

Justifying Tolerance in Liberal Societies: The Need for Public Morality

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One of the most important assumptions in liberal societies is that citizens should be tolerant of a diversity of values. We are challenged by this assumption to justify restraint when we confront what we oppose, disapprove of, or perceive to be immoral, even if we have the power to suppress perceived immoralities. Based on the work of Elliot Turiel, Jonathan Haidt, and Gerald Gaus, the argument developed in this article is that the best way to address the challenge is to distinguish between public morality and other normative categories such as convention and private morality. Public morality circumscribes what should not be publicly tolerated. Conventional and private immoralities that are not prohibited by public morality should be tolerated.

Keywords: Elliot Turiel; Gerald Gaus; Jonathan Haidt; Liberal Society; Public Morality; Tolerance

Introduction

One of the most important assumptions in liberal societies is that citizens should be tolerant of a diversity of values. We celebrate value diversity and regularly admonish people to be tolerant as if it is a self-evident truth. It may be surprising, then, to hear from a philosopher, Catriona McKinnon, that there is a dangerous complacency about toleration or tolerance in the political zeitgeist and a mysterious inattention to the subject of tolerance in the Academy. In a recent statement, McKinnon (2006) says that her book aims to reassert the significance of toleration by exploring the best current theoretical answers to the following questions: How is toleration possible? Why is toleration required? And, what are the limits of toleration? The dangerous complacency about toleration in the political zeitgeist is mirrored by a mysterious quiet in the Academy: with few exceptions, the subject of toleration has been largely absent from the academic literature for the last twenty-five years, and the questions just listed have rarely been addressed directly (pp. 13-14).

Philosophers may think that McKinnon's claim about the Academy is an exaggeration because there are some good theoretical (philosophical) attempts to answer her questions if not answers in the literature, although the bulk of the latest work on tolerance is English, not American (see the introduction to her bibliography, p. 202). It is not an exaggeration, however, to say that there is virtual silence, if not a mysterious quiet, in the work of moral psychologists. Perhaps psychologists are silent because they understand that their work is descriptive, not normative, although the boundary between the empirical or descriptive and the normative has been dissolving.

Another possible explanation for the silence among moral psychologists is that a defense of tolerance did not seem so urgent in Elliot Turiel's research program because of an assumption that tolerance applied to the large conventional domain provided for in the theory. Most of the interesting theoretical action, especially concerning moral dilemmas, seemed to

be in the smaller moral domain involving harm, justice, rights, and welfare. Extending the theory and research of Richard Shweder (1997), Jonathan Haidt (2001) and others (Haidt & Kesebir, 2010) have been pressing their fellow moral psychologists to expand the moral domain to include issues of in-group loyalty, respect for authority, and spiritual purity. With a diverse moral domain nearly co-extensive with all of life, finding the answers to McKinnon's questions becomes more urgent. If there is to be tolerance within this extensive domain, it seems that we will inevitably be required to tolerate at least some immoralities. This is the paradox of toleration articulated by philosophers (McKinnon, 2006: p. 19).

In this article, my first task will be to clarify the meaning and essential features of tolerance. I will then show that it is not difficult to justify tolerance in Turiel's moral theory. Jonathan Haidt's research represents a much more serious challenge to the justification of tolerance. Based on the social philosophy of Gerald Gaus (1999), I will argue for a normative theory that justifies tolerance and resolves the paradox of tolerance presented by Haidt's expanded moral domain.

Essential Features of Tolerance

McKinnon (2006, p. 14) provides a useful outline of the most important features of tolerance on which most philosophers agree:

- 1) *Difference*: what is tolerated differs from the tolerator's conception of what should be done, valued, or believed.
- 2) *Importance*: what is tolerated by the tolerator is not trivial to her.
- 3) *Opposition*: the tolerator disapproves of and/or dislikes what she tolerates, and is *ipso facto* disposed to act so as to alter or suppress what she opposes.
- 4) *Power*: the tolerator believes herself to have the power to alter or suppress what is tolerated.
- 5) *Non-rejection*: the tolerator does not exercise this power.
- 6) *Requirement*: toleration is right and/or expedient, and

the tolerator is virtuous, and/or just, and/or prudent.

As McKinnon notes, the first four features concern the circumstances of tolerance, that is, “the conditions in which it is meaningful to describe one agent as tolerant of another” (p. 14). Tolerance is a meaningful concept only if people differ in their values, beliefs, or practices. Tolerance may be a meaningful but not relevant concept if differences are not important or significant. Some people like to wear turtleneck sweaters in the winter, but I do not. Because this difference is trivial to me, I simply ignore it.

The third feature, opposition, is perhaps the most important. This feature creates the most difficulty in justifying tolerance. We can see this by considering a couple of examples. For example, suppose that Mary Smith is a well-paid attorney who works for a reputable law firm. I also work for the law firm and live in Mary’s neighborhood. When in the local grocery store, I notice that Mary selects several cans of dog food and puts them in her cart. I walk by and ask about her dog. Mary says that she does not have any dogs. She eats dog food because she likes it. I do not say anything but walk away feeling disgusted. Mary and I differ about food in a way that is not trivial to me; we have an oppositional difference. I would strongly dislike eating dog food, but actually I do not care if Mary eats it. I am opposed but indifferent. Our difference involves only a matter of non-moral value. Tolerating Mary’s eating practice is not difficult.

Tolerance becomes more difficult, however, when opposition involves a moral matter. For example, suppose that Mary has a colleague, Lisa Jones, who Mary believes is a lesbian, although Lisa has never directly revealed her sexual orientation. One day in a conversation at the water cooler, Lisa not only discloses that her roommate is really her life-partner but she also explains in vivid detail what they do together sexually in bed and their plans to marry. Mary is horrified. She is a devout Catholic who not only dislikes homosexuality but also believes that gay sex and marriage are morally wrong. Because Lisa’s difference with Mary involves a moral matter, not just a difference in values, Lisa finds it difficult to tolerate Mary’s sexual practice and marriage plans. In Lisa’s mind she would be tolerating immoral acts. This is the paradox of tolerance that must be resolved in order for tolerance to be justified.

McKinnon (2006) says that “Features (4) and (5) relate to the control the tolerator believes herself capable of exercising over what she tolerates” (p. 15). The fourth feature (power) defines a circumstance of tolerance and the fifth non-rejection describes how a tolerator responds to the circumstance. A person may not believe that she has the power to either alter or suppress what she dislikes or disapproves of. In this circumstance, it would be a misunderstanding of the term to say that this person is tolerant. Rather, we would say that this person is resigned to the circumstance. “Prisoners do not tolerate their guards, or slaves their masters” (McKinnon, 2006: p. 15). However, if a person believes that she has the power to alter or suppress what she opposes, then she is in a position to tolerate what is opposed, if she does not exercise this power. In the example of Mary and Lisa, if Mary believes that she has no power to affect Lisa’s marriage plans, then she is not tolerant of but resigned to the marriage. On the other hand, if Mary believes that she does have the power to affect Lisa’s plans, perhaps by supporting a powerful lobby against gay marriage, and she refrains from using the power, then we can say that she tolerates Lisa’s marriage.

The last feature entails two possibilities: tolerance is either a prudential or moral requirement. One might hold that tolerance is a prudent strategy to avoid serious conflicts, perpetual war and the violence associated with war. In this case, both what is tolerated and the prevalence of tolerance are variable, depending on the power relations among individuals and groups and other cultural factors in a society that might contribute to or ameliorate social cohesion and/or conflict. The other possibility is that tolerance is a moral requirement and the tolerant person is virtuous. In this case, peace is not inevitable, but the terms of peace are clarified by moral requirements. A moral theory is needed to establish the moral force of tolerance in this possibility. In the following, I will outline such a theory and suggest how it is possible to say that a person who tolerates some immoralities is a virtuous person.

How challenging the justification of tolerance will be depends on the definition of morality or the moral domain. For example, if the moral domain is relatively small, perhaps with one or two universally agreed upon moral principles, then justifying tolerance will not be difficult. Violations of the central moral principles are intolerable, but actions, practices or value differences outside the moral domain should be tolerated. In the crucial fifth feature, non-rejection, we see that the major reason a tolerator is not justified in exercising her power to eliminate differences is that these differences belong to the non-moral domain.

However, as the moral domain is expanded, the justification of tolerance becomes more and more challenging. If the moral domain is defined co-extensively with most life-activities, a tolerator will be asked to refrain from exercising her power to eliminate many differences that belong to the moral domain. Of course, a principled justification of tolerance in this situation is not necessary for tolerance to be meaningful. In an authoritarian society, what should be tolerated and not are decided for the citizens by one or more individuals who are powerful enough to coerce conformity with their preferences.

Justifying Tolerance in Turiel’s Moral Theory

It is not often recognized that the definition of morality determines our understanding of the meaning and role of tolerance in society. Traditionally, the task of defining morality has been the province of philosophers. As one might expect, philosophers have not been able to agree on the definition (see the review by Gert, 2008). Meanwhile, mostly outside the attention of philosophers, developmental psychologists have been defining and empirically testing morality. One reason for this inattention is that philosophers assume that a move from fact to value is logically illicit. No matter what facts the psychologists discover empirically, the development of a normative theory of morality requires the kinds of logical argument that philosophers are in the best position to provide. After twenty years of reflection, analysis and study, philosophers and psychologists have now begun a dialogue. Since the beginning of the twenty-first century, philosophers have become increasingly interested in and influenced by the empirical study of morality (Nado, Kelly, & Stich, 2009: pp. 1-2).

Elliot Turiel is one of the central figures in this psychological research tradition. Turiel began with a distinction between the moral and conventional domains and a definition of the kinds of rules that are appropriate to each domain. “Prototypical examples of moral rules include those prohibiting killing or injuring

other people, stealing their property, or breaking promises. Prototypical examples of conventional rules include those prohibiting wearing gender-inappropriate clothing (e.g., men wearing dresses), licking one's plate at the dinner table, and talking in a classroom when one has not been called on by the teacher" (Kelly, Stich, Haley, Eng, & Fessler, 2007: p. 117).

Moral rules are pan-cultural (universal), historically invariant, objective and prescriptive; conventional rules are not. Moral rules do not depend on the authority of any individual, group, or institution; conventional rules do. Violations of moral rules are more serious than violations of conventional rules. Violations of moral rules involve harm to victims, violation of rights, and unjust treatment; violations of conventional rules do not. The purpose of conventional rules is to maintain social order and coordinate social activities. A conventional rule may be easily changed if another rule is determined to better achieve this purpose (Turiel, 1983: pp. 2-4; for a succinct summary, see Nado, Kelly, & Stich, 2009: pp. 2-3).

Over the course of thirty years, Turiel and his associates tested these definitions using "an impressively diverse range of participants differing in religion, nationality, culture and Age from 3.5 years to adulthood" (Nado, Kelly, & Stich, 2009: p. 4). They found support for a robust distinction between the moral and conventional domains and their characterization of the difference between moral and conventional rules. They also found evidence of the authority-independent, universal and objective nature of moral rules and their early emergence in childhood development.

Two observations about these findings are important. First, transgressions of prototypical moral rules usually involve clear harm to a victim, but subjects might justify their judgments variously in terms of harm, justice, or rights. Kelly, Stich, Haley, Eng, & Fessler (2007) note this fact but not its significance (p. 119). Harm, justice, and rights are different concepts, and beliefs about all three may not be pan-cultural and universal. In the work of philosophers who pay attention to research findings, the assumption seems to be that harm-based violations are universal but not necessarily violations of rights or justice. For example, Nichols (2004) concludes that "despite the cross-cultural differences in moral judgment, the evidence indicates that all cultures share an important basic capacity, what I will call "core moral judgment." The capacity to recognize that harm-based violations have a special status (as compared to conventional violations) is an important indicator of the capacity for core moral judgment. As a first approximation, the capacity for core moral judgment can be thought of as the capacity to recognize that harm-based violations are very serious, authority independent, generalizable and that the actions are wrong because of welfare considerations (p. 7).

The other observation is that research on harm-based moral violations and the philosophical use of this research assume an open-ended, common-sense understanding of harm as "psychological harms like pain and suffering" (Nichols, 2004: p. 16).

What are the implications of Turiel's definition of the moral domain for the meaning and justification of tolerance? The answer seems to be relatively straightforward. Violations of moral rules that cause harm should not be tolerated. Violations of conventional rules may be tolerated depending on the authority. This simple solution does not mean that all disagreement will be eliminated. In any application of the do-no-harm principle, we still have to define precisely what counts as a

violation of the principle. People may also disagree about trade-offs when violations conflict in moral dilemmas.

There will also be disagreement about rules within the conventional domain. The distinguishing feature of a rule within this domain is that it covers an activity or behavior that is less serious than harm. It is also the case that some rules are authority-independent. No harm would be done if a conventional rule were changed. For example, the authority-dependent rule prohibiting driving on the left side of the street could be changed to prohibit driving on the right side of the street. Two different teachers could have opposite rules about chewing gum in the classroom. These rules create necessary order in a society. On the other hand, there are some conventional rules that are authority-independent in that no particular person, group or institution established them. They are authority-dependent only in the sense that they depend on social solidarity, influence, or constraint. Some of the rules, for example, in regard to dress or hairstyle, involve general social pressure to conform to whatever is customary at a particular time. Other authority-independent conventional rules involve matters of etiquette. Some people will disagree about what counts as a violation of a conventional rule. They will disagree with the decisions of those in authority and resist social pressure to conform to custom and etiquette.

Another difficulty with my relatively straight-forward answer is that I seem to have committed the naturalistic fallacy: I have illicitly argued from facts to values-from pan-cultural facts about the harm principle to the normative conclusion that harm-based violations of rules should not be tolerated. Since Hume, philosophers have worried about committing this fallacy; moral psychologists have not (see Pojman's chapter on the fact-value problem for a basic account of the fallacy and various philosophical responses to it, 2006: pp. 208-234). One reason may be that intuitively we know that the fallacy can be logically corrected by adding factual and normative premises to the argument:

- 1) All cultures share the basic "capacity to recognize that harm-based violations are very serious, authority-independent, generalizable and that the actions are wrong because of welfare considerations" (Nichols, 2004: p. 7).
- 2) This basic capacity is the necessary and sufficient condition of a moral obligation not to engage in harmful activities and behaviors.
- 3) The violation of a moral obligation is intolerable.
- 4) Therefore harmful activities and behaviors should not be tolerated.

The Challenge of Jonathan Haidt

The first serious challenge to Turiel's conceptualization of the moral domain came from Richard Shweder in the 1980s. Based on research conducted in India, Shweder claimed that the moral domain is culturally variable and extends beyond issues of harm, rights and justice. He created a scheme of the moral domain that includes three different ethics: an ethics of autonomy (judgments relating to issues of harm, rights and justice), an ethics of community (issues of respect, duty, hierarchy, and group obligation), and an ethics of divinity (issues of purity, sanctity, and the recognition of divinity in each person) (Shweder, Much, Mahapatra, & Park, 1997; Haidt & Bjorklund, 2008a: pp. 196-197).

Turiel and his colleagues argued that Shweder was mistaken

(Turiel, Killen, & Helwig, 1987). Properly interpreted, the Indians actually did understand that the violations in the research scenarios were based on harm (according to an account by Haidt & Bjorklund, 2008a: p. 196). In a study drawing subjects who were from different social classes from Brazil and the United States, Jonathan Haidt and his colleagues hoped to settle the disagreement by including research scenarios that described harmless taboo violations: “For example, a family eats its pet dog after the dog was killed by a car; a woman cuts up an old flag to create rags with which to clean her toilet; a man uses a chicken carcass for masturbation, and afterwards he cooks and eats the carcass” (Haidt & Bjorklund, 2008a: p. 196; see the original design and findings in Haidt, Koller, & Dias, 1993). Haidt and associates found that groups from the upper social class (college students) did indeed support Turiel’s prediction that harmless taboo violations would be classified as conventional (though perhaps disgusting) and not as moral violations. The other groups, however, supported Shweder’s claim that some cultural groups operate with a broader moral domain. These groups said that these harmless taboo violations represent universal moral violations.

Haidt concluded from this study that Shweder was largely correct: the moral domain is not universally confined to harm-based violations (and violations of rights and justice). After a review of some of the relevant literature on moral systems, Haidt and his colleague, Craig Joseph, expanded the moral scheme developed by Shweder (Haidt & Joseph, 2004). They relabeled Shweder’s three ethics and added two additional sets of moral concerns. The result is a moral scheme with five different categories (Haidt & Bjorklund, 2008a: p. 203):

1) *Harm/care* (a sensitivity to or dislike of signs of pain and suffering in others, particularly in the young and vulnerable).

2) *Fairness/reciprocity* (a set of emotional responses related to playing tit-for-tat, such as negative responses to those who fail to repay favors).

3) *Authority/respect* (a set of concerns about navigating status hierarchies, e.g., anger toward those who fail to display proper deference and respect).

4) *Purity/sanctity* (related to the emotion of disgust, necessary for explaining why so many moral rules relate to food, sex, menstruation, and the handling of corpses).

5) Concerns about boundaries between *in-group and out-group*.

These five categories represent the “psychological foundations of human morality” (Haidt & Joseph, 2007: p. 16). The foundations have been pre-wired by evolutionary forces, but they are built upon by each culture. Cultures construct the virtues and vices in variable ways on the basis of these foundations. Haidt and Bjorklund (2008b) theorize that

Evolutionary forces have “prewired” human brains to readily develop concerns about harm/care, fairness/reciprocity, in-group/loyalty, authority/respect, and purity/sanctity. This prewiring explains the otherwise uncanny similarity in cultural practices such as initiation rites, or displays of deference, or rules about purity and pollution that regulate food, sexuality, and menstruation in so many cultures. Yet at the same time our theory requires that the first draft be heavily edited by each culture (p. 245).

All five foundations are candidates for moralization, which can simply be defined “as the acquisition of moral qualities by objects and activities that were previously morally neutral” (Rozin, 1997: p. 380). Moralization occurs when people adopt

“virtue and vice words with which to praise and condemn people, and to instruct their children” (Haidt & Joseph, 2007: p. 17; for Haidt and Joseph’s chart listing the relevant virtues and vices associated with each foundation, see p. 31).

Societies do not moralize the five sets of concerns in the same way. This accounts for moral variability across cultures. But the variability is constrained by the foundations; it is not indiscriminate. Moral variability can also be present within a culture. One of the examples that Haidt and his associates frequently use in their work is the moral variability that underlies the so-called culture war between liberals and conservatives in the United States (Haidt & Graham, 2007; Haidt & Graham, 2009; Haidt & Hersh, 2001). They believe that conflicts between liberals and conservatives can be explained by how each side understands the moral status of the last three foundations: in-group/loyalty, authority/respect, and purity/sanctity. Liberals and conservatives agree on the moralization of concerns represented by the first two foundations because “all cultures have virtues and concerns related to harm/care and fairness/reciprocity” (Haidt & Bjorklund, 2008a: p. 209). This is a universal cultural factor, although Kelly, Stich, Haley, Eng, and Fessler (2007) present evidence that harm norms may not be culturally universal in all circumstances. The different ways in which cultures moralize concerns represented by the other three foundations is the variable factor: “cultures are quite variable in the degree to which they construct virtues on top of the in-group/loyalty, authority/respect, and purity/sanctity foundations” (Haidt & Bjorklund, 2008a: p. 209).

Haidt and Bjorklund suggest that liberals are inclined to treat the sets of concerns in the last three foundations as conventional matters or as matters of prejudice and exclusion. Conservatives, like many or most people in other cultures, see these sets of concerns as moral matters. Liberals want moral regulation only of the rules related to the first two foundations (harm/care and fairness/reciprocity) and advocate tolerance of behaviors classified under the last three (in-group/loyalty, authority/respect and purity/sanctity). According to Haidt and Bjorklund (2008).

Liberals value tolerance and diversity and generally want moral regulation limited to rules that protect individuals, particularly the poor and vulnerable, and that safeguard justice, fairness, and equal rights. Cultural conservatives, on the other hand, want a thicker moral world in which many aspects of behavior, including interpersonal relations, sexual relations, and life-or-death decisions are subject to rules that go beyond direct harm and legal rights (p. 209).

The liberal restriction of moral status to rules related to harm/care and fairness/reciprocity is essentially the position defended by Turiel. But, as conservatives see it, if the moral domain includes all five foundations, the request to tolerate many behaviors within three out of the five foundations is a request to tolerate immoralities. The implication is that for conservatives the conventional domain is much smaller than for liberals. At the very least, conservatives must assume that liberals have misclassified many kinds of immoral behavior as conventional. Ever worse, perhaps liberals have created a state of moral chaos. As Haidt and Bjorklund (2008a) say, “Conservatives are horrified by what they see as the ‘anything goes’ moral chaos that liberals have created, which many see as a violation of the will of God and as a threat to their efforts to instill virtues in their children” (pp. 209-210).

We can see that my justification of Turiel’s liberal theory is

seriously challenged by Haidt and associates. Despite their claim that only two sets of concerns have been universally moralized, most cultures, including our own, have constructed virtues and vices based on all five foundations. Perhaps the differences in the various culturally edited versions of the first draft that is pre-wired in the brain by evolutionary forces have more to do with the particular virtues and vices that are constructed and not with the fact that some cultures do not moralize one or more sets of concerns. But if the concerns of all five foundations are usually moralized, then we are confronted with the paradox of tolerance: as conservatives imply, liberals are asking them to tolerate immoralities. How can liberal tolerance be justified?

Justifying Tolerance after Haidt

We should recognize that the liberal request for tolerance in our society is quite unusual. Tolerance is an unnatural and insecure value or virtue in the five-foundation theory because the theory does not provide for a pre-wired foundation of tolerance in the brain that might form the basis of culturally edited versions. Without a natural foundation, it is not difficult to understand why most cultures are intolerant of almost any kind of deviant behavior. One cannot commit the naturalistic fallacy of moving from the natural or cultural fact of tolerance to the moral value or virtue of tolerance if tolerance as a fact does not exist. It should also be recognized that the five-foundation theory results in a kind of moral relativism: moralization of the foundational concerns in the edited versions is culturally variable. And contrary to popular opinion, we cannot logically move from the fact of moral relativism to the value of tolerance without a normative argument: “relativism is a *meta-ethical* doctrine; that is, it is a view about what morality *is*. However, any principle of toleration can only be justified by a normative argument; that is, by an argument about what ought to be done” (McKinnon, 2006: p. 39).

In order to justify tolerance, my proposal is that we base our normative argument on reason rather than nature or culture. I suggest that we adopt the basic framework of Gerald Gaus’s social contract theory. One reason for adopting Gaus’s framework is that the harm principle is central to his theory. Turiel and Haidt have compatible understandings of this principle. Another reason is that Gaus’s theory is a social philosophy, that is, a social or public morality. Gaus’s public morality is not a complete moral theory. It is a theory about how people should regulate their common life together as citizens, but strangers, in society.

Gaus explicitly explains how his theory is located within the liberal tradition of social philosophy.

The liberal tradition in social philosophy maintains that each person is free to do as he wishes until some justification is offered for limiting his liberty. As liberals see it, we necessarily claim liberty to act as we see fit unless reason can be provided for interfering. I shall call this the *Liberal Principle*: 1) A person is under no standing obligation to justify his actions. 2) Interference with another’s actions requires justification, unjust-tified interference is unjust (pp. 118-119).

According to Gaus’s formulation of the liberal principle, what requires justification is the interference with a person’s actions, *not* the action itself. A major assumption in the liberal tradition is that liberty is the natural state of affairs or moral status quo “in the sense that it requires no justification while

limitations of it do” (Gaus, 1999: p. 119).

How is the interference with another’s actions justified? Interference is justified if an action is harmful. For Gaus (1999), harm to others is “the core principle of social morality” (p. 111). Gaus (1999) claims that all goal-pursuing persons would agree that interference can be justified when an action sets back the welfare interests of others. He argues that they would agree because everyone has reasonable grounds for accepting the harm principle and no one has reasonable grounds for rejecting it (Gaus, 1999: p. 26). Reasonable grounds are ones that are clearly not defective, “that is, they are not based on clear mistakes in reasoning, or on clearly false information, or on manifest ignorance” (Gaus, 1999: p. 26). Welfare interests are those interests that are instrumental to the realization of our goals. It would be impossible to produce a complete, uncontroversial list, but some of the interests typically included are bodily security and health, liberty itself, security of property, self-respect, privacy, and being told the truth (Gaus, 1999: p. 148).

Gaus’s definition of harm as a set back of welfare interests is broader than the definition assumed by moral psychologists. As I have already noted, moral psychologists understand harm in terms of psychological pain and suffering. Following Feinberg (1984), Gaus takes some kind of interest to be the object of harm. Welfare interests are one kind. What Gaus calls “regulative interests” is the other most important kind of interest. Regulative interests are the goals of persons. Gaus excludes harm to goals or regulative interests as an agreed-up, justified reason for interference. Gaus (1999) defines them as neutral interests: “*Regulative interests* are neutral, in the sense that while we are free to pursue them, we are not harmed when they are thwarted” (pp. 150-151). If regulative interests were included, unjustifiable harms to others would be impossible to limit. For example, I may have an interest, my goal or regulative interest, in marrying a particular woman. She thwarts my interest by marrying someone else. This kind of harm in society is so pervasive that if it were counted as a legitimate reason for limiting action the harm principle would be meaningless and social life would be impossible.

Gaus (1999) also argues that everyone has reasonable grounds for excluding any conception of a harmful act that depends on a belief that something is perverse, bad, wrong or immoral (p. 143). For example, the production of pornography would not be classified as a harmful act just because someone is distressed by knowing that somewhere it is produced and distributed. We cannot make belief in the inherent immorality of something and unpleasant mental states grounds for prohibition. If these are counted as harms, then individuals have a right to be protected from such harms. This right must be excluded. Otherwise, a public or social morality would be impossible because a distinction could not be made between personal ideals about the good and social morality. As Gaus (1999) explains,

Whenever people fail to live up to my idea of the good—whenever they do things that I think are perverse or evil—I can get them to conform to my personal ideals by getting distressed about their actions. That, though, would undermine the whole project of generating a shared social morality that is distinct from personal ideals (p. 144).

In Gaus’s public morality, we can justify the moralization of only some concerns about harm. The core of Gaus’s theory is built upon Haidt’s harm/care psychological foundation, only one of five foundations of moral importance. This means that

for Gaus the moral domain is quite narrow, even narrower than Turiel's moral domain, which also includes concerns about rights, fairness, and justice, that is, Haidt's fairness/reciprocity foundation. (However, Gaus, 1999, incorporates "some supplemental reasons as genuine public reasons to justify limiting liberty" in his framework that I have excluded, p. 111). Gaus assumes that all other concerns must be classified under a non-moral category of personal ideals or values. Following Turiel, we can say that Gaus's theory requires a large conventional domain. In addition to the concerns of fairness/reciprocity, conservative concerns related to the foundations of in-group/loyalty, authority/respect, and purity/sanctity must have a non-moral status and be classified under the conventional domain.

Although Gaus's theory creates a large zone of tolerance, it entails the demotion to conventional status of a large number of concerns that many people believe have moral status. I think that we can preserve the status of these concerns by adding the category of private morality to Gaus's framework. This addition allows us to recognize that concerns about fairness/reciprocity and other conservative concerns are moral matters, but they cannot be justified as part of public morality. Invoking Gaus, we can say that some individuals have reasonable grounds for rejecting these concerns as a basis for rules and laws that everyone in society is obligated to obey.

I also recommend that we explicitly acknowledge rules of etiquette as another moral category that is not a part of public morality. Turiel classifies these rules under the conventional domain, but they are actually based on Haidt's five foundations. These rules concern minor infractions, and we usually do not criminalize violations. For example, bumping into a stranger on the street, pushing in a crowded store, or going to work with a bad cold represent minor harmful acts. Going to the head of the line in a supermarket checkout is unfair. Eating the discharge from one's nose in close proximity to another passenger on a crowded bus is offensive because it involves a concern related to the purity foundation. We all probably believe that rules of etiquette have some obligatory force, but following them is optional in the sense that they are not included in public morality and enforced.

Using my framework, it is now possible to say how, in light of Haidt's five-foundation theory, the paradox of tolerance might be resolved. A public morality based on the foundation of harm/care will entail the toleration of a variety of immoralities classified under the category of private morality. It is also true that my framework does not avoid the demotion of private moralities to a lower status. I have created a hierarchy in which the harm principle is supreme. For these reasons, it may be more accurate to say that I am proposing that we live with rather than resolve the paradox. If so, tolerance should be understood as a prudential virtue.

However, invoking Gaus again, I would argue that everyone has reasonable grounds for tolerating some kind of immoralities and no reasonable grounds for rejecting such toleration because everyone needs terms of cooperation and peace to survive and flourish in a society of strangers and even to have a private morality. For this reason, my proposal does entail a resolution of the paradox, and tolerance should be understood as a moral virtue because everyone in society has an obligation to tolerate private immoralities. Thus, tolerance of some private immoralities is not just optional and prudent; it is a moral requirement.

Conclusion

My argument for a resolution of the paradox of tolerance—that the moral virtue of tolerance requires the toleration of at least some immoralities—has progressed through several steps. I began with a question about why tolerance has not received more political and academic attention. I suggested that one answer is that tolerance may not be seen as problematic in the kind of liberal moral theory proposed by Elliot Turiel in which the moral domain is restricted to justice, rights, and welfare. I showed how easy it is to correct a standard criticism that Turiel's work is only descriptive by adding a normative premise to a logical argument for tolerance of conventional concerns.

I concluded with a more significant challenge to the justification of tolerance presented by Jonathan Haidt and associates. Continuing the seminal work of Richard Shweder, Haidt's research suggests that the moral domain is much more extensive than Turiel allowed. With broad moral and small conventional domains, we are inevitably confronted with the prospect of moral relativism and the paradox of tolerance. I proposed a way for us to move logically from descriptive moral relativism to a normative moral theory and resolve the paradox by adapting Gerald Gaus's moral framework to include several categories: public morality, private morality, etiquette, and convention.

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