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# Toleration, Autonomy and Respect

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# BOOK REVIEW

# TOLERATION, AUTONOMY AND RESPECT

MICHAEL WALZER, ON TOLERATION. New Haven and London. Yale University Press, 1997. xii + 126

*Reviewed by Colin J. Harvey**

There could be few more important times for reflecting on toleration. The century we have left behind will be known for its barbarism as well as its technological and other advances. The massive numbers of forcibly displaced persons attest to the continuing failure to respect human dignity. The toleration which exists is the international community's tolerance of a general failure to ensure that human rights are properly protected and effectively enforced. The result is a world where autonomy is a value which is absent from whole populations. The failure to respect difference and nurture pluralism plays a large part in violations of human dignity. However, the most severe problems lie in the absence of respect for the full autonomy of individuals. This lack of respect for individuals is evident, for example, in the use of 'ethnic cleansing'. That such violent practices coincided with the rapid expansion of international human rights law must be a cause for concern. What troubles many human rights lawyers is that the standards are there but the abuses continue.

While the legal norms exist, other competing social norms come into play. International lawyers will, like other lawyers, have to engage with the factors which impede the full realization of international norms. Only after this understanding is gained is it possible to create legal mechanisms which promote the implementation of the normative framework. What this suggests is the importance of understanding the context within which law operates. However when approaching context, some theoretical framework is required to locate law and practice. It is important to know which context we are talking about. In particular, the recognition of the politics of legality necessitates consideration of political theory.

This all makes Michael Walzer's little book very timely indeed. International lawyers, perhaps more than most lawyers, have to engage with political theory, but this engagement takes place with an eye firmly fixed on the moment of decision. International lawyers do not generally

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have the luxury of extended and unending dialogue over applicable norms. Reasoned decisions must be made and determinate outcomes achieved. By providing practical examples of regimes of toleration and complicated cases which do not fit the mould, Walzer's book facilitates this process.

Walzer is not concerned with producing a procedural model which will set out the principles which should guide the practicalities of peaceful co-existence. His work is focused instead on historical and contextual accounts of the forms that peaceful co-existence has taken. In taking this approach, he departs from some dominant modern strands in political and legal theory. While his work is grounded in the 'real-world' of peaceful co-existence, it is still rather more removed from context than most international lawyers will be comfortable with. He is concerned with toleration in instances where the differences are cultural, religious or way of life distinctions. Although it can be argued, quite convincingly, that autonomy is not possible in the absence of a multi-cultural society, Walzer believes that even a liberal society need not be multi-cultural. Autonomy can, according to Walzer, still be guaranteed within a single cultural group. He notes that there is a continuum and that successful regimes of toleration do not insist on everyone starting at the same place.

The five models of political arrangements which make for toleration are: multinational empires; international society; consociations; nation-states; and immigrant societies. Multinational empires consist of groups which are autonomous across a range of activities. The group's choices are constrained by the fact that all areas are ruled by 'imperial bureaucrats' operating 'imperial codes'.[1] Normally, however, there is no interference in the life of the community. What this structure does is to lock people into their groups. Walzer makes this sound very unappealing to the 'lonely dissidents' and heretics who resolve their problems by making for the imperial capital.[2]

Some would not include international society as a regime of toleration, because it is claimed to be anarchic and lawless. International lawyers know the stories here. Walzer rejects this and suggests that although it is a weak regime, toleration is an essential feature of international society. The limits to toleration are fixed, he claims, by the legal doctrine of humanitarian intervention. When barbarism is taking place, then existing principles of toleration simply do not protect a state.

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1.  MICHAEL WALZER, ON TOLERATION 15 (1997).
2.  *Id.* at 16.

Other states are not however obliged to use force in response to this. His argument is that, as a matter of principle, international society is tolerant.

Walzer calls consociationalism a 'heroic program'.[3] The basic aim of a consociation is to maintain imperial rule without the 'bureaucrats'.[4] This differs from the first regime of toleration by the fact that the groups must work out the terms of peaceful co-existence by themselves. One could for example make the argument that the Good Friday Agreement 1998 in Northern Ireland strongly reflects the consociational model in its design and in its process of adoption. Walzer is alive to the attractions of a model which allows parties to strike a bargain which protects their interests.[5] However, when others begin to look dangerous, problems arise. He makes the same point with reference to nation-states and their toleration of minorities.

Walzer is aware that he is abstracting from reality. In recognition of this he examines some complicated cases. The ones he selects are: France; Israel; Canada; and the European Community. The French example is a good one, for in France there is what Walzer describes as 'an uneasy standoff between republican assimiliationists . . . and the new immigrant groups'.[6] Similarly, he recognizes the uniqueness of the European Community, but he makes the common mistake of confusing the European Convention on Human Rights, and thus the Council of Europe, with the European Community. What these complicated cases suggest is that there are a number of ways of achieving toleration.

The practical issues which Walzer discusses include power and class. He suggests that affirmative action is egalitarian at the group level only.[7] The purpose is not to challenge the notion of hierarchy in society but to 'produce similar hierarchies'.[8] People are moved up the class structure in order to advance equality between economic groups. His argument is that where the social profile of groups is largely the same, then cultural difference will be accepted. The solution, he suggests, might lie in an overall reduction in hierarchy in society generally.

Education raises particularly problematic issues. If a state insists on promoting societal norms through its education system, does it run the risk of being intolerant towards minorities? How would education for 'good citizenship' deal with and respect diversity in practice? The norms

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3. *Id.* at 22.
4. *Id.*
5. *Id.*
6. *Id.* at 40.
7. *Id.* at 59.
8. *Id.*

that are taught in schools are not necessarily those which are encountered elsewhere in a child's life.

The issue which no doubt arises for many people is toleration towards the intolerant. Walzer notes that it is the case that political parties and religions which seek total control do exist and are tolerated. However, he argues that such groups can be actively barred from seizing state power and from competing for it.[9] These groups will be permitted to operate in civil society, but they will be confined to this sphere. They will, according to Walzer, be confined to a 'sectarian existence' only.[10]

The regimes which Walzer examines are known just as much for their intolerance as for their tolerance. One need only think of empires for an example of this. In practice, the drive for 'unification' and the lack of respect for difference are defining features of some of these regimes. The forms of toleration that dominate discussions today are individual assimilation and group recognition. Democratic politics in many states is marked by the struggles of various groups within the polity for recognition. Walzer questions whether these should be properly conceived of as mutually exclusive and identifies two modernist projects at work. The first is the various struggles for inclusion which involve individuals working for inclusion as democratic citizens. The second is the struggle of these groups to have their different voices heard within the democratic polity. Here we see a subtle shift from inclusion to the politics of 'self-determination'. The end result is a growing demand for separation and respect for this detachment. The difficulty resides in talking of groups rather than the individuals which constitute the group. Communal autonomy can in practice reinforce traditional hierarchies and be little more than the convenient result of elitist practices.

These two projects can be viewed as mutually exclusive. The demands of individuals for recognition as citizens can clash with calls for more communal autonomy. Some individuals will find that they have more entitlements and freedoms as citizens than they do within their autonomous communities. Walzer's answer is that they are not exclusive and very often both will be used in different times and places by groups and individuals. The reason is that there is an embedded tension which must, for Walzer, be worked through on a case-by-case basis. There is little point in resisting this and it cannot be overcome. As he notes: "The coexistence of strong groups and free individuals, with all its difficulties, is an enduring feature of modernity."[11]

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9. *Id.* at 82.
10. *Id.*
11. *Id.* at 87.

Towards the end of the book he notes a different pattern which may be emerging, which is what he terms the 'postmodern project'. This is the condition of living without fixed or clear boundaries and moving away from absolutist notions of identity. Individuals in this new condition have a looser connection to their group and feel comfortable mixing with the majority community without assimilating. Walzer is clearly concerned about this development. He takes aim in particular at the argument that we are all strangers and therefore should tolerate others. Walzer finds this difficult to accept, for the reason that if we do not experience 'sameness' in a strong way we cannot experience otherness either. His emphasis is on the importance of community in the construction of selfhood. The postmodern notion that we are all fragmented selves does not appeal to him. He does not believe that we are moving to a 'world without foreigners' and fears that this postmodern turn may result in a world of shallow individuals. What Walzer is doing here is questioning the postmodern emphasis on hybridity. The fragmentation involved may bring with it liberation for some social groups but it can have a devastating impact on others. Hybridity is of course attractive to those in society who are able to make use of the freedom created by our new cosmopolitanism. There is an argument that it fits neatly, for example, with the self-understanding of many academics. There is, however, a less cynical way to view the postmodern stress on fragmentation. In societies like Northern Ireland, where discussions of law and politics are dominated by narratives of 'two communities', it is essential that dissident voices exist to confront reductionism with complexity. To be reminded every so often of our hybrid selves is no bad thing. Whether this encourages toleration is another matter.

International lawyers are often faced with the consequences of the failure to guarantee peaceful co-existence. This little book is a thoughtful contribution to the debate, and it should facilitate discussion on ways to enable toleration to flourish in practice.