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Sensitivity Isn't Enough by Peter Berkowitz

A review of *Virtue, Reason, and Toleration* by Glen Newey. University of Edinburgh Press, 208 pp.

Once liberalism's signature virtue, toleration has of late been superseded by other more fashionable ideals. Foremost among these is 'sensitivity', before which there was 'neutrality'.

Like toleration, neutrality presupposes pluralism, or a world in which a multiplicity of beliefs and a variety of ways of life coexist. To its proponents, the doctrine of neutrality seemed clear cut, universal in scope and based on modest, uncontroversial ideas about the moral life. Neutrality was non-judgmental, the argument being that it was not the task of government or anyone else to decide what was right and wrong for people, but rather the right and responsibility of individuals to make their own decisions about how to live their lives, consistent of course with a like freedom for everyone else.

Critics countered with two principal objections, one which was formulaic and quickly grew obsolete, the other subtle and of lasting significance. According to the first objection, neutrality was a sham because there was no Archimedean point from which to view the world, no universal perspective, no impartial ethical ground. All moral judgments and political arrangements, it was said knowingly, and as if one could dispense with justice's universal claims in one fell swoop, are situated, value laden and partial. The second, more penetrating objection was that the aspiration to devise laws and public policy that were neutral towards competing conceptions of the good life was itself not neutral but rather affirmed the good of individual choice. By seeking to remain neutral, the state (and teachers, parents, friends, and so on) gave wide latitude to individual choice, thereby honouring it as the primary or greatest good. Moreover, if neutrality was the means and a life of choice the good served, how could the choices made by individuals not also be good? How could you respect choice and not the thing chosen? Failure to take this further step, which in truth is not compelled by either logical or moral necessity though thought by many to be required by both, came to be seen as a lack of 'sensitivity'.

Sensitivity also resembles toleration in presupposing pluralism. But where toleration calls for restraint, or holding back in the face of what you disagree with or disapprove of, and neutrality requires a suspension of judgment, sensitivity involves an affirmative judgment, indeed the appreciation or embracing of beliefs and ways of life that differ, in some cases dramatically, from your own. Thus sensitivity could seem the more demanding option. In one

respect it surely is. For whereas toleration leaves the individual free to form his judgments about right and wrong while enjoining him not to compel others to comply with his own moral opinions, and neutrality asks him to refrain from judging others, sensitivity compels him to judge other favourably.

In another respect sensitivity is less demanding, however, because it involves an abdication of judgment, or at least of independent judgment. It abandons fine distinctions: it means not merely discerning what is good in other beliefs, actions and persons, but seeing as good whatever beliefs, actions and persons enter your field of view. It may arise to encourage diversity, but it also provides the comforts of conformism by dictating that all should judge alike. It is forbidden to give offence, where offence is understood subjectively, as a violation not of general standards but of personal feelings. Requiring that we all must be made to feel at peace and happy with our choices, sensitivity leaves little room for criticism or disapproval, except in the case of the insensitive person, whose poor judgment renders him a fit target for public opprobrium.

In fact, toleration is the hard position to take. To tolerate means, etymologically speaking, to bear or to endure, as in 'He has low tolerance for noise, for smoke, for this or that medication.' When it comes to the moral life, however, the tolerant person does not bear all offences and endure all injuries. He must bear the right things in the right way at the right time. He knows where to draw the line and how, once it's drawn, to hold it. He understands the limits of state power and, while he does not conflate his private interest with the public interest, he appreciates that the public good, at least in a liberal democracy, is advanced by protecting a sphere in which individuals are given the opportunity to live as they think fit. In short, to act tolerantly one must employ practical wisdom, exercise self-control and sometimes show courage and generosity.

Which then is to be preferred, toleration or its successor ideals? Glen Newey does not address the question directly, but his closely reasoned book gives us cause to believe that neutrality and sensitivity are poor substitutes for toleration. It is unfortunate that much of Newey's dense, abstract, and resolutely technical analysis of toleration will be unintelligible to anyone who isn't a professional in the field of analytic moral philosophy, because his central line of argument offers a valuable corrective to contemporary complacency in and outside of the academy.

Perhaps the single most influential opinion that Newey seeks to dispel is that the task of philosophy consists in identifying fundamental principles and deriving laws and public policy from them. This is the opinion of many who practice philosophy in the manner of John Rawls and Ronald Dworkin. Philosophical reflection on the nature of toleration, Newey contends, shows that this is a wrongheaded enterprise. It is, Lord knows, not the abstraction that Newey objects to, but --- quite rightly --- the conceit that philosophical reflection of sufficient rigor and inventiveness can decide political issues, as if most political questions did not turn upon controversial empirical claims and debatable speculation about right and wrong.

From the point of view of a common sense understanding of the moral life, it may appear that Newey proceeds in a manner itself no more promising. He says straight out that he will not seek to provide answers to the sort of practical questions connected to toleration that tend to arise in ordinary life: What ought to be forbidden? What ought to be commended? What ought to be tolerated? Rather, his guiding concern is with what the professionals call the 'transcendental' question: "What must be possible in order for toleration itself to be possible?" In other words, Newey aims to identify what must be true about the world, morality, reason and human beings for toleration to be coherent and desirable value.

The transcendental question presupposes a working knowledge of what toleration is, such that its elements can be identified and its coherence and desirability put to the test. In seeking a definition, Newey follows Aristotle, whose advice to those undertaking an ethical inquiry is, as Newey reminds us, to start with the opinions held by 'the many and the wise'. The task of philosophy, on this view, is to elaborate the implications of what is already reasonably well-accepted. This is not, as it may seem, to render philosophy subservient to common sense, or worse, to local prejudice and time-bound pieties, for it may well happen that philosophical analysis exposes a claim's implausibility or incoherence.

According to Newey, the common sense understanding of toleration, consists of two claims: "first, that toleration is regarded as having value in itself, as being something which is morally admirable or worth pursuing for its own sake; and second, that it seems necessary, if a person or act is to be tolerated, that the tolerator views what he tolerates as being worthy of disapproval, which is (at least very often) moral disapproval."

Newey does not, as his method would seem to require, pause here to provide a smidgen of empirical evidence --- no suggestive anecdotes or telling observations --- to support his contention that this understanding of toleration captures a widely held view. This does not invalidate his definition, but it does reflect a remoteness from the world whose ethical outlines he purports to be explicating, and an obliviousness of the extent to which he is analyzing a principle that has fallen on hard times.

Sticking to analysis of the concept, Newey argues that toleration has a three-part structure:

| in order for a given practice P to be eligible for toleration, the practice must be such that the tolerators have (as they think) moral grounds for disapproving of P; further, there must in their belief be some moral reason for refraining from acting so as to prevent P. . . in addition. . . the tolerators must specify some set of circumstances in which practices P (which may include P itself) would not be tolerable.

This three part structure has consequences. It suggests, first, that toleration is not a free-standing ideal. Rather, it depends upon a more comprehensive conception of ethics, whereby we can identify what deserves moral disapproval and what does not, as well as illuminate the place of toleration in a good or well-lived life. Second, it implies that, being context sensitive,

toleration requires practical knowledge, imagination and familiarity with the messy and ambiguous circumstances of political life. And third, it points to the indispensability of virtue, since toleration issues in acts, even if they are in most cases acts of forbearance.

What kind of virtue does toleration require: or what does tolerance, as Newey calls it when it becomes a quality of character, look like? In addressing these questions, he exposes the limitations of his approach. Like all virtues, tolerance is a 'settled dispositional property', a fixed quality of character which inclines someone to act in specified ways. But which ways? Is it tolerance or mere abdication of responsibility to allow peculiarly devout parents to raise their children and educate them in ways one is convinced will undermine the children's opportunities to participate later as fully-fledged citizens? Is it tolerance or a superficial open-mindedness and pusillanimity that would refrain from imposing restrictions on hate speech and obscenity? Is it tolerance or cowardice for a person who believes that abortion is murder to honor laws that allow it? In short, what sorts of acts is a tolerant person inclined to perform? Because of his insistence that a properly philosophical analysis must remain on the level of pure concepts, Newey refrains from saying very much about this crucial issue.

The most he can offer is the solution to a conceptual puzzle, that of the 'ensorious tolerator'. The puzzle is that since toleration involves the tolerant person forbearing to prevent an act of which he disapproves morally, one can seemingly become more tolerant by adding to the number of acts of which one disapproves while steadfastly refraining from interfering with them. In fact there is no inconsistency. The 'ensorious tolerator' only seems a paradoxical figure because of certain persisting intuitions. Toleration, it appears, involves more than restraint from interference, it also requires a generosity of spirit when it comes to judging others. Newey solves the puzzle of the censorious tolerator in the same way as he created it, by appealing to the sorts of act that tolerant men and women perform: since tolerant people are not censorious, censoriousness cannot be part of toleration.

Virtue, however, is more than a solution to a conceptual puzzle, it is a critical ingredient of the moral life that raises hard and urgent questions of its own. How reliable is what people say about the virtue of tolerance? Is it a single virtue or does it involve a constellation of virtues? What beliefs, practices and institutions foster the qualities of mind and character that form tolerant persons? And which foster intolerance?

Are such questions really, as Newey implies, really beyond the ken of philosophical analysis? In supposing that they are, he departs dramatically from the 'broadly Aristotelian cast' that he attributes to his argument. For Aristotle famously argued that because moral and political matters admit of so much variety and are so dependent on circumstances, the answers to them can only be sketched roughly, in outline. Newey, however, carries his case to excess by excluding from consideration anything which cannot be established with mathematical precision --- while at the same time appealing, inconsistently, to observations about how tolerant people conduct themselves to solve the problem of the censorious tolerator.

Newey also carries the demand for theoretical purity to excess in his analysis of the variety of arguments professional philosophers typically offer to justify political toleration. All, he concludes, fail. Arguments from neutrality fail because every policy inevitably favours one conception of the good over the rest. Arguments that appeal to value pluralism founder because the ultimate values that are plural may well be indifferent to or inconsistent with toleration. Both scepticism as to the existence of ultimate values and moral relativism (the dogmatic claim that ultimate values do not exist) license intolerance as readily as toleration, perhaps more readily. The argument from the good of personal autonomy raises doubts because a regime of toleration necessarily imposes limits on autonomy, which, Newey suggests, smacks of intolerance. Nor is the matter settled by the argument that toleration is justified because it provides a *modus vivendi* between competing factions in a diverse society, since on occasion toleration may destabilize society.

Newey is correct in saying that each of the arguments for toleration he considers is flawed, but wrong to treat all such flaws as fatal. He has failed to see how each of the theories he dismisses can in fact provide partial justification for a doctrine of political toleration and how, taken together --- as they ought to be on Aristotelian grounds, inasmuch as each justification has a root in ordinary, widely shared intuitions --- they form a very strong case for toleration.

Moreover, Newey overlooks the most fundamental justification for 'toleration', which stems from the premise or governing principle of the regime under which the citizens who form the main audience for this book live. That premise, the governing principle of liberal democracy, is the natural freedom and equality of all human beings, which impels us to allow everyone their freedom, even in many cases when it extends to actions and ideas that we have good reason to believe are misguided or harmful. We exercise restraint or tolerance both out of respect for others who, like us, are by nature free, and out of a wish to maintain a political order that protects our privacy and controversial choices.

In many matters, concerns of fairness will prompt liberal democracies to enact laws and establish procedures that strive to be neutral toward competing conceptions of the good life. We all profit from people who are sensitive to our peculiar needs and support us without hesitation through trials and tribulations. But this is not enough. Philosophical niceties and conceptual conundrums notwithstanding, toleration remains indispensable.

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