Such facilities are available to every other student society recognized by or affiliated to the Union. The Union holds a monopoly of control of such facilities and can enforce its rulings coercively.

Now consider the example of an Islamic student society, affiliated to the Union. Under pressure from other student societies or individuals, the Union decides to impose a new non-discrimination policy (or, perhaps, review the enforcement of its existing one) on all affiliated student societies, upon breach of which privileges or even membership are withdrawn. This new policy requires all society offices to be filled by elections in which all members can vote, to open up such positions equally to men and women and to heterosexually- or homosexually-active members. But the Islamic society has a rule, contained in its own constitution, and deriving from its own reading of Islam (perhaps under guidance from a sympathetic local Imam), that senior offices in the society are reserved for men, and for those upholding the society's religious beliefs, one of which is that homosexual relations are morally illicit. The inconsistency is discovered, and the Islamic society is disaffiliated. It protests loudly against 'discrimination.' In the name of a policy of non-discrimination, a student society finds itself discriminated against. Is this a 'tolerant' policy? Exactly the same question arose recently in regard to Catholic adoption agencies, which have now in effect been instructed by the government to abandon their own moral stances on homosexual behaviour and its implications for parenting, if they are to continue to receive public recognition and funding.<sup>5</sup>

### **Individualism or pluralism?**

What this case exemplifies at the micro-social level is a clash between two competing regimes of tolerance, an individualistic one and a pluralistic one. One – the Student Union's – prioritizes arithmetical equality, understood as *identical* treatment for *individuals* across a wide range of institutional practices within all associations. Backed by the monopoly power of the Union it imposes uniform rules on all student societies irrespective of what their internal beliefs and rules prescribe. The other – the Islamic group's – prioritizes associational plurality, allowing *differential* treatment of different *groups* out of equal respect for the diverse viewpoints and internal procedures such societies represent. Both seek equal treatment, but they differ over which entities merit equal treatment, individuals or associations. An individualistic regime of tolerance in effect allows the majority of individual students to determine the internal appointment procedures of every affiliated society. But imposed arithmetical

equality among individuals has the effect of squeezing out associational diversity. A pluralist regime of tolerance allows each affiliated student group equally to determine its own internal appointment practices, even when some of these may diverge from what the majority of students think is morally acceptable. Its approach is also backed by the monopoly power of the Union: respect for associational pluralism is enforced across all affiliated societies. Imposed protection of associational pluralism necessarily allows the possibility of unequal (non-identical) treatment of individuals within groups. We cannot resolve which regime is the more 'tolerant' merely by gazing at the abstract concepts of 'tolerance' or 'equality'.

In practice, of course, any Student Union (as any political society) is likely to embody a combination of individualist and pluralist elements. Any conceivable pluralist regime in universities today will certainly expect equal treatment for members of all races. No Union would tolerate a student society which practiced racial discrimination. Legitimate pluralism meets its proper limits at the point where non-negotiable human rights are at stake, and the relevant authority – whether a Union, a university administration, or a government – has to enforce them. But beyond this agreed baseline there seems to be an expanding contest in Union politics between the individualist and pluralist tendencies. Currently, it seems that the individualistic tendency is gaining the upper hand, even where the Union pays lip-service to pluralism. This individualistic standpoint blinds many of its advocates to the obvious inconsistencies they seem to be able to harbour. Consider a feminist society, committed to advancing the cause of women's rights on campus. Could anyone reasonably cry 'discrimination' if the senior offices – even the membership – of that society were reserved not only for women but for feminist women, defined as those subscribing to the stated aims of the society? Even more obviously, who would cry foul if a student Labour Club required that its offices be reserved to members of the Labour Party, or at least those willing to sign up to a statement of Labour-friendly principles?

In such cases the restrictions in question seem wholly pursuant to the very purposes of the societies. They are not arbitrary acts of discrimination, but eminently justifiable ones. As it happens, it is difficult to imagine any Union disaffiliating *such* societies on grounds of a breach of its non-discrimination guidelines. Yet recently, as many are aware, a number of Christian societies in the UK (and the USA and Canada) – notably those with conservative theological convictions – have been subjected to exactly such

moves by Student Unions. In some cases this is because the societies require office-holders, or even members, to indicate their agreement with a particular doctrinal statement and with a particular lifestyle policy declaring (among other things) homosexual sex to be morally illicit. Some such groups have had their Union membership withdrawn, a move supposedly justified by the putative right of the Union to impose an identical set of internal norms of inclusion, tolerance, diversity, etc. on all affiliates. But this amounts to the monopolistic enforcement of an individualistic regime of tolerance, one which prioritizes imposed uniformity over self-governing plurality.<sup>6</sup> Let's call it by its name: it's a coercive act of exclusion.<sup>7</sup>

Obviously a key question at the heart of the recent conflict involving Christian societies is whether certain doctrinal or moral standpoints – notably on homosexual sex – fall into the same 'human rights' category as racism and so merit proscription *as arbitrary*, or whether they are more like the ideological convictions of party political or feminist societies and so merit protection.

Well, how should *that* question be resolved? How should we decide whether a particular practice by a student society has crossed the border of acceptable plurality and entered the realm where individualistic imposition is justified? On that there will inevitably be real disagreement by proponents of different regimes of tolerance. But in my view those who place racial identity and views on sexual morality in the same category are simply not comparing like with like. As a biologically determined trait, racial identity is wholly outside someone's choice, while also being profoundly implicated in someone's social identity. This is the basic reason why we have rightly come to insist that racial discrimination is arbitrary and that individuals of all races should be treated equally. *Views* of sexual morality, by contrast, are *elective*: we consciously adopt them, either through individual choice or by intentionally remaining within a community that upholds them.<sup>8</sup> And for some, the views they hold on this question are profoundly connected to their own moral or religious identity, such that being required to suspend or disavow them is experienced as deeply compromising. There is, then, a compelling argument for respecting *pluralism* on *this* question.

### **Conclusion: an honest debate**

Whatever we make of this very specific example, a wider conclusion beckons about the future direction of our society. As I noted, such cases are merely micro-social examples of a dilemma of tolerance facing liberal societies at large. Such societies are sites of

increasingly intense struggle between rival individualistic and pluralistic regimes of tolerance. The debate between them will run for a long time yet. But let no-one be allowed to get away with construing it as a simple contest between reactionary practitioners of intolerance, exclusion, dogmatism, and confinement (them), and liberating heralds of tolerance, inclusion, openness, and freedom (us). *That dishonesty should certainly not be tolerated.*

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### End notes

1 This is a revised and abridged version of 'Living with liberalism: understanding regimes of tolerance', first published in *Comment*, the online journal of the Work Research Foundation (December 2006). [www.wrf.ca/Comment](http://www.wrf.ca/Comment).

2 See David Fergusson, *Church, State and Civil Society* (Cambridge: Cambridge University Press, 2004), chapter 4.

3 On this development see David Koyzis, *Political Visions and Illusions* (Downers Grove, Ill: IVP, 2003), chapter 2.

4 See Nancy Rosenblum's (liberal) critique of this logic in 'Amos: Religious Autonomy and the Moral Uses of Pluralism', in Nancy Rosenblum, ed., *Obligations of Citizenship and Demands of Faith: Religious Accommodation in Pluralist Democracies* (Princeton: Princeton University Press, 2000), 165-195.

5 Madeleine Bunting defends the government's policy in 'Retreat on adoption and the Equality Act will crumble', *The Guardian* January 25 2007. She wrongly assumes that, if a voluntary body is in receipt of public funding, it should be subject to the same set of uniform public norms as prevail in government-controlled institutions. In this way, public funding regimes are exploited to further the politicization of civil society associations, a process particularly damaging to bodies upholding a set of values at odds with those of the monopolistic liberal regime. On this see Jonathan Chaplin, 'Are we a little bit confused about discrimination?', *Church of England Newspaper*, 9 February 2007.

6 See the cogent critique of this policy by Archbishop Rowan Williams, 'It is not a crime to hold traditional values', *Times Higher Educational Supplement*, 10 December 2006.

7 Some Christian defenders of the stance of Student Unions seem oblivious of this conclusion. E.g., the London-based Christian think tank Ekklesia favours an individualistic regime of tolerance without acknowledging that the imposition of individualism is just as coercive and exclusionary as the imposition of pluralism. This is ironic given Ekklesia's anti-state, Anabaptist-inspired leanings.

8 Note that it is *views of homosexual practice* that are at stake, not *sexual orientation* itself, which virtually everyone experiences as something wholly outside their choice. Regrettably, some Christians do not consistently acknowledge this crucial distinction in their public rhetoric.

### For further reading

- J. Budziszewski, *True Tolerance: Liberalism and the Necessity of Judgment*, Transaction, 1992.
- Jonathan Chaplin, 'Rejecting Neutrality, Respecting Diversity: From "Liberal Pluralism" to "Christian Pluralism"', *Christian Scholar's Review* 35/2 (Winter 2006), 143-176.
- David Fergusson, *Church, State and Civil Society*, Cambridge University Press, 2004.
- William A. Galston, *The Practice of Liberal Pluralism*, Cambridge University Press, 2005.
- Susan Mendus, *Toleration and the Limits of Liberalism*, Macmillan, 1989.
- Stephen V. Monsma & J. Christopher Soper, *The Challenge of Pluralism: Church and State in Five Democracies*, Rowman & Littlefield, 1997.
- Robert Song, *Christianity and Liberal Society*, Clarendon Press, 1997.

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