

**THE CONTRIBUTION OF  
THE  
MODERN ORTHODOX JEWISH FAITH SCHOOL  
IN  
TWENTY-FIRST CENTURY ENGLAND  
TO  
CONCEPTIONS OF RELIGIOUS TOLERATION AND  
CITIZENSHIP**

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## ABSTRACT

This thesis challenges the widely held liberal view that faith schools are necessarily a conflictual influence in contemporary society. In examining the conceptual resources that the Modern Orthodox Jewish (MOJ) faith school might bring to the formation of its pupils as tolerant citizens, the thesis draws on selected contexts and concepts of toleration from British thought in the seventeenth and early eighteenth century most notably that of John Locke, from the era of Enlightenment and Emancipation in seventeenth to nineteenth century Europe, and from contemporary ideas concerning aspects of toleration and citizenship central to the present day. The argument does not take for granted homogeneous and conventional conceptions of toleration, or indeed of intolerance. In paving a critical path, it offers fresh perspectives on religious autonomy and diversity from a philosophical, historical, theological, political and educational point of view. These ideas provide a significant contribution to issues of crucial current debate concerning religious toleration and citizenship in twenty-first century liberal democratic England. Finally the thesis suggests ways in which the MOJ faith school might educate its pupils to participate in, and contribute to, wider society as a community of tolerant practice, and offers ideas concerning the philosophical framework that might underpin this practice.

## DECLARATION

I hereby declare that, except where explicit attribution is made, the work presented in this thesis is entirely my own.

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Signed:

## ACKNOWLEDGMENTS

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## HEBREW GLOSSARY

All Hebrew words are italicised throughout the thesis and translated into English the first time they are used.

This glossary is comprised of Hebrew words which are used more than once throughout the thesis in order to obviate the reader having to search for the initial translation.

The English spelling of all Hebrew words follows current academic convention. I am not responsible for any variance in spelling by individual authors or online sources cited.

<i>Beth Din</i>	Court of Jewish Law.
<i>Biur</i>	The radical simplification by Moses Mendelssohn and Naphtali Herz Wessely of existing <i>Torah</i> commentaries which gave rise to the <i>Biuristic</i> school.
<i>Derekh eretz</i>	The way of the world.
<i>Gemarah</i>	Scholarly rabbinic commentary and argumentation on the <i>Mishnah</i> [see below].
<i>Gemiluth Hesed</i>	Deeds of loving-kindness.
<i>Gevurah</i>	Strictness or severity.
<i>Halakhah, halakhot [pl.]</i>	Jewish law/s.
<i>Halakhik</i>	Jewish legal status.
<i>Haskhalah</i>	Ideological Jewish movement for Jewish Enlightenment.
<i>Hatham Sofer</i>	Rabbi Moses Sofer.
<i>Hesed</i>	Kindness.
<i>Hora'ath ha'sha'ah</i>	The response introduced by Rabbi Samson Raphael Hirsch, to the need for <i>halakhik</i> change which might arise at a specific time in history.
<i>Heder, Hadarim [pl.]</i>	An institution of supplementary Jewish education.
<i>Maskhil</i>	A member of the <i>Haskhalah</i> movement.



<i>Masorti</i>	Conservative branch of Judaism.
<i>Mishnah</i>	The <i>Mishna</i> comprises the sixty-three tractates of Rabbinic law codified by Rabbi Yehudah Hanasi in c. 200-220 CE.
<i>Mitsvah, mitsvoth [pl.]</i>	Divine command/s.
<i>RaMBam</i>	Rabbi Moses ben Maimon – Maimonides.
<i>Shehitah</i>	Ritual slaughter of meat for kosher consumption.
<i>Shulhan Arukh</i>	Code of Jewish Law authored by Rabbi Yosef Caro in 1563.
<i>Talmid hakham</i>	Learned Jewish sage.
<i>Talmud</i>	The central text of rabbinic Judaism which comprises the <i>Mishnah</i> , and the elucidation of the <i>Mishnah</i> through scholarly rabbinic commentary and argumentation known as the <i>Gemarah</i> .
<i>Talmud Bavli</i>	The Babylonian <i>Talmud</i> compiled in Babylon from the 3rd to 5th centuries CE.
<i>Talmud Yerushalmi</i>	The Jerusalem <i>Talmud</i> compiled in Israel from 350-400 CE.
<i>Teshuvah</i>	Repentance and return.
<i>Torah</i>	Pentateuch/the Five Books of Moses which constitute the Hebrew Bible.
<i>Torah im derekh erez</i>	<i>Torah</i> life and values and their connection with the wider world.
<i>Tsedakah</i>	Charity as justice.
<i>Tsedek</i>	Justice.
<i>Yeshivah, yeshivoth [pl.]</i>	Religious institution of advanced Jewish learning for men and boys.
<i>Yisurin shel ahavah</i>	God's chastenings of love.

## Chapter 1: Introduction

As one of the world's great civilizations, the Jewish voice has a central place in the conversation of human-kind. It tells its own story of faith, history and heritage, tradition, identity, rights and responsibility. Contemporary Judaism comprises plural religious differences, between Orthodoxy and more liberal forms of Judaism, and between religious and secular Jews. These distinctions are discussed only insofar as they shed light on the focal heart of the thesis, which is to examine the contribution of the Modern Orthodox Jewish (MOJ) faith school in twenty-first century England<sup>1</sup> to conceptions of religious toleration<sup>2</sup> and citizenship.

Although the thesis and the further research it suggests, might lead amongst other things to practical outcomes, it is not intended to be an empirical study. Its aim, in relation to religious toleration and citizenship, is to challenge the strongly held liberal view that faith schools are necessarily a conflictual and divisive influence in contemporary society<sup>3</sup>. As a particular case in point, the thesis offers new insights into the capacity of the MOJ faith school to affirm or reject some of the possibilities and constraints encountered **both within and outside of** itself, as a

Liminal institution positioned at the threshold of our social, political, cultural and educational spaces (Conroy, 2004, p.7)

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<sup>1</sup> I have selected England, because for over 30 years, it has been the main context of my practice and involvement as a professional Jewish educator.

<sup>2</sup> I use the word toleration and tolerance interchangeably throughout the thesis.

<sup>3</sup> For a wide-ranging overview of the arguments concerning the influence of faith schools, see: Gardner, R; Cairns, J. and Lawton, D. (2005) (Eds.); Haydon, G. (Ed.) (2009); Judge, H. (2001); Nussbaum, M. C. (2008).

To achieve this goal, the thesis draws on a wide range of philosophical, historical, theological, political and educational material. It does not claim to deal exhaustively with all or any of this work, rather aspects of it have been selected according to their relevance to the general and the Judaic conceptions of toleration and citizenship most central to the argument. Questions and concerns have been flagged throughout in order to point up the importance of, and critical need for, further research in the field.

An examination of the topic of toleration suggests that the critically important body of literature on toleration in the 1980s and early 1990s by philosophers such as Mendus, S. (1985, 1987, 1989, 1991); Dunn, J. (1991); Edwards, D. (1987); Horton, J. (1985, 1991); Nicholson, P. (1985); Raz, J. (1988); Lord Scarman, (1987); Tuck, R. (1988); Waldron, J. (1991); Weale, A. (1991) and Warnock, M. (1987), was reinvigorated by renewed interest in the topic in the second half of the 1990's by scholars such as Heyd, D. (1996); Horton, J. (1996); Shklar, J. (1996); Williams, B. (1996); Kymlicka, W. (1998) and Walzer, M. (1999). This resurgence of the topic of toleration<sup>4</sup> became evident both in academia, and as this thesis shows, in the context of liberal democratic political life. Interest continued into the twenty-first century with work for example by Margalit, A. (2002); Creppel, I. (2003; 2008) and McKinnon, C. (2003; 2006).

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<sup>4</sup> Enslin, P. and White P. (2003) identify a reinvigoration in regard to the notion of citizenship in the early 1990's, which I argue mirrors to an extent, the resurgence of interest in the topic of toleration. The authors suggest that renewed interest in the topic of citizenship was attributable to several factors arising in different contexts including

Perceptions of political apathy and declining levels of participation; tensions resulting from the resurgence of nationalism and from the presence of multicultural populations in Western European societies; regional political and economic restructuring in moves towards an integrated Europe; and problems of democratic consolidation in societies in transition to democracy. (Enslin and White, 2003, p. 110)

Currently sustained critical attention is being paid to contemporary challenges to notions of toleration. Examples include Creppel, I. Hardin, R. and Macedo S. (2008) (Eds.); Tietje, L. (2012) in relation to justifying tolerance in liberal societies, and by Nussbaum, M. C. (2012) concerning the new religious intolerance and overcoming the politics of fear.

Exciting contemporary research, writing, and indeed professional practice has begun to emerge in the field of teaching toleration in schools. Examples include Sardoc, M. et al. (2010) in regard to teaching toleration, respect and recognition in education, and Gereluk, D. (2008, 2012) concerning what should be worn and why in relation to symbolic clothing in schools, and what in relation to extremism and terrorism citizenship education should teach and why.

In the field of **Jewish** education however, my searches in England and central Europe, Israel, the Ukraine, the USA, and further afield in South Africa and Australia, have, to date, revealed no sustained or developed academic or school work to do with the topic of toleration, religious or otherwise. It is precisely this gap which this thesis attempts to mitigate.

In order to achieve this aim, the early part of the thesis draws from a philosophical perspective, on the broader conceptual canon concerning toleration, and challenges the ability of conventional liberal notions of moral scepticism, neutrality and autonomy, to provide a robust, substantive basis for toleration. In specific regard to religious toleration, critical consideration is given in this section to the impact of the exponential growth of religious pluralism, state action and reaction to religious groups, and to attempts to integrate the demands of faith and the obligations of secular citizenship.

The later part of the thesis examines the nature and scope of central educative paths the MOJ faith school in England might take in educating its pupils to contribute, as tolerant citizens, to contemporary liberal democratic society as a community of tolerant practice. This section draws on, and reconceptualises, structures of toleration central to Judaic theological, historical, political and philosophical thought, and suggests innovative ways in which these might be crucial in forging relationships with diverse human others.

The thesis highlights the importance within Jewish education, of the dual focus of the MOJ faith school in teaching for toleration, through fostering in its pupils both as participants in a particular faith school context, and as citizens of wider liberal democratic pluralist society, the toleration of a diversity of beliefs, values and practices. In this regard the thesis explores the distinctive Judaic conceptual resources the MOJ faith school might bring to the formation of its pupils as tolerant citizens; to their participation in and contribution to liberal democratic society as a community of tolerant practice; and to the philosophical aspects of this practice. I suggest an original contribution of the thesis to current thinking about conceptions of religious toleration and citizenship is that it offers from within the faith curriculum of the MOJ faith school, coherent and morally viable notions of toleration which might contribute to important universal conceptions of human values.

A novel aspect of this research shows particularly in Chapter 5, that in comprising certain plural Judaic religious differences, the pupil and parent body of the MOJ faith school creates a **context of toleration internal to the school.**

I hope my work will contribute to fresh thinking, writing, teaching and learning in regard to conceptions of toleration and citizenship, both in the specific setting of the MOJ faith school, and more generally, in wider faith and non-faith education contexts, including the domain of public education in the polity. I concur with McKinnon (2006), that the importance of reinvigoration of this kind, is that the notion of toleration will be reasserted to explore the best current theoretical answers to some of the most significant and pressing questions we face both globally, and as twenty-first century citizens living in liberal democratic England: Why is toleration required? How is toleration possible? What are the limits of toleration?

### **The liberal democratic context**

In applying the critical questions above to the pluralist context of twenty-first century liberal democratic England, it is interesting to read the report in the *Times Newspaper* (9 May, 2012, News London section), in regard to hosting the Olympics. The article says that London will be the first host city in Olympic history to have a permanent resident from every single competing nation. All 204 of them! The report states that when it comes to multiculturalism

Our capital is king, with one in every two Londoners born outside Britain.  
(*Times Newspaper* 2012, News London section pp. 12-13)

This article highlights a key challenge to the definition and justification of toleration in liberal democratic society, because, whilst the state might value both diversity and tolerance, and to an extent shows this through, for example, laws designed to protect individuals, to safeguard the liberal principle of equal rights to political participation, free speech or to religious practice, I argue that as the civic context expands to include

multiple faiths and cultures, its political and moral landscape changes. When this happens, the notion of specific rights might change, and various ideas might present themselves in regard to whose morality counts.

To illustrate this, the thesis takes up issues of dialectic between established liberal principles and new and different understandings and attitudes which come about, Tietje (2012, p.13) suggests, when those who might be seen as cultural conservatives within a liberal democracy, demand a moral world in which aspects of their lives, religious beliefs for example, impose rules that go beyond conventional liberal notions of direct harm and legal rights.

In the context of ideas concerning toleration, I argue that neither classical nor contemporary liberalism has ever been free of the contentious issue of state intervention however subtle. Whilst it is true that through the notion of free association liberal democratic societies have always offered the choice to either associate with one's historic familial past, or the choice to belong to a society in which everyone was 'equal', free of the trappings of any constraining 'identity', both the general and Judaic accounts in this thesis show that the brick in the bouquet of political and social liberal 'equality' is the complex homogenizing influence of the state in regard to its pluralist citizens. Thus I contend, the 'gift' of equality might come at great cost, because of its capacity to drastically change the identity of the individual, and to utterly alter the very formation and existence of her cultural group.

Callan (1993, p. 10) usefully distinguishes between the notion of **liberalism** and of **democracy** in regard to their competing understandings of the sense in which equal citizens are free. The early chapters of the thesis give contemporary examples of

precisely this dialectic, firstly in relation to the **general** philosophical conceptions of toleration that underpin the thesis as a whole, and secondly in specific regard to current problems of **religious** toleration in twenty-first century England.

Callan argues that for those who stress **the primacy of liberalism** in the notion of liberal democracy, the liberty of free citizens is the necessary social space for individuals to create meaningful lives for themselves. However this thesis shows that as the single benchmark of liberal autonomy, the importance of the individual choosing her own way of life might often have idiosyncratic and sometimes even anti-social outcomes, especially in relation to what Rosenblum (2000), calls the tension between demands of faith and the obligations of citizenship.

In both echoing and going beyond John Locke (1632-1704), pre-eminent seventeenth century thinker on religious toleration, a possible outcome of the unfettered growth of individuality might be that individuals and/or groups come to live lives as Callan (1993, p. 9) suggests, that dismiss citizenship as a distraction from their more private ideas of what to them 'really' matters. In protecting or advancing the particular way of life they cherish, they might perversely come to use the rights of liberty, free association and political participation extended to them as liberal democratic citizens, in ways that pose a threat to the integrity of that very society.

Based on the principle of toleration, I argue it crucial for religious and/or cultural groups to fully participate in and benefit the wider society in which they live, and for the members of these groups to treat one another without discrimination. As an equal and opposite principle however, I contend that the liberal democratic state must be religiously and culturally sensitive.



If, following Callan, **the primacy of democracy** is emphasized in the notion of liberal democracy, I argue it insufficient to understand it only as the embodiment of the notion of autonomous self-rule with which it is most famously associated. I contend that in regard to the obligations of citizenship, it becomes a balancing notion expressed in John Dewey's (1941) conception of a democracy as

More than a form of government; it is primarily a mode of associated living, of conjoint communicated experience (Dewey, 1941, p.101)

This important idea is central to the thesis.

If both the philosophical and practical notions of liberal democracy are to be regarded as more than merely political conceptions, then I argue they must, in addition, be understood as social and educational goals, linked to practical outcomes. In this regard, Enslin and White (2003 p.117) in their examination of the notion of citizenship as deliberation, explore the implications of deliberative democracy which are of crucial relevance to newer understandings of tolerant citizenship presented in this thesis

As well as the deliberative skills of presenting arguments to others and being able to judge which argument carries the greatest force, deliberation requires a disposition to reciprocity, a willingness to recognise others as free and equal participants in deliberation. (Enslin and White, 2003, p.117)

In suggesting ways in which these goals might be achieved within the context of the MOJ faith school, the thesis explores new and innovative ways in which the Jewish Studies curriculum might enable the school to educate its pupils to become tolerant

citizens within the wider liberal democratic society of which they are part, willing and able to contribute to and enrich its flourishing as a community of tolerant practice.

### **Key research questions**

In light of the discussion above concerning notions of toleration, citizenship and pluralism in relation to the liberal democratic context, the key research questions which lie at the heart of this thesis are

1. In what ways might the liberal canon of toleration have critical bearing on historical and contemporary notions of Judaic religious toleration?
2. In what ways have Jewish belief, tradition, history, culture and values shaped modern Jewish Orthodox ideas concerning religious, political, cultural and social toleration?
3. Which resources in the Jewish Studies curriculum might through innovation, enable the MOJ faith school to educate its pupils to become tolerant citizens, through developing their ability to make autonomous and responsible choices, provide them with the opportunity for rational critical reflection, and foster their empathic awareness of diverse identities outside their own?
4. How might the central Judaic notion of covenant as a **reciprocal associative relationship** within society, enable the building of a community of tolerant practice in a mixed society where the critical point at issue is the nuanced but crucial difference between belonging and assimilation?

A synopsis of the chapters below shows the ways in which I attempt to explore these questions within the thesis.

## **A synopsis of the chapters**

### **Part I: Concepts and contexts of toleration in contemporary liberal democratic society**

In providing the broader conceptual background of toleration, Chapters 1 - 3 provide the conceptual context, and necessary groundwork for, the main argument. To this end, the chapters examine ways in which religious pluralism, government activism and integralism<sup>5</sup> have challenged and affected the toleration of religion in the context of twenty-first century liberal democratic England.

This introductory chapter provides an overview of the thesis and sets out its relevance to the liberal democratic context in regard to conceptions of toleration and citizenship. It enumerates the key questions which lie at the heart of the research, and gives a synopsis of the chapters.

The second chapter examines toleration from a philosophical perspective, and highlights significant educational implications in relation to toleration as a political practice linked to liberal political theory, and in regard to toleration as a personal disposition and tolerant personal conduct. In selectively examining what might count as a robust liberal basis for toleration as a political practice, the chapter argues against moral scepticism as a substantive liberal basis for toleration, because in fostering the conventional notion of merely ‘putting up with things’ or being indifferent to them and letting ‘live and let

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<sup>5</sup> On Rosenblum’s view (2000 pp.15-21), the defining characteristic of integralism, as explained in the introduction to the thesis, is a push for a religiously integrated existence. She suggests that at the heart of integralism is a sense of alienation or falling off from unity, which comes from being forced to live the divided life of believer and citizen. Integralists want to be able to conduct themselves according to the injunctions of religious law and authority in every sphere of everyday life, and to see their faith mirrored in public life. Nussbaum, M.C. (2008), provides a good account of the concerns surrounding this issue in her book *Liberty of Conscience: The Defence of America’s Tradition of Religious Equality*.

live,' it fails to admit of anything which strikes tension at the oppositional core and **needs to be tolerated.**

The chapter challenges the bald principle of neutrality as a liberal basis for toleration, and calls for its revision away from the conception of public blindness to public attention and concern for different traditions. If, in this way, the principle of neutrality is able to reflect the political will to redraw societal standards so as to include different identities, then, the chapter argues, it becomes an important and plausible liberal basis for toleration. Understood in this way, the principle of neutrality as a liberal basis for toleration is crucial in relation to religious toleration.

In addition to the principle of liberal neutrality, the chapter argues for the revision of the stringent political notion of liberal autonomy as the disengaged reflective power of an unencumbered self, which dictates that the highest respect is the respect of a self which is independent of context. Instead, it calls for a more expansive conception of autonomy which is of great relevance to the ways in which religious groups express their autonomy in relating both to each other and to the state. These might take the form of emphasising their separateness, integrating with liberal society, or contributing to society in associative ways.<sup>6</sup>

Concerning autonomy as a personal practice, the chapter argues that critical reflection, through which an individual expresses her autonomy, must entail her capacity to revoke the commitments and values constituent of her identity as well as, following Burt (2003), the capacity to embrace them.

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<sup>6</sup> In relation to plural groups within Judaism, the thesis shows ways in which this revised conception of liberal autonomy plays a significant role in understanding the scope of sectarian intolerance to liberal society and more liberal accommodations of it.

The chapter is innovative in connecting this idea to the development of personal autonomy in the MOJ faith school pupil, and argues for the critical relevance of toleration to education in general.

Chapter 3 develops the argument in specific regard to religious toleration. It examines the liberal democratic context in twenty-first century England, within which toleration and indeed intolerance operates, and explores the often conflictual process of individualisation, globalisation and multiplication of immigrant societies. Through modern day examples, the chapter highlights the critical relevance of religious toleration to both Jews and other groups who, in their daily lives as citizens, form part of the wider pluralist context whilst living according to their own particular beliefs, traditions, values and practices. Drawing on the startling contemporary relevance of the arguments of John Locke (1689) in regard to religious toleration, the chapter argues that there is a great deal to be learnt regarding what it means to think seriously, and with breadth, about problems of religious toleration. To this end, it explores ways in which Locke understood and responded to the problems of religious violence and intolerance that characterised the era in which he lived. In that the kind of toleration Locke advocated was very much based on a rational civil response to religious difference, and on the insistence that the truly religious persona acknowledge her communal responsibility just as much as her religious identity, this idea is central to the thesis *per se*, and in particular to the education of the MOJ faith school pupil.

The chapter discusses in detail the subtle points Locke makes in regard to the nature of **sincere belief**, and the not immediately obvious but critical distinctions he draws between what he terms **necessary and indifferent things** (Horton and Mendus, 1991, pp. 33-37). In light of Locke's argument that the kind of sincere belief necessary for

salvation cannot be acquired by force and compulsion, the chapter examines the contemporary effects of subtle internal and external politicizations of religious faith and practice. Under Locke's rubric of necessary and indifferent things, the chapter explores issues relating to faith practices in the contemporary context of both civil and criminal English law.

## **Part II: Judaic<sup>7</sup> Conceptions of toleration - Historical Perspectives**

This section, comprising Chapters 4 – 5, sets out the main Judaic foundations of the thesis in relation to conceptions of toleration and citizenship. The historical approach is selective because its primary aim is to provide the conceptual underpinning upon which to hang contexts and concepts of religious toleration and citizenship suggested in later chapters of the thesis.

Chapter 4 centres on the impact of religious, political and social liberalism on critical aspects of Jewish religious toleration in the era of Enlightenment and Emancipation in seventeenth to nineteenth century Europe. In its detailed analysis of the term 'modern orthodox', this chapter provides the necessary theological and conceptual precursor to the chapters which follow.

Chapter 5 examines the multi-layered effect of the Anglicization of immigrants from the eighteenth century to the present day, in shaping Anglo Jewry and its institutions, amongst which is the MOJ faith school. The chapter throws up the irony of changing Anglo-Jewish views in regard to the nature of sectarian education in a secular world, and shows that when combined with the changing attitudes of the liberal state toward

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<sup>7</sup> As stated at the beginning of this introduction, it is not the task of this thesis to treat the complex issue of the religious ideological differences within Judaism in any great detail. It focuses on the modern Orthodox Jewish approach which is defined and explained in detail in chapters which follow.

religious education, this led to the development of a variety of Jewish educational contexts, and a wider range of secular options, for Jews living in liberal democratic England. The chapter argues perhaps a little unexpectedly, that the MOJ faith school emerges as a pluralist Jewish context of religious toleration.

### **Part III: Conceptions of Toleration and Citizenship in the MOJ Faith School Jewish Studies Curriculum**

Chapter 6 [together with Chapters 7 and 8] provides the contemporary thrust of the thesis in regard to conceptions of toleration and citizenship. This is done by offering new thinking in regard to innovative Jewish Studies curriculum development, concerning pupil identity, autonomy and responsibility, critical reflection and education for toleration.

The chapter argues for an expanded notion of a **discourse of toleration**, through which pupils are encouraged to draw on the relational contexts of the self and God, the self and one's fellow, and on the reflexive self, in discussing or disputing diverse or opposing views. The chapter grounds new understandings pupils might have reached through this process in innovative curricular examples in the Jewish Studies curriculum. These undergird the broader conceptions of religious toleration and citizenship developed in the final chapters of the thesis.

Finally, the chapter foregrounds the crucial link between the philosophy of education and effective teacher practice, and argues this connection to be critical in formulating and delivering an innovative curriculum and in providing a qualitative education, which in addition to the grades pupils achieve, pays attention to their development as tolerant human beings.

Chapters 7 and 8 in this section offer innovative ways in which the Jewish Studies curriculum might be extended to connect with liberal democratic society through core examples of Judaic values.

Through reconceiving the central Judaic idea of **a covenantal society**, Chapter 7 explores the unique contemporary contribution the MOJ faith school might make to liberal democratic society as a **community of tolerant practice**. This is a new idea in faith school curriculum development, which, the chapter suggests, might provide a valuable transferable model for other Jewish schools, and for schools of other faiths.

Chapter 8 as the concluding chapter, discusses the possible contribution of the thesis, and reflects on its aims, on its transferability, and on the possibility of it leading to future practical implementation. The chapter examines the role of the thesis in contributing to new horizons in regard to creating conceptually inclusive yet religiously distinctive curricula, and highlights the critical importance of both continuing teacher education and continuing academic research.

In closing, the chapter calls for the crucial future expansion of new meanings and contexts of toleration, and for further curriculum development and innovation not only in schools, but also in youth organisations, adult education institutions and community care groups.

### **Broader questions**

The wide-ranging nature of this thesis necessarily raises broader questions the full treatment of which are beyond its ambit. Bearing this in mind, key issues have been



extensively footnoted in order to expand the argument, or to offer reasons for the importance of further research. I have chosen to use footnotes rather than endnotes because they connect more immediately to the main text and do not interrupt the flow of the argument by requiring the reader to turn repeatedly to the end of the chapter.

## **Chapter 2: Conceptions of toleration - a philosophical perspective**

### **Introduction**

To develop an adequate conception of toleration, we need to get beyond the conventional day-to-day ways in which we think about and use the term. In this chapter I attempt to show this is not an easy task because of the complexity of the conceptual structure of toleration, the contested nature of its justification, and problems to do with its practical application. I argue that the clarification of central theoretical conceptions of toleration is particularly crucial in recognising and reflecting on the process of individualisation, globalisation and the multiplication of immigrant societies, through which 'difference' has become more diffuse and pervasive in our daily lives. This provides the central contemporary context in which toleration, and indeed **intolerance**, operates.

Following McKinnon and Castiglione (2003, pp.1-2), I argue that a central challenge for the state and its citizens in twenty-first century liberal democratic England is to come to terms with the theoretical and practical transformations through which institutions, groups and individuals must go in order to live in an increasingly multi-faith and multicultural environment, and to address the divergence in religious, political, legal and social contexts between theories of toleration and its practice.

In order to tease out the kind of issues which might be involved in taking up this challenge, the chapter examines toleration in two main ways. Firstly as a political practice linked to liberal political theory, and secondly as a personal disposition and tolerant personal conduct. Both strands have significant educational implications as Judith Shklar (1996) suggests

The question of what meaning and worth toleration has within a pluralistic and sceptical context is far from clear, but it might be helpful if one looked at the demands of tolerant personal conduct apart from toleration as a political practice. By keeping the two apart from one another, one might gain a better view of the actual intellectual and political issues that confront us here and now. (Shklar, Preface in Heyd, 1996)

### **Toleration as a political practice**

Mendus (1989, p.70) states that a coherent account of liberalism's commitment to toleration presupposes a clear understanding of what liberalism is. However, she argues, from within the liberal tradition different accounts of liberalism and its justification have given rise to contrasting theories of toleration. Mendus (p. 74) selects three such examples, set out in synopsis immediately below, which are critical to arguments central to this thesis.

The first notion, which seems to describe the **limits** of liberalism rather than liberalism *per se*, has to do with **intolerance**, and belief in a single truth. The main proponent of this view was Jacques-Benigne Bossuet (1627-1704), French Bishop and theologian and staunch advocate of the theory of political absolutism. He considered that since the government was divine, and kings received their power from God, all revolt, whether civil or religious, was in direct defiance of the Almighty. Thus those in power had the right to persecute, because by virtue of their divine right they were 'right' and anyone else 'wrong'. This very clearly defines what liberalism **is not**, and as I argue below, the idea of moral scepticism grew in opposition to it.

The second notion in regard to the connection between toleration and liberalism, relates to specific reasons for interference, and draws on John Locke's seminal arguments in

his classical treatise *A Letter Concerning Toleration* (1689)<sup>8</sup> - [*Epistola de Tolerantia*], in which he makes a case for religious toleration. Locke argues that whilst there is no right to the freedom of worship as such, there is the right, for religious reasons, not to have one's worship interfered with by the civil authority. As will be seen in the chapters that follow, the central importance of Locke's arguments for this thesis is that in pinpointing what he considers to be the irrationality of state interference, Locke attempts to define the limits of religious toleration, both for the state and for religious groups within it.

The third historical connection between toleration and liberalism cited by Mendus, upon which I elaborate later in the chapter, is embodied in John Stuart Mill's *On Liberty* (1859), in which he sets out his argument for the liberal basis for toleration as commitment to the values of diversity and individuality, and the intolerance of the moral wrong and oppression wrought by religious, political and social tyranny.

I argue that the different historical origins of the notions of toleration selected above are important for liberalism, because each clearly generates a different theoretical conception of and basis for toleration, and has led to different social practices. For example as I have stated above, moral scepticism as a reaction to moral absolutism, denied that there was any such a thing as one moral or religious truth. By eschewing the notion of a set of universal values that people might share, and by espousing the idea that one set of values was not necessarily better than another, moral scepticism claimed to provide a liberal basis for the toleration of people's differences. The Lockean example of the irrationality of interference in religious matters by the civil magistrate has been claimed as the basis for both the liberal doctrine of neutrality with respect to

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<sup>8</sup> Please note that I reference *A Letter Concerning Toleration* as LT throughout the thesis.

reasons, and for religious belief, and Mill's argument for the importance of choosing one's own way of life has become the paradigmatic basis for the theory of liberal autonomy.

I now examine the conceptions of moral scepticism, moral indifference, neutrality and autonomy in detail in terms of the nature of toleration to which they give rise, and in order to challenge the extent to which each is able to provide a robust and compelling liberal basis for toleration.

### **Moral scepticism as a liberal basis for toleration**

I argue that the problem with basing any conception of toleration on the idea of moral scepticism is that scepticism takes all knowledge to be uncertain. Eschewing any certainty we may claim to have in regard to our commitments, scepticism considers doubt the most appropriate manner in which we should hold them. On this view, we cannot impose commitments on others that we ourselves doubt. Thus toleration, in the weak form of just 'putting up with' the values of others, becomes the default position, and is justified in terms of the rather circular argument of having to put up with what we doubt because we doubt it. I contend that this account of toleration is implausible, and is unable to provide any real moral basis or commitment out of which the tolerator acts. After all, if we are talking about toleration, then there must surely be something that **needs to be** tolerated, and which strikes tension at the oppositional core.

Bernard Williams (1996, p.18), states that toleration is necessary where different groups who have conflicting moral, political or religious beliefs, realise that there is no alternative to living together except armed conflict. This would be unlikely to solve anything, and would impose continuous suffering. Williams insists that it is precisely in

circumstances where we find another's way of life **deeply** unacceptable, and our opposition to it is very strong, that toleration, although it seems impossible, is necessary in mediating the intolerable. Thus, I argue, the claim of the moral sceptic, for whom there is no set of universal values which every person ought to share, is implausible, because it would require toleration to be the default position in **all** cases of a clash of values or commitments. This view would require us to tolerate the intolerable without limits under any and all circumstances, which when applied to real life is patently unrealistic, impractical and irresponsible.

### **Moral indifference**

The 'live and let live' conception of toleration is very similar to the view of moral scepticism, but with a slightly different nuance. The view is that it is none of our business to interfere with what other people believe or how they choose to live, so let's just turn a blind eye and get on with our own life. I argue against this view as an adequate basis for the liberal conception of toleration, because as a value and as a practice it suggests moral indifference in failing to admit, as does moral scepticism, any kind of conflict between the moral values of the tolerator and what is ostensibly being tolerated. As such it is completely devoid of the characteristically paradoxical nature of toleration, which is that its object must be genuinely **intolerable**. I contend that any maximal notion of toleration demands much more opposition than the 'live and let live' conception allows, and that there is a crucial distinction between tolerance and indifference. After all, Horton (1996, p.20), reminds us that if we **don't care** what anyone believes, we don't need an attitude of tolerance any more than we do in regard to people's tastes in food.

With regard to the important distinction between toleration and indifference, Heyd (1996, p.5) observes

The scope of indifference is growing in the field of value judgment, [and] liberalism today means less the toleration of other ways of life than the cool acceptance of the very plurality and heterogeneity of lifestyles. If that is the case toleration might prove in the future to have been ‘an interim value’, that is, an attitude that characterized political morality between the age of absolutism, in which every deviation from the only truth was suppressed, and the age of pluralism, in which nothing is considered a deviation. (Heyd, 1996, p. 5)

Thus although scepticism and indifference might look like liberal bases on which what appears to be tolerance as a practice is based, they fail to provide a sufficient basis for principled toleration.

### **Neutrality as a liberal basis for toleration**

If liberalism is based on the premise of individual diversity, where each person has their own idea of what makes life worth living, and has the equal right to pursue that idea to the best of their ability, then it would follow that the principle of neutrality arising from liberalism defined in this way, would require the state to adopt the policy of not favouring any one conception of the good above another. Following Galeotti (1999, p.38), I argue that this anti-perfectionist conception of neutrality prescribes **public blindness** towards difference, rather than its recognition, because neutrality in this sense is being proposed as the normative device to bring about a consensus on the liberal principles and institutions which ground political legitimacy. Thus if, in twenty-first century liberal democratic society faith and/or cultural groups are to have value as **communities of meaning**,<sup>9</sup> I contend that the conventional principle of liberal

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<sup>9</sup> The significance and value of multicultural groups as **communities of meaning** requires a shift of the limits of toleration with respect to some of the practices of groups or of individuals within them, in regard

neutrality provides an inadequate basis for toleration in relation to either group practices or those of individuals within them.

*Neutrality and public recognition*

Galeotti (1999, p.48) usefully observes that to be publicly judged or socially defined as **‘different’ from the ‘norm’** is a source of injustice. She contends that if differences are recognised not because they are important *per se*, but because they are important **for their bearers**, and the liberal conception of neutrality is revised on this basis and reflects the political will to redraw societal standards so as to include different identities, then it becomes an important and plausible basis for toleration. I concur with Galeotti that this reconceptualised notion of neutrality would enable it to be a liberal basis for toleration through

Counter[ing] the unequal respect publicly paid to the bearers of social differences, reversing their invisibility and including them fully into citizenship, **given that** (and **not because**) the difference in question does not infringe the harm principle<sup>10</sup> and ... rights are not violated. (Galeotti, 1999, p.48)

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to the special rights or exemptions they demand. I argue this holds out a challenge to the liberal commitment to pluralism because the special rights or exemptions demanded might mean that they may, as groups or members of groups, be permitted to engage in practices which would otherwise be intolerable. McKinnon (2006, pp.100 -101), usefully cites two examples of cases where British law has accommodated religious requirement. The first example is that Sikhs who wear turbans as part of their required religious traditional dress are exempted from wearing motorcycle crash-helmets Motor Cycle Crash Helmet [Religious Exemption] Act 1976. [Online]. Available at: <http://gurmat.info/sms/smspublications/theturbanvictory/chapter3/> [Accessed 2/07/2014]. The second example, [which is important to compare and contrast with **contemporary** issues of toleration and its limits in regard to Jewish ritual slaughter - *Shehitah* - discussed further on in this chapter], is that Jewish and Muslim abattoirs which slaughter animals while fully conscious as a requirement for Kosher and Halal meat are exempted from the requirement that animals be stunned and unconscious prior to slaughter. [See Slaughter of Poultry Act 1967 [Online]. Available at: [http://www.legislation.gov.uk/ukpga/1967/24/pdfs/ukpga\\_19670024\\_en.pdf](http://www.legislation.gov.uk/ukpga/1967/24/pdfs/ukpga_19670024_en.pdf) [Accessed1/07/2014]; and the Slaughterhouses Act 1974. [Online] Available at: [http://www.legislation.gov.uk/ukpga/1974/3/pdfs/ukpga\\_19740003\\_en.pdf](http://www.legislation.gov.uk/ukpga/1974/3/pdfs/ukpga_19740003_en.pdf) [Accessed1/07/2014].

<sup>10</sup> I discuss J.S. Mill’s harm principle in greater detail further on in the chapter in the section entitled *Autonomy and the harm principle*.



Thus, the point of the positive public recognition of difference mediated by the harm principle as a principle of toleration is to restrain cancelling or being blind to difference in the sceptical or indifferent sense explained above, and to enhance the full-blown identities of citizens in public, in consonance with their private selves.

*Does neutrality require the absence of interference or positive support?*

Weale (1991, p. 27) states that the fundamental problem in using the idea of neutrality as the underlying basis for toleration, is that, as we have begun to see, it is extremely difficult to specify the exact content of the ideal. He argues that at least two questions need to be answered before content can be given to the idea of neutrality. Does it involve mere absence of intervention, or does it require positive action?

Instructively Weale comments that it may be that by its policies the state does not **intend** to favour certain ways of life rather than others, but the **effect** of certain of its policies may be to advantage some ways of life at the expense of others. He takes as an example the growth of Sunday trading, which has come about by state abolition of a restriction on Sunday trading hours. The intention behind the policy was to make it more convenient for people to shop at the weekend, and thus the policy remains officially neutral. However the effect of the legislation on devout Christian shopkeepers is that it makes it difficult for them to both keep their commitment to their traditional religious way of life, and continue to compete fairly in the market in a commercially profitable way. The state may not have **intended** to disadvantage devout Christian shopkeepers by the change in trading hours, but the **practical outcome** of the legislation in fact did so. In this regard Mendus (1989, p. 84), states that restricting neutrality to reasons for action, [along the lines of the Lockean argument of neutrality

with respect to reasons outlined earlier], is not in itself a guarantee of liberal democratic political practice in the broadest sense.

Developing this idea further, if the effect of the change in legislation is to create a disadvantage that was not there in the first place, then, Weale points out, the abolition of the restriction on Sunday trading hours **is** in breach of the principle of neutrality, because the consequences of the legislative change has caused an extra burden on Christian traders compared to their secular competitors. This consequence-based account of neutrality, or neutrality with respect to outcomes, calls into question whether any law could ever in principle be neutral in the context of different competing conceptions of the good. In regard to the Sunday shopping example, Mendus argues that to have no restriction on Sunday trading is to favour the secularist, atheist or non-Christian, over the devout Christian. But to have **some** law governing Sunday trading is to favour the devout Christian.

At this point the following questions must be asked: How minimalist is neutrality meant to be? Are governments neutral if they merely do not forbid certain practices, or are they required to give positive support to all practices? Galeotti's (1999, pp. 51-52) argument here is illuminating. She contends that what is really at stake is the symbolic aspect of recognition, the literal content of the claim is much less important, and can be the subject of negotiations once political authorities have taken some perhaps symbolical step which signifies recognition. Thus she argues that in regard to the Sunday shopping example, there is no need to change Sunday as the end-of-the-week day off, as long as shop regulation has been revised and shops can be open on Sundays and closed on Fridays or Saturdays.

Significantly, Galeotti argues that **the revision** of the previous regulation prescribing Sunday as the general day off, and exclusively patterned after the majority's tradition, signifies a public attention and concern for the traditions of others, and the political will to redraw societal standards so as to include different identities.

In respect of the contrast between the absence of intervention and positive support, Weale (1991, pp. 27-28) argues that in the absence of positive support from the state certain minority ways of life might well be eroded. Historically, there have been situations in which English law has **actively accommodated religious requirement**. For example as mentioned above, the Slaughter of Poultry Act (1967), and the Slaughterhouses Act (1974) exempted Jewish and Halal abattoirs from the requirement that animals be stunned<sup>11</sup> and unconscious prior to slaughter. However in the latter part of 2010, a point of contention arose, which according to the revised notion of liberal neutrality I am suggesting, does, I contend, **infringe the harm principle**, and threaten to violate Jewish rights in relation to the ritual slaughter of meat for kosher consumption, *shehitah*<sup>12</sup>

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<sup>11</sup> Stunning refers to the methods of attempting to render an animal or bird unconscious prior to slaughter. The main methods used in the general slaughtering industry for **cattle and sheep** are: captive bolt gun: a steel bolt is shot into the skull at the front of the animal's brain. Electric shock: electrodes are clamped to the animal's head/heart and the animal is electrocuted. These methods are contrary to Jewish law, because an animal intended for food must be healthy and uninjured at the time of *shehitah*. These stunning methods injure the animal, making it *treifa* - non-kosher - and thus prohibited. [See *Shehita: Guide to Shehitah* (2009) [Online]. Available at: [http://www.shehitahhuk.org/fileadmin/user\\_upload/pdf/A\\_Guide\\_to\\_Shehitah\\_2009\\_.pdf](http://www.shehitahhuk.org/fileadmin/user_upload/pdf/A_Guide_to_Shehitah_2009_.pdf) [Accessed 16/01/2011].

<sup>12</sup> The process of *shehitah* is the only method of slaughtering meat and poultry so that it is kosher for Jewish consumption. *Shehitah* is performed by a *shokhet*/highly trained slaughterer with a surgically sharp knife [*khalaf*] which must be perfectly smooth and maintained without notch or irregularity. The frontal structures at the neck of animals permitted for kosher consumption, including the trachea, oesophagus, the carotid arteries and jugular veins are severed in a rapid and uninterrupted action causing an instant drop in blood pressure in the brain. Poultry is similarly treated. The abrupt loss of pressure results in the immediate and irreversible cessation of consciousness and sensibility to pain. Proponents of stunning seek to achieve the state of unconsciousness by **additional intervention**, but *shehitah* **humanely incorporates stunning** as an integral part of the procedure, which renders the animal insensible to pain, dispatches and exsanguinates with a rapid action. English law defines 'stunning' as

Any process which causes immediate loss of consciousness which lasts until death (*Welfare of Animals (Slaughter or Killing) Regulations* (1995 Part I, regulation 2 (1) [Online]. Available at:

*Shehitah*

This contentious issue concerned the EU updating of the Regulation for the Provision of Food Information to Consumers which aimed at the labelling of food in regard to health. During the process of this matter through the Committee of the Environment, and the Public Health and Food Safety body of the European Parliament, Amendment 205 was mooted. The Amendment proposed, purportedly in the interests of consumer information, that all meat and meat products derived from animals which had not been stunned prior to slaughter was required to be labelled as ‘meat from non-stunned slaughter’, thereby implying that it was somehow less ethical than non-religious products.

Campaign group Shehitah UK said the amendment was discriminatory, and could cause kosher prices to rocket because buyers from the non-kosher market, which consumes 70 per cent of *shehitah*-slaughtered meat, might be put off by the labelling. In addition the proposed amendment was contrary to World Trade Organisation guidelines to reduce unnecessary barriers to trade, and which do not consider customer information to be sufficient reason to enforce mandatory labelling. Further objections raised in regard to the proposed labelling said it was not directly about food information, but related to issues of animal welfare inappropriate to include because that was not what the legislation was about.

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<http://www.legislation.gov.uk/ukxi/1995/731/regulation/2/made> [Accessed 27/05/2013].

*Shehitah* conforms to this requirement. See *Guide to Shehitah* (2009) referenced in the footnote immediately above.

On 7 December 2010, after strong lobbying from the Jewish community, the European Council of Ministers approved a draft of new food information regulation which **did not** include Amendment 205. Despite this fact the practical implication of the Amendment was that it comprised a direct and serious threat to *shehitah*. The Amendment and its intention are currently still of deep concern to the Jewish community because of possible future implications. Recently calls for food labelling have returned, and it is expected that the European Commission will begin a new consultation concerning labelling in specific regard to animal welfare.<sup>13</sup> Thus intensive work must continue with the European Jewish Congress and the European food authorities, the detailed discussion of which are beyond the ambit of this thesis, to explain the humane nature of *shehitah*, as opposed to the general slaughter of meat/ poultry by means of captive bolt gun, electric shock, and gassing.

Weale points out that according to the current conception of liberal neutrality, although the state might not **intend** to favour certain ways of life rather than others, the effect of certain of its policies may be to advantage some ways of life at the expense of others. I argue that the insistence on labelling meat for kosher consumption as ‘not stunned prior to slaughter’ is categorically **in breach of the principle of neutrality**, because it is discriminatory in applying its labelling policy only to meat killed by means of ritual slaughter, and causes an extra burden on religiously observant Jewish and Muslim traders and consumers, compared to their secular competitors. Thus I argue that for neutrality to provide a basis for toleration, the liberal democratic state must pay

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<sup>13</sup>For examples of recent issues of debate see

- *Statement on Shehitah in the Netherlands* [Online]. Available at: [http://www.bod.org.uk/live/content.php?Item\\_ID=298](http://www.bod.org.uk/live/content.php?Item_ID=298) [Accessed 22/12/2011].
- *Should animals be stunned before slaughter?* [Online]. Available at: <http://www.bbc.co.uk/news/magazine-14779271?print=true> [Accessed 8/02/2012].
- *Overview of the Debate Surrounding Stunning Before Slaughter* [Online]. Available at: <http://www.shehitahuk.org/news-resources/newspress-releases/news-resources/article/bbc-overview-of-the-debate-surrounding-stunning-before-slaughter.html> [Accessed 26/02/2012].

attention to the **outcomes** of policies intended to be neutral between groups, as well as to the **intention** behind them.

### *Sabbath Observance*

Scarman (1987, p.55), cites the case of a Muslim schoolteacher who wanted to take Fridays off from school so that he could attend the mosque. His head teacher refused to give permission for this, and the teacher complained that this rule, and indeed the law were not neutral. What then is required of neutrality in this case and indeed in others like it,<sup>14</sup> where a person is faced with the very stark choice between practicing their religion and fulfilling their professional commitment? In the case of the Muslim teacher, does the principle of neutrality merely demand **non-interference** in that there is no law forbidding attendance at the mosque on Fridays, or does it demand **positive support** in terms of putting a formal strategy in place for teacher cover on Fridays so that devout Muslim teachers are able to attend the mosque, and observant Jews to leave the workplace before the onset of the Sabbath?

As I have argued above, the bald principle of neutrality lays itself open to ambiguity in regard to both its interpretation and its sufficiency as a liberal basis for toleration. What is important in regard to both the Muslim schoolteacher, and the Sabbath observant Jew, is that **the revision of the previous regulation** prescribing Sunday as the general day of worship exclusively patterned after the majority's tradition, and the preparedness to recognise Friday and Saturday as days of worship for others, signifies the political will to redraw societal standards so as to include different identities.

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<sup>14</sup> For example an observant Jew, who in the winter months when the Sabbath begins at the onset of dusk – often as early as 3.15 p.m., would need to leave work early on a Friday afternoon in order to prepare for and commence the Sabbath in the proper way. Where permission is granted, making up the work by doing overtime, and/or covering for others on their religious holiday, for example over Christmas, is often required of or indeed offered by the religious Jewish person.

Thus whilst all the political issues of contemporary pluralism will hardly be solved here, I argue that the intractability for the contemporary liberal democratic state of identity politics and the politics of interest, may to some extent be mitigated by the compelling suggestions made in this section concerning the revision of the notion of neutrality, so that it becomes a political practice that actively seeks to promote individual interests and concerns. As such, I contend it provides a plausible liberal basis of toleration.

In the exploration below of the notion of liberal **autonomy** as a substantive basis for toleration, I argue, as in the case of neutrality above, for a more responsive notion of autonomy in regard to our individual capacity to tolerate others.

### **Autonomy as a liberal basis for toleration**

My main purpose in this section is to examine ways in which the notion of autonomy might be regarded as a liberal basis for toleration. To this end I discuss those aspects of personal, political and moral autonomy most salient to the arguments pursued in this thesis.

On the liberal view, the essential characteristic of the autonomous person is that she is self-directed. Primarily this means that she has the capacity to choose, and is in control of directing and changing her actions, goals and way of life. However communitarian critiques<sup>15</sup> of the liberal ideal of autonomy, draw attention to the fact that few of us if any, have ever been in a position to control absolutely all the elements that shape our identity. On the communitarian view, one of the central features of human existence is

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<sup>15</sup> Communitarian critics of the liberal notion of autonomy most notably include Alasdair MacIntyre, Charles Taylor and Michael Sandel. Sandel's arguments, which I discuss below, seem most appropriate for my purposes. The consideration of feminist and postmodern critiques of the liberal ideal of autonomy is beyond the ambit of this thesis.

that if individuals are embedded in a social context which has been formed by history, tradition, norms and values, then all human beings belong to some degree to **social webs**, and are involved in the formation of deep personal relationships, mutual caring and solidarity which characterize the communities of meaning of which they are part.

In regard to liberal autonomy as a basis for toleration, it is useful to recall here Callan's (1997, p.10) nuanced distinction between liberalism and democracy mentioned in the introduction, because it points up the balancing notion between the liberty free citizens have to create meaningful lives for themselves as individuals, and the sharing of an associational way of life with fellow citizens. I argue that this conception of the dual nature of liberal democracy suggests that individuality is only **one** reference point for the standard by which we assess our life as more or less autonomous, and that this assessment does not take place in a vacuum.

To what extent might the identity of others represent a curb on our personal autonomy, or, as Appiah (2005, pp. xiii, xiv) suggests, provide its very contours? Perhaps part of the answer to this complex question has to do with a more **responsive and flexible** notion of autonomy in regard to our individual capacity to tolerate others, and in relation to our collective capacity to tolerate the individual.<sup>16</sup>

Before further exploring what the implications of a more responsive notion might be, more needs to be said about the **stringent liberal ideal** of autonomy.

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<sup>16</sup> It is interesting to note that Callan (2006), in an unpublished paper about the integration of immigrant groups, highlights the responsive notion of autonomy

Integration ... is a delicate process of mutual give and take between immigrant groups and the host society.... The ultimate success of integration depends massively on individual immigrant and native citizens freely choosing to do things they have a right not to do - to live in mixed neighbourhoods, to make friends across ethnic and religious divides, to show active goodwill across such divides, and the like. (Callan, 2006, pp. 13, 14)



*Autonomy as the priority of the right over the good*<sup>17</sup>

Sandel (2004, p.114), points to the tension at the core of the notion of autonomy of the priority of the right over the good which is premised upon the belief that individual rights cannot be sacrificed for the sake of the general good, and that the principles of justice that specify these rights cannot be premised on any particular vision of the good life.

Justice is more than just another value. It provides the framework that *regulates* the play of competing values and ends; it must therefore have a sanction independent of those ends. But it is not obvious where such a sanction could be found. (Sandel, 2004, p.115)

Sandel illustrates his point instructively, with reference to the decision by the American Supreme court in 1977/8, concerning the Skokie controversy. I argue that this example, which I now discuss, shows how the liberal ideal of autonomy, based on the claim for the priority of the right over the good, might conflict with the ideal of toleration.

The Skokie case<sup>18</sup> concerned the freedom of the National Socialist Party of America [NSPA], a neo-Nazi group, to march through the town of Skokie, Illinois, dressed in Nazi uniforms, and displaying swastikas. They planned to give out leaflets promoting the idea of an all-white America, and recommending a restrictive citizenship policy aimed at getting rid of Jews and Negroes, considered to be the ‘wrong’ race. In Skokie however, one out of every six Jewish citizens was a survivor or a direct relation of a

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<sup>17</sup> The main proponents of the argument for the right over the good are Nozick, R. (1974) *Anarchy, State and Utopia*; Dworkin, R. (1977) *Taking Rights Seriously*; Ackerman, B. (1981) *Social Justice in the Liberal State*. Full justice cannot be done here to the breadth and complexity of their argument, but I have used the bare bones of it to explore the tension at its core with reference to toleration which I discuss above.

<sup>18</sup> I have selected the details of the Skokie case relevant to arguments concerning toleration rather than those more broadly to do with free speech.

survivor of the Holocaust, and local municipal government had passed a series of ordinances which denied the dissemination of any materials, any speech or assembly, aimed at inciting hatred based on race, national origin or religion.

Invoking the First Amendment<sup>19</sup> the NSPA claimed the right of free speech, while the Jewish citizens of Skokie as a particular religious, cultural/ethnic group, claimed the right not to be intimidated. The argument that the march would infringe on the sensitivities of its Jewish citizens and might spark violence, managed to win a Constitutional Court injunction against the marchers. In response however, the American Civil Liberties Union [ACLU] took the case to the Supreme Court, where they successfully defended the Nazis' right to free speech. The court declared the local government ordinances in Skokie to be unconstitutional, and the march got permission to go ahead.

I argue in terms of toleration, that this permission, which allowed free speech to trump harmful intimidation, throws into stark relief the tension between justice and the law, and the Supreme Court decision which protected the right of neo-Nazis or racists to cut across the Jewish community embedded in Skokie without a thought for their concomitant rights and the balancing of their interests, can only partially be explained

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<sup>19</sup>The intricate ramifications of the First Amendment to the United States Constitution, which forms part of the Bill of Rights introduced by James Madison (15 December 1791), are beyond the ambit of this thesis. I briefly cite it in connection with the Skokie case, to show that in relation to toleration, the liberal aim of the Amendment to set limits on government action in regard to personal liberty, might lead to quite radical outcomes in regard to the fair and balanced interests of the parties involved. The salient points of the Amendment to bear in mind in specific regard to my argument concerning toleration above are:

- At the same time as prohibiting the establishment of any particular religion, it forbids any interference in the free exercise of religion.
- Any curtailment of free speech is forbidden.
- There can be no interference with the right of peaceful assembly.
- Any blocking of appeal to government to redress grievances is prohibited.

by recourse to the details of the First Amendment. I strongly agree with Sandel (1996), that part of the reason for the court's rejection of local ordinances stemmed from its perception and acceptance of the liberal view of the self

On the liberal conception of the person, the highest respect is the self-respect of a self, independent of its aims and attachments. However much I prize the esteem of others, the respect that counts cannot conceivably be injured by a slur against the racial or religious groups to which I happen to belong. For the unencumbered<sup>20</sup> self, the grounds of self-respect are antecedent to any particular ties or attachments, and so beyond the reach of an insult to 'my people'. (Sandel, 1996, p.82)

I contend that the Skokie case shows the conception of the autonomous self 'unencumbered' by any particular ties or attachments to be seriously flawed. Farrelly (2004, p.110) supports this view by pointing out that the political result of the Supreme Court's decision in allowing the march to go ahead, was that the Jewish community who were members of an historically subordinated group, were through court action, prevented as a political community from acting democratically to protect goods important to them.

#### *Autonomy and the notion of the unencumbered self*

The Skokie case shows how autonomy based liberalism fails as a basis for toleration if it is based upon the stringent Kantian (1785) ideal of autonomy. This ideal dictates that the highest respect is the self-respect of a self, independent of, and unencumbered by, its aims and attachments, and the grounds of self-respect are antecedent to, hence unembedded in, any particular empirical context. For Kant, a person is autonomous only when she holds the particulars of her social situation at a distance, and is constantly

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<sup>20</sup> Sandel (2004, pp. 114-124), examines the significance of Immanuel Kant's notion of the autonomous self as transcendental, for the political context of public life, upon which Rawl's (1971) notion of the unencumbered self is predicated. I discuss this immediately below in the section entitled: *Autonomy and the notion of the unencumbered self*.

disengaged from her desires, preferences and commitments, judging each before she adopts them. On this view, the self is prior to all socially given roles, relationships and contexts.<sup>21</sup>

I argue that if the subject is prior to its ends, then the right is prior to the good, and we are now able to see, based on the stringent Kantian notion of the liberal ideal of the autonomous self, how it came about that neo-Nazis were permitted by the US Supreme Court to march through the Skokie Jewish community without restraint.

I contend, as indicated in the introduction to the thesis, that in order to provide a robust basis for toleration, the stringent liberal ideal of autonomy must, in a liberal democracy, be revised. The effect of this would be create various forms of autonomy which respect the right of citizens to live in ways that do not necessarily affirm it as a disengaged reflective power of an unencumbered self as prior to its ends.<sup>22</sup>

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<sup>21</sup> Conversely, if I was a wholly empirical being embedded in society and situated in a particular context, I would not, according to Kant, be an autonomous, free rational chooser, because all choice would be governed or dictated by some desirable practical end or perceived good outside myself. Hence in Kant's terms, it would not be an autonomous, but in his words a 'heteronomous' choice. This argument is developed in detail in Chapter 7, in regard to ways in which the MOJ faith school, as a heteronomous institution which may not value personal, political or educational autonomy in the strictly liberal sense, might in light of its religious *nomos*, educate its pupils to contribute appropriately as citizens to wider liberal society.

<sup>22</sup> Crucially for both the liberal democratic state and, as we shall see further on in the chapter, for illiberal groups within it, Kymlicka (1989), bolsters this argument.

The question is not whether we must take something as given in making judgments about the value of our activity; rather the question is whether an individual can question and possibly substitute what is in the given, or whether the given has to be set for us by the community's values. (Kymlicka, 1989, p. 905)

The importance of Kymlicka's view is that reflection and judgements on the 'given' are not and should not be conducted from a distance. The individual does not view the given from without but from within, and reflection begins after a person has gone through a process of socialization and acculturation. As we will see later in the chapter, Aviram and Yonah (2004) corroborate the view that the process of critical reflection, and the securing of cultural coherence, does not rule out either the possibility of deliberation about externally transmitted values and ideals, or the possibility of revising them. Arguments in the chapters which follow, show that the notion of critical reflection is of great relevance to religious toleration in regard to: how individuals within religious groups deal with internal pluralism; how groups

*Autonomy and the harm principle*

How does the basis of the harm principle relate to autonomy-based toleration? Gray and Smith (1991, p.7) question the extent to which the nature and severity of harms can be established without recourse to moral judgments which might, as in the example of the Skokie case, construe the state as perfectionist, and in the case of the individuals and groups involved prove intractably controversial. The authors also ask to what extent offence and pain count as harm.

In this regard Raz (1988 p.169), argues that respect for the autonomy of others consists in securing for them adequate options and the opportunity and ability to use them. Thus to diminish or deprive a person of these options, or to frustrate their opportunity or ability to use them through causing offence and pain, is a way of causing them harm. On Raz's view (p. 171), a morality which assigns a high value to individual autonomy, is a basis for the harm principle as a principle of toleration only if it secures conditions of autonomy **for everyone**. Thus if the liberal democratic state has a duty to promote people's autonomy, the harm principle allows it to use coercion both in order to stop people from actions which would diminish the autonomy of others, and in order to force them to take actions required to improve people's options and opportunities. Coercion here implies compliance with the law, and if the law reflects autonomy-based duties, then failure to comply harms others. It would seem then that the harm principle as a principle of toleration is satisfied.

However what constitutes harm in the case of illiberal groups who do not value autonomy in the liberal sense?

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relate to one another and to the state, in terms of either emphasising their separateness or integration; and how they might relate to civil society in associative ways.

*Autonomy and illiberal groups*

Based on the arguments above, it seems that in deciding which options to encourage and which to reject, the liberal democratic state in addition to its duty to prevent the loss of autonomy, must as far as possible allow its citizens to flourish. This should apply even to members of illiberal religious or cultural groups who might not value autonomy in quite the same way as it is valued in wider liberal or secular society.

Whilst it might be assumed that individuals who are members of particular religious or cultural groups lack autonomy because members define themselves as a specific community of meaning, with divinely given beliefs, traditions and practices which have been part of their history for thousands of years, or live lives deeply rooted in cultural and historic tradition, and are bound by moral ties antecedent to choice, I argue that these very beliefs and traditions are critically constitutive of the autonomy internal to that group, which is expressed through the religious and cultural choices they have made.

Thus I contend perhaps perversely, that it is the state itself which demonstrates the lack of a robust and effective principle of liberal autonomy if, in mirroring the conventional notions of moral scepticism and liberal neutrality discussed above, it merely provides lip-service conditions of autonomy to communities of difference within society, and fails to substantively improve their civic participation, or enhance their religious or cultural one.

*A flexible notion of autonomy*

If, as I have argued above, the self is not located only in the disengaged reflective power of an unencumbered self, prior to its ends, but is rooted in the commitments and values

constituent of the agent's identity, this does not render it incapable of engaging in autonomous critical reflection. Aviram and Yonah (2004, pp. 5-7), observe that critical reflection must entail the agent's capacity to autonomously revoke the commitments and values constituent of their identity as well as the capacity to embrace them. The ability to do so does not mean that the agent is tenuously attached to them or at a distance from them, it means [and this to my mind makes the notion of personal autonomy all the more challenging], that the agent should be able, **whilst involved in them**, to place their commitments and values under rational and moral scrutiny should they be seriously challenged, and to discard them should they be found insupportable under such scrutiny.

In the next chapter, I show how this works in relation to immigrant groups in twenty-first century liberal democratic England, which are caught between making the choice **to secede from** their religious and/or cultural beliefs, traditions and values and espouse liberal values, and the choice **to adhere to** their religious and/or cultural beliefs traditions and values whilst living in a democracy. In addition I show how the state might balance its commitments and values, in order to at worst avoid exacerbating sectarian violence, and at best to enable the flourishing of diverse communities of meaning.

I argue that within Judaism, the idea of a more flexible notion of autonomy plays a significant role in understanding the scope of sectarian intolerance to liberal society, and more liberal accommodations of it. I argue in Chapter 6 that this notion of autonomy contributes in two main ways to the education of the MOJ faith school pupil. The first is to develop the personal autonomy of the pupil from within the faith context, through encouraging her critical powers of evaluation; the second is to educate the pupil to strike

the balance between self-regarding and other-regarding dispositions, and encourage her tolerant personal conduct.

To return to the complex realities discussed in the current chapter, concerning what might be involved in the flourishing side by side of people with divergent, often incommensurable beliefs, lifestyles, goals and aspirations, I now turn, although not without overlap, from my emphasis on the notion of toleration as a political practice, to the notion of toleration as a personal disposition and as tolerant personal conduct.

### **Toleration as a personal disposition and tolerant personal conduct**

Bernard Williams (1996, pp.19, 20) notes that the notion of toleration as a political practice has to do with the determination by the state as a more powerful group, of for example, what laws should exist in regard to permitting or forbidding various kinds of religious practice, and the imposition of those laws on less powerful groups. However, Williams argues that at a more basic level toleration cannot only be about laws, but is a matter of the **attitude** of any group to another, and does not only have to do with the relations of the more powerful to the less powerful. Thus, a group or creed [reverting to the example above of the neo-Nazi march through the largely Jewish community of Skokie], can rightly be said to be intolerant if it would like to suppress or drive out others even if, as a matter of fact, it has no power to do so. Thus, toleration has not only to do with the state in relation to more or less powerful groups, it also has to do with the relationship between groups, and amongst the individuals within them. Williams's critical point is that the problems of toleration are found first at the level of human relations, in the attitude and conduct of one way of life toward another. It is this aspect of toleration as a personal practice that I will now explore.



McKinnon (2006, p.18), observes that toleration can only be required in response to situations to which the tolerator is opposed in significant ways, which the tolerator believes herself to have the power to alter, suppress or eradicate, and which the tolerator as a result of all this, **is disposed to** interfere with so as to alter, suppress or eradicate.<sup>23</sup> In explication, McKinnon lists six essential structural features of toleration which are instructive:

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 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**.

McKinnon (2006, pp.14, 15), characterises this taxonomy as follows: Features 1-4 above set out the circumstances of toleration, and the conditions in which it is meaningful to describe one agent as tolerant of another.

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<sup>23</sup> It is illuminating see how in Chapter 6, McKinnon's structures of toleration map onto curricular paradigms of religious encounter between human beings and God; between human beings and one another; and encounters that take place within the reflexive human being herself. In that chapter, I examine McKinnon's ideas in regard to the dynamics which present themselves in regard to paradigms within the Jewish Studies curriculum.

(1) States an obvious condition of toleration which is that **unless** a person, group or practice differs from me, I cannot be said to tolerate them or it.

(2) States that we only tolerate what we take to be important or significant, and many problems in the practice of toleration arise because of a divergence of opinion on the importance of a feature or practice between the tolerator and the person she tolerates.

(3) Characterises toleration as a response to opposed differences, and if we revert to the Sunday shopping example discussed above in relation to the principle of neutrality, explains why ‘the devout’ in McKinnon’s example of Sunday shopping, would be in a position to tolerate shoppers and not vice versa. Only the devout for whom Sunday is significant as a religious day of worship, and who have a deep and strong moral disapproval of Sunday shopping, have to tolerate it. The shoppers themselves, and indeed the liberal state, are indifferent to their views.

#### *Toleration as restraint*

Moral **disapproval**, and **dislike** [as shown in (3) above], show opposition, arguably differing in the degree of their objectivity. However McKinnon (2006, p. 28) points out that to count as the proper kind of opposition for toleration to take place, what matters is not whether it is constituted by disapproval or by dislike *per se*. Rather what is important, is the way in which the tolerator makes her judgement of disapproval or dislike. The tolerator must take responsibility for her judgments of opposition, and to that extent show that she genuinely takes these to be justified. Horton (1996, p. 33), supports this view, and observes that a person is tolerant when she **refrains**, on principled grounds, from acting on her disposition to oppress or interfere with another person or group in order to prevent them from engaging in practices to which she is principally opposed. Bernard Williams (2000, pp. 66-67), argues similarly, that when a person genuinely takes her opposition to be justified through responsible deliberation

and belief her opposition takes the form of a commitment, and toleration requires that she **does not** act on this commitment

If we are asking people to be tolerant, we are asking .... [them] to lose something, their desire to suppress or drive out the rival belief; but they will also keep something, their commitment to their own beliefs, which is what gave them that desire in the first place. There is a tension here between one's own commitments and the acceptance that other people may have other and perhaps quite distasteful commitments. This is the tension that is typical of toleration, and the tension which makes it so difficult. (Williams, 2000, pp. 66-67)

The space for toleration is thus created between having a commitment, and judging whether it should be acted upon.<sup>24</sup>

The complexity which is beginning to emerge, in regard to the conceptual structure of the notion of toleration as a personal disposition and as tolerant personal conduct, seems

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<sup>24</sup> Peter Nicholson (1985) and Mary Warnock (1987) explore further critical questions concerning the moral character of toleration. Nicholson's definition of toleration is

the virtue of refraining from exercising one's power to interfere with others' opinion or action although that deviates from one's own over something important and although one morally disapproves of it. (Nicholson, 1985, p. 162)

Warnock (1987, p. 125), argues that the more normative sense in which one would think oneself tolerant, is if one refrained from criticising something not because one morally disapproved of it, but because one disliked it, or regarded it with varying degrees of distaste. Nicholson claims (1985, p. 160 – 61), that if we are characterizing toleration as a specifically **moral** ideal, then a distinction between dislike and disapproval is essential, for whilst allowing that dislike could be connected in the descriptive sense with the feelings around tolerating something to which one objects, Nicholson insists that such feelings are not **morally** grounded.

Warnock (1987, p. 126), objects to Nicholson's account of morality because she does not think a distinction can be drawn between the moral and the non-moral, resting on the presumption that the moral is rational, or subject to argument, and the non-moral a matter of feeling or sentiment. Warnock argues, and I am inclined to agree with her, that strong feelings or sentiments must be more closely connected with moral judgment than Nicholson allows; because were they not involved in the judgement that something is morally right or wrong, then Warnock believes, the concept of morality itself would wither away, and become lost in the concept of expedience. Warnock's (pp.126-127) final riposte to Nicholson is illuminating, and to an extent will be borne out in this thesis; in that she suggests that their disagreement might be resolved by thinking about a 'strong' and 'weak' sense of toleration

In the weak sense, I am tolerant if I put up with, do not forbid, things which it is within my power to forbid, although I dislike them or feel that they are distasteful. In the strong sense I am tolerant only if I put up with things which it is within my power to prevent, even though I hold them to be immoral. The distinction between the strong and the weak senses can be roughly maintained even if we hold that sentiment or feeling must enter into the judgment that something is immoral. (Warnock, 1987, pp.126-127)

to suggest that toleration lies between something which there is no objective moral reason to reject, [for example the pungent, overwhelming smell of curry which wafts into our house from our neighbour's kitchen during dinner time almost every evening, or the deafening drum practice of our teenage son from 5-6 p.m. each weekday] even though we may have strong feelings of dislike about it, and something which is so bad or wrong [for example repeated random murder by knife gangs reported almost daily in the current news media, and the example of the Kurdish honour killing which is discussed in the next chapter.<sup>25</sup>] that it must not be tolerated. Heyd (1996, p.6), remarks that the space between the scope of beliefs and actions which are justifiably disapproved of, and those which are not **intolerable**, is the very narrow area in which toleration takes place.

#### *Toleration as prudential*

The multidimensional conception of toleration developed thus far, is further compounded by McKinnon's (2006) list (6), where she refers to a 'schism' in the history of **why** toleration is required. McKinnon notes, and I have mentioned above, that on some accounts toleration is required as a practical strategy to avoid war [which is too costly in all kinds of ways], and is thus a method for negotiating opposition. On other accounts toleration is prudential and the tolerant person prudent; and on yet a third account toleration is morally required and the tolerant person virtuous, and /or the tolerant state just. I argue that sometimes in real life what prudence dictates, morality may disallow.<sup>26</sup> For the purpose of the arguments pursued in this thesis I will focus on the moral account.

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<sup>25</sup> Both of which examples must lie outside McKinnon's structures of toleration as forbearance.

<sup>26</sup> In the next chapter, as an example of how prudential toleration and toleration as morally required can pull apart, I discuss in detail the important contemporary debate raised in liberal democratic pluralist England in October 2006 by Jack Straw, then leader of the House of Commons, in regard to Muslim women wearing the *niqab* [the Arab word for face veil].

## Conclusion

Although the main focus of this thesis concerns the contribution of the Modern Orthodox Jewish (MOJ) faith school in twenty-first century England to conceptions of **religious** toleration and citizenship, the broader philosophical conceptions of toleration discussed in this chapter undergird this thesis as a whole.

In exploring selected liberal bases for toleration as a political practice, I have argued in the current chapter, that moral scepticism, in fostering the conventional notion of toleration as merely ‘putting up with’ things, and moral indifference in turning a blind eye and letting ‘live and let live’, fail to admit of anything which strikes tension at the oppositional core and **needs to be** tolerated. As such I have argued against them as a substantive liberal basis for toleration.

With regard to neutrality as a liberal basis for toleration, I have argued that the bald principle lays itself open to ambiguity in regard to both its interpretation and its sufficiency as a liberal basis for toleration. However if the conception of neutrality is revised, and shifts from the conception of public blindness to public attention and concern for different traditions, and reflects the political will to redraw societal standards so as to include different identities, it becomes an important and plausible liberal basis for toleration. Thus, the role of neutrality as a robust basis for toleration should be to counter the unequal respect publicly paid to the bearers of social differences, reversing their invisibility, and including them fully into citizenship. Understood in this way, the principle of neutrality as a liberal basis for toleration is crucial in relation to religious toleration.

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I have argued that if the notion of liberal autonomy is to provide a substantive and compelling contemporary basis for toleration, then the stringent liberal ideal of autonomy as an un-encumbered self-prior to and independent of its aims and attachments is in need of revision. Thus I contend in the chapter, that a more flexible and responsive notion of liberal autonomy might enable an individual, a group or the state to subject themselves to the goals of others, and exercise the capacity for critical reflection and restraint. This principle is logically compatible with, and essential to, the conceptions of autonomy discussed in the thesis as a whole.

I argue that a more flexible notion of autonomy is of great relevance to religious toleration, concerning ways in which diverse religious groups express their autonomy in relating both to each other and to the state. In the following chapter, I argue that this expression might take the form of emphasising their separateness, or of their integration with liberal democratic society. In relation to plural groups within Judaism, we will see later how a more flexible notion of autonomy plays a significant role in understanding the scope of sectarian intolerance to liberal society, and more liberal accommodations of it.

Before considering how particular issues regarding toleration both as a political and personal practice might be approached in the MOJ faith school context, it is necessary to bring into sharp focus key aspects of **religious** toleration. To this end, in the following chapter, I examine John Locke's ideas concerning religious toleration and explore the nature and impact of state interference in relation to religious groups through attempting to delineate the independent validity of the political and the religious realms, and through suggesting ways in which we might reach normative thinking about how to live with others with whom we are in conflict.

## Chapter 3: Religious Toleration

### Introduction

This chapter sharpens the preceding more general discussion of toleration by focussing more specifically on ideas concerning conceptions of **religious** toleration and citizenship in twenty-first century liberal democratic England. Questions explored in the chapter include: What kind of toleration might be required in committing to the principle of equal religious liberty in a pluralist context? What limits of toleration might reasonably be placed on both the state and its multi-faith, multi-cultural citizens, in regard to religious belief, tradition, values and practice?

With Callan's (1997, p. 9) view in mind, that public morality within a liberal democracy will, in all probability, entail the toleration of what might be considered **immoralities**, the current chapter argues that these might stem from the accommodation within liberal democratic society of the private moralities of particular cultures flatly opposed to liberal democratic ideals. Conversely, these diverse cultures, which might fall outside what liberal society considers 'properly' welcome, might perceive the liberal democratic state itself as immoral. McKinnon (2006, p.17) states that the stark reality of our modern world is that unless defenders of toleration have some good arguments to show as to why people should be tolerant, and a proper understanding of the implications and costs of making those arguments, any hope that real world problems will be dealt with through the use of reason and argument rather than force is doomed.

I argue McKinnon's view has been dramatically borne out in the twenty-first century, by the shocking examples, amongst others, of the terrorist destruction of the Twin Towers in New York - 9/11/2001, the London bombings - 7/7/2005, and the Mumbai terror attack - 26/11/2008.

In a British Academy public discussion *Toleration Past and Present* (2007) recorded live [Online]. Available at: <http://www.britac.ac.uk/events/2007/toleration/> (Accessed 03/03/2008), John Dunn remarks that religiously motivated violence and its devastating consequences have had the destabilizing effect on society of casting grave doubt on both the assumption that toleration is 'on the up', and that religiously inspired mayhem is spiritually unprepossessing, reassuringly anachronistic and a feature of the distant past. Joining this discussion, Susan Mendus argues that historically, problems which confront us now in the contemporary post 9/11 world are in many respects similar to those that confronted the inhabitants of seventeenth century Europe. Mendus observes that our world like theirs is deeply divided on religious grounds, and people are prepared in the name of religion, to engage in acts of violence and terror. Thus a great deal can be learned in contemporary liberal democratic society, from the political philosophers of the seventeenth century, in regard to what it means to think seriously and with breadth, about problems of religious toleration.

Based on this premise, I do three things in the current chapter:

1. I explore in some depth John Locke's (1689) '*A Letter Concerning Toleration*', in which he sets out his argument for religious toleration, and shows how he understood and responded to the problems of religious violence and intolerance that characterised his age. I argue that Locke's liberal religious ideas, which are a critical part of early modern thinking, have had and continue to have significant impact on contemporary thought.
2. I apply and expand Locke's major arguments concerning religious toleration to show how they might cast light on the often difficult relationship between what Rosenblum (2000), calls the obligations of citizenship and the demands of faith.



3. In echoing Locke, yet going beyond him, I follow Rosenblum (2000 pp. 8-21, pp. 165-190) in examining how the three key challenges of the explosion of religious pluralism, the increase in government activism, and as mentioned in the introduction, the significant recent prominence and pervasiveness of integralism, have worked to unsettle the contemporary liberal democratic accommodation of religion.

Insofar as they impact on the liberal accommodation of religion, and on the religious accommodation of liberalism, I argue that these challenges define the critical interface between liberal democratic society and the MOJ faith school, which are the two central contexts of religious toleration in this thesis. Hence the chapter examines ways in which religious pluralism, government activism and integralism have challenged and affected the toleration of religion in the wider context of twenty-first century liberal democratic England, and the next chapter shows ways in which these challenges have impacted on the Jewish world, and have framed the nature and scope of religious toleration within Judaism itself. These issues are considered particularly in relation to the context of the MOJ faith school, and in regard to the relationship between modern Orthodox Judaism and wider liberal democratic society.<sup>27</sup>

Critical to the line of argument in the current chapter, is the dialectical tension within immigrant groups between the wish to secede from religious and/or cultural beliefs, traditions and values and espouse liberal values, and the wish to adhere to the religious and/or cultural beliefs, traditions and values of the group whilst living in a liberal democracy. In this regard, Amartya Sen (2006, p. xii -xiii) warns that the politics of

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<sup>27</sup> As explained in the introduction, it is not my purpose to examine the religious differences within Judaism in any great detail, other than the specific ways in which they might have bearing on the main argument. My focus is on the modern Orthodox Jewish approach, which I define and explain in detail in the next chapter.

global confrontation, which is frequently seen as a corollary of religious or cultural division, is at risk of ignoring the multiple ways in which people see themselves. Enslin and White (2003), state that

A commitment to communication across difference demands that deliberators behave not as bearers of interests, but as willing to recognize calls for justice from those both differently situated and whose speaking styles are different too. In participating in deliberation across a wide public, citizens need to acquire knowledge of when to suspend judgment and when not, keeping themselves informed about issues and following public deliberation vigilantly. (Enslin and White 2003, p.117)

The authors argue that new opportunities for democratic citizenship lie in the growth of a transnational civil society, the detailed discussion of which lies beyond the parameters of this particular thesis. However I highlight that a critical area of further research in regard to possibilities for the formation of a transnational society, is to explore the nuanced effect of shifts in the acculturation of ethnic groups living in England over time, which might alter the way in which they relate to groups still living in their country of origin. Thus I echo Enslin and White's point that the importance of public education and debate, discussed at several points in the thesis, cannot be underestimated in broaching issues to do with either safeguarding or stifling religious and/ or cultural equality.

My argument in the previous chapter, concerning groups perceived to be illiberal in relation to the stringent notion of liberal autonomy, was that a solitarist approach to human identity which stereotypes human beings as members of only one group is a good way of misunderstanding nearly everyone in the world. The imposition of an allegedly **unique** identity [which I understand to have the pejorative connotation of

‘singular’], by **either** the liberal host culture **or** by the culturally conservative group, is often a crucial component in fomenting sectarian confrontation, and/or effecting group isolation. In the current chapter I show Locke’s thinking concerning religious toleration to be illuminating in this regard, particularly in relation to the freedom of religious rights and practice in contemporary liberal democratic society.

### **John Locke’s ideas concerning religious toleration**

To sharpen the relevance of Locke’s arguments to my own, I concentrate on the balance between theory and practice central to his philosophy. As Mendus points out in the British Academy discussion quoted earlier in the chapter, Locke provided a **theoretical** defence of religious toleration, which demanded both toleration from within religion itself, and an end to religious persecution. In addition Locke suggested a very clear **practical** stratagem, born out of years of religious conflict and bloodshed on a huge scale, that if the church or state misused political power in the name of religion it was a force to be resisted, and if citizens subverted the state in the name of religion, they were to be restrained.

I concur with Mendus, that Locke’s stratagem calls for the active presence of two key political elements of religious toleration: a) a well-founded theoretical understanding of what the respective limits of religion and politics in fact are, and b) the prudence and courage to judge wisely and fearlessly when, and by whom, these limits are overstepped, and to respond accordingly.

A close reading of Locke’s (1689) classical treatise *‘A Letter Concerning Toleration’*<sup>28</sup> reveals his liberalism in the expression of the following key points:

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<sup>28</sup> As noted previously in Chapter 2, *‘A Letter Concerning Toleration’* will be denoted as *LT*.

- a) Toleration, as an obvious rational response to religious difference, is

So agreeable to the Gospel of Jesus Christ and to the genuine reason of mankind, that it seems monstrous for men to be so blind, as not to perceive the necessity and advantage of it. (*LT* in Horton and Mendus, 1991, p. 17)

- b) Locke acknowledges that the diversity of opinions cannot be avoided, but insists that

The refusal of toleration to those that are of different opinions has produced all the religious wars in the Christian world. The heads and leaders of the church, moved by avarice and insatiable desire of dominion, have made use of the immoderate ambition of magistrates to incense the giddy multitude, against those that dissent from themselves. (*LT* in Horton and Mendus, 1991, p. 52)

- c) He draws attention to the danger of arbitrarily stereotyping people according to their religion, and points up the important idea of their common humanity, and their broader civic and social multiple identity<sup>29</sup>

Suppose this business of religion were let alone, and that there were some other distinction made between men on account of their different complexions, shapes and features, or that those who have black hair, or grey eyes, should not enjoy the same privileges as other citizens; that they should not be permitted either to buy or sell, or live by their callings; that they should either be excluded from the benefit of the laws, or meet with partial judges:.... can it be doubted but that these persons, thus distinguished from others by the colour of their hair and eyes, and united together by one common persecution, would be as dangerous to the magistrate, as any others that had associated themselves merely upon the account of religion? Some enter into company for trade and profit: others, for want of business, have their clubs for claret. Neighbourhood join some, and religion others. But there is one thing only that which gathers people into seditious commotions, and that is oppression. (*LT* in Horton and Mendus, 1991, p.49)

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<sup>29</sup> I have used textual quotation from Locke substantially in this chapter in order to provide evidence of the remarkable relevance of his arguments to twenty-first century problems of toleration.

The originality of Locke's thinking in regard to toleration as a rational response to religious difference, is apparent in the way he sharpens the boundaries between civic justice and religious identity, and enables their fruitful linkage through personal moral responsibility and communal accountability. This is evident from his argument, (*LT* in Horton and Mendus, 1991 pp. 46, 47), that whilst neither pagan, Mahometan, nor Jew, ought to be excluded from the civil rights of the commonwealth because of his religion, Locke, on the grounds of the negative, and in his view, very dangerous impact of religious belief and practice upon the peace and stability of society and the common good, categorically denied the right of liberty of religious conscience and religious toleration to the following groups. To 'heretics' who arrogated to themselves the power to depose kings, because they challenged the royal right of excommunication, to Catholics who delivered themselves up to the protection and service of another prince which would lead to the settling of a foreign jurisdiction in England, and to atheists because they denied the existence of God. Locke's argument against atheists was that they could not be bound by promises, covenants and oaths, which were considered to be the bonds of human society, because the removal of God, even in thought, dissolved all commitment and trust.

I argue that these examples set out the **limits** of religious tolerance, and raise the broader question of **how much** dissent, faction or conflict societies can in fact tolerate.<sup>30</sup>

This enduring question was just as much at the heart of Locke's thinking as it is currently of our own.

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<sup>30</sup> Nicholson (1985, p.159), in taking the technical meaning of tolerance as an 'allowable amount of variation in the weight of fineness of a coin', or in the dimensions of a machine or part, considers these definitions to be useful when applied to the notion of the limits of toleration. He explains that just as a machine with a piston which is too loose will not function, neither can a society, which allows excessive departures from its norms and practices, actually survive as a society.

*Coercion by the civil magistrate*

The importance of Locke's argument concerning religious toleration as an attempt to delineate the independent validity of the political and the religious realms, whilst leading to normative thinking about how to live with others with whom we are in conflict, is that it shows indiscriminate imposition to be irrational. It opens up the thinking around the idea that in a religiously and culturally diverse society, there may well be an argument to suggest, that imposition is not only pragmatically ineffective, but morally unjust.

Thus Locke is at pains to explain repeatedly throughout his *Letter Concerning Toleration*, that the single most important right of any individual [excluding those discussed above whom he considered beyond the limits of tolerance, and whom he outlawed], is the right to worship in accordance with the 'light of their own reason' and within the 'dictates of their own consciences' (*LT* in Horton and Mendus, 1991 p. 19). On Locke's view, it would be as much a violation of the rights of Mahometans or Jews, to whom he extended the liberty of religious conscience and religious toleration, for a Christian ruler to interfere in their authentic acts of worship, as it would be for a Mahometan ruler to interfere with Christian religious practice. His argument centres on both the significance of religious belief, and on the impossibility of the state's bringing about the conformity of belief through coercive means

The care of the salvation of men's souls cannot belong to the magistrate; because though the rigour of laws and the force of penalties were capable to convince and change men's minds, yet would not that help at all to the salvation of their souls.... All the power of civil government relates only to men's civil interests [and] is confined to the care of the things of this world, and hath nothing to do with the world to come. (*LT* in Horton and Mendus, 1991, p.19)

No man can, if he would, conform his faith to the dictates of another. All the life and power of true religion consists in the inward and full persuasion of the mind; and faith is not faith without believing. (*LT* in Horton and Mendus, 1991, p.18)

Clearly for Locke, if the kind of religious belief that really mattered depended on the autonomous internalization, recognition and acknowledgement of it by the individual for himself, it followed that the state, in the *persona* of the civil magistrate, lacked the means to coerce such belief.

How can we establish that the coercion of religious belief is, as Locke states, **irrational**? Matravers and Mendus (2003, pp. 50 -51), suggest the answer lies in an examination of the defence of toleration which follows from Locke's concept of belief. The authors observe that famously Locke claimed that coercion works by operating on a person's will, and in coercing someone, we attempt to influence their decision-making via threats or inducements. However, Locke insisted that belief, in so far as it is a matter of religious faith, is not subject to the will. It then follows, according to Locke, that all attempts to coerce religious conformity are strictly irrational, since they involve deploying means utterly inappropriate for the desired end. Waldron (1991) puts the matter as follows

Laws, Locke says are of no force without penalties and the whole point of penalties is to bring pressure to bear on people's decision-making by altering the pay-offs for various courses of action so that willing one particular course of action [the act prohibited by law] becomes more or less attractive to the agent than it would otherwise be. But this sort of pressurizing is crazy in cases of action which men are incapable of performing no matter how attractive the pay-off or unattractive the consequences. Sincerely believing a proposition that one takes to be false is an action in this category.... the imposition of belief, then, by civil law has been shown to be an absurdity. (Waldron, 1991, p. 104)

However Waldron (1991 p.120) argues, that by insisting on the irrationality of coercion, Locke pays no attention to the question of whether and why it is **morally** wrong, hence the kind of defence of toleration Locke supports is not a principled moral, but rather a pragmatic, response. I take issue with this view, and argue that Locke's defence of toleration was not only a morally neutral practical strategy, but that, [*pace* Waldron], the moral wrongness of coercion lay precisely in its irrationality.

*The indirect coercion of religious faith*

Waldron (1991 pp. 116-119), states that Locke ignores the **indirect** coercion of religious faith which occurs when magistrates, politicians and people in power generally, engage in censorship of the sort that will quash diverse opinions. Waldron's assertion is that whilst coercion of this kind may not work on the belief itself, it works on the 'epistemic apparatus' that surrounds belief and can therefore influence it.

Suppose the religious authorities know that there are certain books that would be sufficient, if read, to shake the faith of an otherwise Orthodox population. Then, although people's beliefs cannot be controlled directly by coercive means, those who wield political power can put it to work indirectly to reinforce belief by banning everyone on pain of death from reading or obtaining copies of these heretical tomes. Such means may well be efficacious even though they are intolerant and oppressive. (Waldron, 1991, pp.116 -7)

Mendus (1989, p.30), contends that plausible though Waldron's argument appears to be, his account overlooks an important feature of Locke's argument, and of our own intuitions about the nature of commitment. This is that the manner in which a belief is held, or the causal story of how it came to be held, are crucial to determining its authenticity. Thus coerced belief might well not be authentic.



*The distinction between sincere and authentic belief*

Mendus, (1989, p.33) argues that persecutors have always known that they have at their disposal both violent and more subtle ways of inducing the ‘right’ beliefs, but what Locke is getting at here is the irrationality of such a strategy where belief is **strong**. This is not only because of his over-riding belief in the irrationality of coercion in regard to religious belief; but also because he believes it is morally wrong in its failure to take into account the wider purview of the all-pervasive character and significance of religious belief and practice in the life of the believer. Thus, in the case of authentic religious belief, banning some of the epistemic apparatus around religious faith such as particular religious books, and introducing others in their stead, is likely to be ineffective and counter-productive.

Mendus (1989, p.34), usefully expands on this point, [which I develop in detail later in the chapter in regard to the Jack Straw debate in England in 2006, concerning his request to Muslim women to remove their face veil], by arguing that since profoundly held religious and moral beliefs are not merely matters of preference, but guide and inform everything a believer does, the very person as it were, would have to be dismantled in order to stamp out, radically manipulate, or transform their belief.<sup>31</sup> I argue that the enormity of such an action must be recognised as a contravention of human right in any society, and the limits of tolerance would need to be carefully drawn in terms of real dialogue and understanding, as to the different ways in which causal stories are held.<sup>32</sup>

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<sup>31</sup> Trilling, (1972, p. 10), makes reference to Erving Goffman’s sociological work *The Presentation of Self in Everyday Life* in which Goffman suggests that in the enterprise of presenting the self, we like Shakespeare’s Hamlet, have that within ‘that passeth presentation’.

<sup>32</sup> See Chapter 7 for the development of the idea that liberal democratic society, which I argue is essentially constructed upon difference, is enriched through acknowledging, sharing and reflecting diverse cultural histories and values.

In this regard Kelly (1991, p.136) observes that on Locke's view concerning the relationship between the liberty of religious conscience and the civil authority, the magistrate's task was not the imposition of a uniformity of belief and worship, but the creation of the conditions within which individuals could seek their own salvation in peace.

### **The demands of faith and the obligations of citizenship**

#### *Locke's distinction between necessary and indifferent things*

In applying and expanding the Lockean canon to show ways in which it might cast light on the often difficult relationship between what Rosenblum (2000) defines as **the obligations of citizenship and demands of faith** in her book of the same name, Kelly (1991, p.142) notes that Locke's account of the role and nature of ecclesiastical authority, rests on the view that the direct relationship between the individual and God contains all the **necessary** components for religious worship. Thus the adoption of certain practices is of significance only to those who adopt them, and in the public civil sense remain objectively **indifferent**.

The only business of the church is the salvation of souls: and it in no ways concerns the commonwealth, or any member of it, that this or the other ceremony be there made use of... For example: Let it be granted, that the washing of an infant with water is in itself an indifferent thing; let it be granted also, that if the magistrate understand such washing to be profitable to the curing or preventing of any disease that children are subject unto, and esteem the matter weighty enough to be taken care of by law, in that case he may order it to be done. But will any one therefore say, that the magistrate has the same right to ordain, by law, that all children shall be baptised by priests, in the sacred font, in order to the purification of their souls? The extreme difference of these two cases is visible to every one at first sight. Or let us apply the last case to the child of a Jew ... for what hinders but a Christian magistrate may have subjects that are Jews? Now, if we acknowledge that such an injury may not be done unto a Jew, as to compel him, against his own opinion to practice in his religion a thing that is in its nature indifferent, how can we maintain anything of this kind may be done to a Christian? (*LT* in Horton and Mendus, 1991, p.34)

*The Muslim face veil debate*

A striking example of the way in which Locke's necessary/indifferent distinction might play out in the contemporary context of liberal democratic England, is the debate, raised in October 2006 by Jack Straw<sup>33</sup>, concerning Muslim women wearing the face veil – *niqab*. Straw, at that time leader of the House of Commons, and MP for Blackburn where 25-30% of his constituents were Muslim, sparked controversy by publicly voicing his concern that the veil covering the faces of Muslim women was a visible sign of difference and was bound to make positive community relations more difficult. Straw said that he did not want to be prescriptive, but would rather the *niqab* was discarded entirely, because of the impact he thought wearing it could have in a society where watching facial expressions was important for contact between different people.<sup>34</sup> He expressed the view that communities are bound together partly by informal chance relations between strangers, people being able to acknowledge each other in the street for example, or being able pass the time of day. He argued that encounters of this kind would be more difficult if people wore a veil.

However in what I contend is a more prescriptive vein, Straw asked women to remove the face veil when visiting him in the private context of his constituency surgeries. He said he would make sure he had a female colleague in the room when asking a Muslim woman to remove her veil to show her mouth and nose.<sup>35</sup> I strongly agree with BBC

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<sup>33</sup> Currently Shadow Justice Secretary and Lord Chancellor since May 2010.

<sup>34</sup> Nussbaum (2012, p. 24-25), argues that the idea of covering the face has taken on a huge symbolic significance in current debates over the role of Islam in Europe. She points out that the obsessive focus on removing the veil follows a long tradition in real life [as well as in fairy tales and films], of imagining the existence of a secret conspiracy that will pop out of hiding to kill us when the time is ripe. She contends that this tendency to fear the sudden emergence of a startling assailant, and which is grounded in biology, has at times served humanity well. However it can be source of irrational and inaccurate reactions, which convince us that if we just tear the veil from a particular group, all our problems will be removed along with it.

<sup>35</sup> Whether Straw's request was based entirely on the fact that the veil made community relations more difficult, or whether he found it personally offensive, is not really at issue. What is at issue I argue is that no cognisance was taken of the fact that some women themselves, although by all accounts not all, may have found removing the veil offensive, which the token presence of a female colleague in the room

News Home Editor Mark Easton's view (Thurs October 5 2006a), in 'Analysis: Straw's Veil Comments' *BBC News UK Section* [Online]. Available at: <http://news.bbc.co.uk/1/hi/uk/5411642.stm> [Accessed 14/10/2012], that this was not merely a reflective little observation from Straw about the protocols of MP/constituent meetings in a multicultural world. It was a deliberate foray into a real debate within Westminster, which by 2006 had become wide-spread, [and which I argue was subsequently greatly exacerbated by the fear<sup>36</sup> engendered by the terrorist attacks in London on 7 July 2007], concerning the extent to which Britain's brand of multiculturalism was working.

The nub of this debate was to question whether government policy in England, by encouraging ethnic communities in their desire to establish faith schools, and by passing laws to protect minority groups from religious and racial discrimination, had in fact encouraged separateness rather than integration. I argue that Straw's request for Muslim women to remove the veil, and the line of argument David Cameron took up in his conference speech to the Conservative party in Bournemouth on 4 October 2006, two days before the Straw story broke, were very much part of the return to the political agenda of imposing a single British identity on communities of difference.

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would do little to mitigate. Perversely I argue, the presence of a female colleague may for some women, have been an additional coercive factor. The upshot was, that whatever the case, the woman would have had to, with a greater or lesser degree of awkwardness, or in some instances possibly none at all, reveal herself to Straw.

<sup>36</sup> Nussbaum observes (2012, p. 20-21), that one of the effects of fear is that it causes what might be legitimate anxieties to become distorted. She cautions that these anxieties often become the drivers of laws and policies against those different to us. She states that whilst the removal of fear would produce social disaster and, through 'obtuseness about real dangers to life and limb' result in the failure to protect both self and other, fear can produce unreliable and unpredictable conduct. Exploited by politicians eager to whip up aggression against unpopular groups, fear has, as history has shown, been implicated in cases of cruel and harmful actions against members of minority religions. Concerning the arguments in the current chapter and in the thesis in general, I concur with Nussbaum (p.23), that to get a handle on fear we need a combination of four things: sound principles involving respect for human equality; arguments that are not self-serving; the avoidance of targeting an alleged fault in the minority that is ubiquitous in the majority; and a curious and sympathetic imagination.

I argue it important to follow the Straw and Cameron examples in tandem, because in terms of religious toleration, both highlight the broader ramifications and possible pitfalls of the government views and policies expressed. In addition this discussion has significant bearing on arguments concerning toleration further on in the thesis.

Cameron talked about the worry to which I have alluded to above, that in England, in the attempt to avoid imposing a single identity and culture on all our citizens, we have allowed communities to grow up which, [to borrow a phrase from the *Second Cantle Report* (2004), see Appendix 2], live 'parallel lives', in isolation from one another

We have created a community where people from different backgrounds never meet; never talk; never go into each other's' homes. Ultimately, it is an emotional connection that binds a country together. Sympathy for people you don't even know, and who may be very different to you. It is by contact that we overcome our differences - and realize that though our origins and our cultures may vary, we all share common values. Cameron, D. (2006). 'Conservative Party Conference Speech'. [Online]. Available at: <http://www.guardian.co.uk/politics/2006/oct/04/conservatives2006.conservatives> [Accessed 14/04/2013].

So far so good, but when Cameron goes on in the same speech to avow his support for faith schools, along with all those who feel strongly about having them, his argument becomes confusing, and the 'sympathy' he recommends goes out of the window. He states that in order to be **British** state schools, they must be part of society and not separate from it, with which I strongly agree. However invoking the *Cantle Report* (2001) [see Appendix 1], Cameron draws on its recommendation that at least 25% of places in single-faith schools, state or private, should be given to children of alternative backgrounds.

This view is as puzzling as it is shocking, and it gets straight to the heart of Locke's necessary/indifferent distinction as the current chapter will show. Surely it cannot be the

aim of the single faith school to willingly erode its particular identity by admitting pupils not of the faith. Indeed the school might feel coercive for those pupils, whose parents might have made a political, rather than a religious or educational choice. I contend that if this recommendation is part of the government's coercive strategy to impose a single English identity on communities of difference, then insofar as it oversteps the harm principle, it falls foul of the liberal principles of neutrality and autonomy as substantive bases for toleration for reasons I have argued in the previous chapter.

In addition, I argue that in the case of single faith schools, by legislating for the 25% alternative faith admission rule on the basis of improving social cohesion, the government has missed the point entirely. This is because **all** schools, [as I show in greater detail later in the thesis], are 'liminal' institutions (see Conroy, 2004 pp.7-8, 44-68), on the border 'betwixt and between' the educational context and that of wider society. Their purpose, whilst quite definitely to educate pupils to become usefully contributing, responsible and tolerant citizens, is also to protect the children and young people within them from the full force of the tussles of the world at large. To politicise the school context, in order to solve the issue concerning what the *Second Cantle Report* describes as the 'depth of polarization' around segregated communities living 'a series of parallel lives', is injudicious, and a gross distortion of the school context.<sup>37</sup> So what

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<sup>37</sup> I contend that coercive admissions policies, too often fuelled by fear engendered by the threat of racial and ethnic rupture in society, commit violence themselves. This can be seen from the language of the *Cantle Report* (2001), which suggests that government, police and community leaders must literally **break** this polarisation. I argue that the violence done by forcing a political identity on single faith schools, to make them other than they are, flies in the face of the principles of liberal democracy. In addition it frustrates and waters down both the institutional identity of the faith school, and the identity of **all** other faiths within it. In possible cognizance of this fact, it is interesting to note the softened approach of the *Second Cantle Report* (2004), section 2.3 [see Appendix 2], in regard to a [**new**] faith-based school demonstrating **either** a partially inclusive admissions policy **or, if it does not feel that that is appropriate**, a commitment to and strategy for working with other schools in the area of another faith or no faith. [For a further interesting development of this argument **from within the Jewish faith context**,

is a possible solution? I contend in this thesis, toleration cuts both ways, and, amongst other things, change must be brought about by faith schools themselves. Drawing on the MOJ faith school paradigm, particularly in Chapter 5, my central argument is that the task of the single faith school is to educate its pupils by means of its ethos and ideology, and of its faith school curriculum, to become tolerant citizens **through developing a double focus**. Thus, alongside their own faith, identity, history, values and religious practice, they will explore concrete ways in which they might contribute to, and enhance, twenty-first century liberal democratic society in England as a community of tolerant practice. *Pace* Cameron, but surely **this** is what it means for faith schools to show social responsibility so that

Every child in our country, wherever they come from, must know and deeply understand what it means to be British. The components of our identity: our institutions, our language and our history. Online at: <http://www.guardian.co.uk/politics/2006/oct/04/conservatives2006.conservatives> (accessed 14/04/2013).

Thus, in striking the **balance between unique and shared identities**, I argue both here and elsewhere in the thesis, that the notion of ‘British-ness’ invoked by Cameron, in relation to the identity of schools in this country, must come to involve the permissibility of, and support for, citizens’ multiple allegiances. Without this I argue Cameron’s words, which notionally in many ways strongly echo those of Jack Straw and Gordon Brown’s view below, might be regarded as an intolerant political imposition.

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concerning the Jewish faith school as a context of religious toleration, see Chapter 5, the section entitled: **The Modern Orthodox Jewish faith school as a microcosm of religious pluralism**].

Gordon Brown, Chancellor of the Exchequer at the time of the Straw debate, corroborated both Cameron's and Straw's political view. In a BBC interview *England's Straw lifts veil on Muslim-veil debate-and ignites firestorm*. [Online]. Available at: <http://blog.sfgate.com/worldviews/2006/10/11/britains-straw-lifts-veil-on-muslim-veil-debate-and-ignites-firestorm/> [Accessed 14/10/20012], he stated that in asking his Muslim women constituents to remove their veil, Jack Straw was not proposing new laws, but was rather proposing a debate about cultural changes that might have to take place in England to successfully integrate people into the country.

Emphasising the importance of all that England does in the interests of integration, Brown justified his view by what, to my mind, is once again a conflation of a religious/cultural and political argument, by rationalizing in what seems to be a rather paternalistic fashion, that the veil had long been a way of taking power away from women, and the battle against it was part of the continuing battle against their limitation. In response to Brown's assumption that by enabling women to divest themselves of the veil, Straw was in fact empowering them, it emerged through television and radio broadcasts at the time, that many Muslim and non-Muslim women were in fact uncomfortable with his request and considered it coercive.

In a series of illuminating interviews, Gereluk (2012 pp. 116-118), observes, that whilst some Muslim women might silently resent being forced by either their husband or family to cover up, clearly not all feel this way. For some wearing the veil is an essential part of their dress, a free and autonomous choice stemming from their own religious belief and practice. Others made the choice in light of the love and guidance of their parents, or as an expression of their cultural and indeed their political identity as



members of a particular group, some women made the choice out of their perception of social modesty, or from the combination of some or all of these elements.

Thus debate about what obligations a minority has to change its religious and cultural habits in the interest of wider social cohesion, gets to the heart of Locke's necessary/indifferent distinction. Based on what I argue is the underlying flaw of Straw's request, which was the assumption that matters of religious and /or cultural identity are issues for political resolution, I question the extent to which, in flagrantly crossing the Lockean necessary/indifferent line in regard to religious toleration discussed above, the desired political goal of creating a greater sense of national identity could be achieved by the request to Muslim women to remove the *niqab*. I contend that Straw, whom I cast in the *persona* of the Lockean magistrate, in expressing the particular preference for Muslim women in his constituency to remove the *niqab* when in private interview with him, overstepped a boundary beyond which he should not have interfered. This was an unwarranted exercise of his authority, because the veil, like Locke's example in the quotation above concerning the practice of baptism within certain groups, should be of no concern to wider society.

However, if in regard to religious toleration, we consider the idea that for Straw, the wearing of the veil was **not** indifferent in the public civil sense, the argument becomes more complex. Kelly (1991, p.136), states that the effectiveness of Locke's distinction between necessary and indifferent things is dependent on the accessibility of a criterion for determining the content of divine law, however Locke did not provide such a criterion. In this regard Dunn (1991, p.179) makes the instructive point that for Locke, alongside his belief that the essence of faith was to transcend the individual will in order to do God's will, was the cardinal principle that it was the duty of each individual

citizen, in the interest of the preservation of a peaceful and just society, to regulate his assent to the content of his own beliefs.

The contemporary relevance of this point, central to arguments in the thesis, is that in regard to the dialectic between the demands of faith and the obligations of citizenship, there is a case, at some level, for a shared political culture. In the context of my argument, the limitation of religious toleration must be teased out **both in terms of imposition and acceptance**. To underscore this point, Gereluk, (2008, pp.108-109), observes that the banning of Muslim religious clothing in France,<sup>38</sup> which began in 1989, when three Muslim girls were barred by their head teacher from entering their school in the small town of Creil, east of Paris, because they were wearing the *hijab* - the Muslim headscarf, did not bear out the argument of the French government, that at least at a political level, banning symbolic clothing would foster a shared political identity. Gereluk argues, that this is because it is one thing to develop a shared political culture within which principles can be debated and discussed, it is another to suggest [as I argue Jack Straw did], that banning religious clothing would be a significant factor in reducing friction among citizens, and in creating a more cohesive society with more shared understanding.

I agree with Gereluk, and contend it is shallow and naïve to think that some kind of token consensus, or common space, can be reached simply by removing symbolic clothing. I argue that in order to function properly as a community of tolerant practice, liberal democratic society in twenty first century pluralist England, must reconceptualise itself at a deep level, as a society **constructed upon difference**. If this

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<sup>38</sup> The specific details, beyond those briefly mentioned here, of the important and broad-ranging debate concerning the banning of symbolic clothing in France, are not the focus of this thesis.

takes place, then I contend, important and meaningful debate can occur, both in the public sphere and in schools, concerning fruitful and practical ways in which individuals might live together, and come to understand their differences and similarities in increasingly diverse contexts.

*Locke's thinking in regard to the limits of toleration*

In considering the Straw debate in the context of the more extreme, though very different, examples of the Kurdish honour killing and the rise of unofficial Somali courts discussed below, it is essential to understand what Locke meant by the **limits** of tolerance

No opinions contrary to human society, or to those moral rules which are necessary to the preservation of civil society, are tolerated by the magistrate.... For no sect can easily arrive to such a degree of madness, as that it should think fit to teach, for doctrines of religion, such things as manifestly undermine the foundations of society, and are therefore condemned by the judgement of all mankind; because their own interest, peace, reputation, everything would be thereby endangered. (*LT* in Horton and Mendus, 1991, p. 45)

Locke sounds a cautionary note concerning any argument which puts the unfettered liberty of religious conscience, and its enactment, above intellectual reasoning and civil law enabling it to escape being called to account by either, because such an argument could easily open itself up to the criticism of encouraging religious fundamental extremism. Hence, I argue it crucial to bear in mind the two safeguards Locke applied to the notion of the liberty of religious conscience, in epistemologically grounding it in rational critical reflection on religious thought and action, and in the understanding of what is required of religious people, in contributing meaningfully, as moral citizens, to the public good.

Thus Locke writes, that the magistrate **has** power to impose his laws in cases where

Some congregations have a mind to sacrifice infants ... or practice other such heinous enormities, is the magistrate obliged to tolerate them because they are committed in a religious assembly? No. [Because] these things are not lawful in the ordinary course of life, or in any private house; and therefore neither are they so in the worship of God or any religious meeting [as the objective content of divine law here is quite clearly not to commit murder] (*LT* in Horton and Mendus, 1991, p. 36)

I argue that in the context of the limits of toleration Locke draws both in relation to the ‘degree of madness’ which manifestly undermines the foundations of society, or the ‘heinous enormity of sacrificing infants’ as an example of lawless murder, the example of the Muslim face veil is grossly overstated. If there is a question of degree in regard to the face veil, I contend it is around the degree to which the concession Straw sought, in asking a Muslim woman to remove her veil, might be considered the state imposition of a dress code. If, as argued in the previous chapter it **is** considered as such, then I contend that Straw overstepped the boundary of religious tolerance, by preventing the woman, in accordance with her beliefs, to dress as modestly as befits her religious *persona*.<sup>39</sup>

Thus following McKinnon’s notion of toleration as forbearance, I argue in regard to the particulars of the Muslim veil debate as it has been presented in this chapter, that according to the principle of reasonable accommodation, [which I discuss more fully in relation to issues of legal pluralism further on in the chapter], the state as tolerator, in

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<sup>39</sup> I argue Locke’s necessary/indifferent distinction is of great relevance to twenty-first century debates around the politicisation of religion, and in relation to the right assumed by the liberal democratic state to ban the wearing of religious symbols for example crosses, or garments such as skull-caps, headscarves or face veils.

refraining from exercising its power to alter and suppress the right of Muslim women to wear the *niqab*, would be just and prudent. However, I argue that this is certainly not the case in relation to the Kurdish honour killing described below.

*The Kurdish Honour Killing*<sup>40</sup>

The clash of religious and civil law to which Locke alludes in the quotations above, is dramatically demonstrated by the Kurdish honour killing carried out in London by a father against his daughter in 2007. *The Times* newspaper reports (*Honour Killing* p.7, News Section, Tuesday June 12 2007), how Banaz Mahmud who at 17 entered a disastrous arranged marriage to a Kurdish man in the Midlands, fled from her husband whom she had reported to the police, had raped her. Risking her father's wrath she returned to her family home in South London. She later met and fell in love with an Iranian Kurd, Mr. Sulami. Her father forbade her to ever marry him because he was not a strict Muslim and not from the same region in Iran as her family. To enforce this point, she was taken to a Kurdish home in Sheffield and beaten for two weeks.

On her return the couple continued to meet in secret. A photograph on a mobile phone which captured the couple kissing was shown to Banaz's uncle. After a family meeting, it was decided that both Banaz and her boyfriend should be murdered by a gang of hired thugs, because of the shame that she had brought on her family by walking out of

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<sup>40</sup> At the time of writing it is evident as seen below that honour killings are really a live and somewhat intractable issue in contemporary liberal democratic England. The shocking account of the cruelty suffered by Banaz through her husband's sexual abuse; and through being stalked, abused and murdered was televised on Wednesday 31 October 2012 entitled *Banaz* in the ITV 1 documentary series *Exposure*. It revealed amongst other things the length of time the police took to act, despite the fact that Banaz went to them and made 5 separate, lengthy, detailed statements. For a further examples of recent honour killings see the *Times Newspaper* (May 24, 2012, News Section p.5) *Mother said 'Just finish it' Sister Tells Murder Trial*. *Times Newspaper* (May 30, 2014, front page; pp. 9, 30) *Save Meriam*; and the *Times Newspaper* (May 31, 2014, front page, pp.7, 24, 25) *Leaders join fight to save Meriam*.

an arranged marriage, and having a relationship with a man considered to be tribally unsuitable. In January 2008, a group of Kurdish men attempted to bundle Mr. Sulami into a car from which he escaped. They shouted after him ‘We are Muslim and Kurdish, We are not like the English where you can be boyfriend and girlfriend’. A few days later Banaz was brutally murdered, and her father was tried and sentenced to life imprisonment. From the viewpoint of the strong prudential and ethical **intolerance** of the notion of ‘honour’ killing, the British court pronounced the verdict of manslaughter of the first degree.

This story is in any view, a tragic one, arising out of irreconcilable cultural differences between traditional Kurdish values and the values of Western society. On McKinnon’s analysis, the example of ‘honour’ killing’ is inadmissible as suitable object of toleration. On Locke’s view, both on the basis of the moral rules which are necessary to the preservation of civil society, and as we have seen above in relation to his concern about ‘a degree of madness’ arising out of religious doctrines which might undermine the foundations of society, the freedom of religious conscience had to be curbed in terms of British criminal law. What action should be taken in cases like these where the state cannot remain neutral, and how is the decision regarding what action to take arrived at?

These crucial questions cannot be fully answered here. In raising them the purpose of this thesis is to indicate the need for education for toleration which, amongst other things, will raise questions about the **intolerable**. These issues certainly strike at the heart of the notion of liberal neutrality as a robust basis for toleration discussed in the previous chapter, and throw up critical concerns regarding the notion of legal pluralism, the detailed exploration of which lies beyond this thesis, but which are highlighted by Locke’s distinction between necessary and indifferent things.

*The emergence of unofficial Somali courts*

It is within the context described above, that religious courts, applying the laws of another culture, are growing apace in contemporary liberal democratic England, and raise concerns relating to the degree of impact, spread and effect that ethnic and/or religious courts might have on the religious, civil and criminal contexts of British life.<sup>41</sup>

Could Somali Courts, which are currently unofficial in England and operate in accordance with Islamic Sharia law, which has no binding power in this country, be **formally** authorized to continue to try as they now unofficially do, criminal Muslim youth released on bail by the British police, in order to have the matter settled out of [the British] court? What effect might this kind of integralism, which aims to get a share of political and social power, have on English law? Its goal is to give religion control in areas of public policy and law, to urge the believers to form religious parties and pressure groups, and to have the power to alter the liberal foundations of public life.<sup>42</sup>

Although significant, the full treatment of these issues in regard to criminal law is beyond the ambit of this thesis. However the point to note, is that up until now in their status as arbitral tribunals, neither Muslim nor Jewish courts have sought to enforce their own versions of **criminal** law, but have steadily built up their capacity to deal with **civil** matters, in which complainants are obliged by English law to abide by the tribunal's decision.<sup>43</sup>

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<sup>41</sup> The findings of this chapter in regard to the somewhat intractable issues of legal pluralism are corroborated in an interesting article relevant to Western Europe, Canada and the USA in the International section of *The Economist* (October 16, 2010, pp.71-2), *Sharia in the West: Whose Law Counts Most?* In order to explore the broader transnational context concerning toleration and its limits in regard to legal pluralism, further research outside the scope of this thesis might usefully compare and contrast ways in which other countries both within Europe and outside it might respond to the issues raised in this chapter, and indeed beyond them.

<sup>42</sup> See *End of One Law for All?* [Online]. Available at: <http://news.bbc.co.uk/1/hi/magazine/6190080.stm> [Accessed 10/7/2007].

<sup>43</sup> Orthodox Jews go to the *Beth Din* – Court of Jewish Law, to settle their disputes with one another because they consider it a religious obligation to go there. The *Beth Din* cannot **force** any Jew to come

However the *Daily Telegraph Newspaper* reported that

The BBC Radio 4 programme 'Law in Action' produced evidence [yesterday] that Sharia law was being used by some Muslims as an alternative to English criminal law. Aydarus Yusuf, 29, a youth worker from Somalia, recalled a stabbing case that was decided by an unofficial Somali "court" sitting in Woolwich, south-east London. Mr Yusuf said a group of Somali youths were arrested on suspicion of stabbing another Somali teenager. The victim's family told the police it would be settled out of court and the suspects were released on bail. A hearing was convened and elders ordered the assailants to compensate their victim. "All their uncles and their fathers were there," said Mr Yusuf. "So they all put something towards that and apologised for the wrongdoing." Although Scotland Yard had no information about that case yesterday, a spokesman said it was common for the police not to proceed with assault cases if the victims decided not to press charges. However, the spokesman said cases of domestic violence, including rape, might go to trial regardless of the victim's wishes. Mr Yusuf told the programme he felt more bound by the traditional law of his birth than by the laws of his adopted country. "Us Somalis, wherever we are in the world, we have our own law," he said. "It's not Sharia, it's not religious — it's just a cultural thing." Sharia's great strength was the effectiveness of its penalties, he said. Those who appeared before religious courts would avoid re-offending so as not to bring shame on their families. (*Daily Telegraph Newspaper*. [Online]. Available at: <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/11/29/nsharia29.xml> [Accessed 29/11/2006].

### **Accommodation as a basis for religious toleration**

These real-life examples call for our urgent response to issues regarding the toleration of religious communities which relate to religious, legal and moral codes other than those of twenty-first century secular liberal democratic England. It seems to me that the enduring problem of accommodation as a basis for religious toleration, from Locke right up to the present day, is that the political stability and legitimacy of the liberal

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within its jurisdiction; but once someone agrees to settle a dispute there, he or she is bound to abide by the Jewish court's decision. If however, one of the parties is recalcitrant, and refuses either to appear before, or agree to the decision of the *Beth Din*, even if an appeal is made to his or her better nature on *moral* grounds, the opposite party can seek the *Beth Din's* permission to take the matter to the English court. Thus, under current English **civil** law, people may devise their own way to settle a dispute before an agreed third arbitral or mediatory party. Crucially however, the legislation does not insist that settlements must be based on English law; all that matters is that the process leads to a reasonable settlement and conclusion, with which both parties can live, and append their signature of agreement.



state depends, to quite a large extent, on granting considerable legal jurisdiction to religious groups.

In so far as this question has to do with the rights of religious groups within the secular liberal state, and what might be done in regard to the degree to which they could be reasonably accommodated, Locke's necessary/indifferent distinction reminds us that the perspective of rights is only one perspective in liberal political theory, and that perhaps the alternative perspective of mutual obligation, may serve us better in discussions of toleration. Such obligation in twenty-first century England might require the relinquishing by the state of absolutist liberalism, which in order to assert a particular kind of political and public identity, may well be riding rough-shod over communities of difference. On the religious side, the notion of mutual obligation might require the acknowledgement, that as British citizens, we have plural identities and multiple affiliations, which may not threaten or necessarily be inconsistent with the integrity of our religious or cultural beliefs.

Rosenblum (2000 p.4), like Locke before her, suggests that the prelude to the normative, if difficult task, of drawing the proper bounds of liberalism and religion, and to justifying accommodation as a basis of religious toleration, is to think soberly about the conditions that actually threaten the viability of particular religious communities on the one hand, and about the stability and legitimacy of the liberal state on the other. I contend that the Lockean argument for religious toleration finds contemporary expression in Rosenblum's definition of accommodation as the reciprocal support between religious and political mandates, which enables citizens to enjoy a 'reflective equilibrium' between their religious beliefs and liberal values. She argues that political principles rooted in the original historical model of religious settlements, are to be

recast and expressed in public life in a form that strengthens common ground. Thus, as Rosenblum points out, the task of political theory is not only to reflect the tensions between the demands of faith and the obligations of citizenship, but to forge practical ways in which religion complements and supports liberal society, and compensates for the limitations of civic identity in the liberal state. How might this goal be achieved?

### *Accommodation and legal pluralism*

In foregrounding Locke's necessary/indifferent distinction, I have highlighted the need for greater attention to religious identity and cultural rights in the practice of law, and have given an example of how this might work in the officially recognised Jewish Court of Law [*Beth Din*], which as the religious court of the Jewish community, acts as an arbitral tribunal in civil matters. It is instructive to note, that in his foundation lecture entitled *Civil and Religious Law in England: A Religious Perspective* delivered on Thursday 7th February 2008 in the Temple Festival series at the Royal Courts of Justice, the previous Archbishop of Canterbury, Dr Rowan Williams, considers what kind of accommodation there might be alongside secular law for the legal provisions of faith groups. He notes that issues concerning what level of public or legal recognition, if any, might be allowed to the legal provisions of a religious group, are not peculiar to Islam: they also arise in relation to Orthodox Judaism.

Echoing the arguments of Sen, Williams argues that

There is recognition that our social identities are not constituted by one exclusive set of relations or mode of belonging - either purely secular or purely religious. The danger arises not only when there is an assumption on the religious side that membership of the community (belonging to the umma or the Church or whatever) is the only significant category, so that participation in other kinds of socio-political arrangement is a kind of betrayal. It also occurs when secular government assumes a monopoly in terms of defining public and political identity. (Williams, 2008, *Civil and Religious Law in England: A Religious Perspective* [Online]. Available at:

<http://rowanwilliams.archbishopofcanterbury.org/articles.php/1137/archbishops-lecture-civil-and-religious-law-in-england-a-religious-perspective> [Accessed 14/04/2013].

He makes a robust case for greater access to recognised authorities accountable to the British courts, acting for religious groups. Thus, he argues that if England is to allow more latitude in law to rights and scruples rooted in religious identity, then official, regulated and greatly enhanced ecclesiastical courts, with a high degree of their own particular communal and secular recognition, may be best placed to deal summarily with vexatious claims. Williams contends that this might aid the secular courts in knowing where conflict is real, and legally and religiously serious, or where it is grounded in either nuisance or ignorance. He makes the important point that no arbitral tribunal should have the power to deny access to any individuals who come to it concerning rights granted to other citizens, or to punish its members for claiming those rights.

In this regard Williams quotes the Jewish legal theorist Ayelet Shachar, who, in her seminal book *Multicultural Jurisdictions: Cultural Differences and Women's Rights*, (2001, p. 5), argues that we need to work to overcome the ultimatum of 'either your culture or your rights'. To do this, she suggests the notion of 'transformative accommodation' (pp.117-143) according to which individuals retain the liberty to choose the jurisdiction under which they will seek to resolve certain carefully specified matters, so that as power-holders, the state and authorized religious/cultural structures of mediation and conflict resolution [such as the *Beth Din* for example] are forced to compete for the loyalty and cultural integrity of their shared constituents. Areas for

inclusion might encompass aspects of marital law for example,<sup>44</sup> or the regulation of financial transactions. Thus, in the examination of accommodation as a basis for religious toleration, I argue that political theory and practice would need to pay attention to the complex legal areas across which conflicts between liberalism and religion arise, and the extent to which they can or cannot be resolved.

My brief treatment of the complex area of legal pluralism here by no means purports to be complete. I highlight it as a crucial area for further research in regard to accommodation within the law as a basis for religious toleration, in the dialectical relationship between the liberal toleration of religion, and the religious toleration of liberalism.

In upshot it seems to me that the argument for accommodation as a basis for religious toleration must entail both religious and secular state and institutional structures becoming more reflexive, and individual structures becoming more self-transcendent. In thinking about the boundaries of human difference, we should reify neither reason nor the liberty of conscience, for in doing so we will fall short of providing an adequate account of a politics, or a sociology, of difference.

Both schooling and public education<sup>45</sup> are critical in reaching some kind of reasonable resolution of the conflictual issues discussed in this chapter. Education for toleration in

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<sup>44</sup> See *High Court Opens Way to Sharia Divorces* in the *Times Newspaper* (February 1, 2013, Front Page)

<sup>45</sup> Recalling Enslin and White's argument earlier on in the chapter concerning the critical importance of public debate in communicating across communities of difference; and in regard to my own argument concerning necessity to foster the skills of public debate in children, youth and indeed adults; and create opportunities for open public debate and education, I offer an example from my own experience. In May 2009 I was invited by Professor John White to attend a public debate at which he was one of the panellists, entitled *Does God do Politics?* The event, which was an open public meeting, had been arranged under the auspices of the organisation Dialogue with Islam [Online]. Available at: [www.dialoguewithislam.org](http://www.dialoguewithislam.org) and was at the East London Mosque. Other panellists included: Peter

schools is critical in relation to this goal because, as Horton (1996, p.37) argues, pupils might be torn between their desire to protect minority cultures from abuse and vilification, and the idea of evaluating and indeed judging the practices and values of other cultures.

As I have argued in both this and the previous chapter, there is not always a clear-cut choice between what it is reasonable to object to, and what should be tolerated. Following this line of argument, Horton (1996, p. 33) observes that there are two directions from which toleration can cease to be a virtue: the first is that some things should not be tolerated, because they should not be permitted, and the second is that some things should not be objected to, hence are not the appropriate objects of toleration.<sup>46</sup>

This practical strategy or twenty-first century *phronesis* gives rise to the idea of a different point of interlock between religious, political and social theory and practice, and indeed between the philosophy of education and educational praxis, the direction of which, in the relationships between human beings, may often work better from cases to

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Hitchens (Daily Mail/Christian Speaker), Dr Mustaqim Bluer (Islamic Party of Britain), and was chaired by an Al-Jazeera News Presenter. Questions for debate centred on former Prime Minister Tony Blair's view that world politicians need to understand and incorporate religion into their politics as a force for good which could bring us all closer together.

Questions for debate by the panellists and the very diverse audience included:

- Does putting God into statecraft make politics more moral; foster peace and above all fix our broken society? Or will it alienate non-believers and those of different faiths?
- How do you choose whose God politicians should 'do'?

It was an extremely edifying event, at which men and women of all age groups and across diverse cultures, faiths and no faith shared and discussed their views, and expressed both their agreement and disagreement in an atmosphere of mutual respect. As I suggest throughout this thesis, whilst recognising and accepting that debate sometimes has its limits, a lot can be done at the level of civil society to challenge offensive and/or extreme views in a focussed and informed way, and to foster toleration and mutual understanding through dialogue.

<sup>46</sup> McKinnon's taxonomy points (4) and (5) in the previous chapter relate to the control the tolerator is able to exercise over what she tolerates, including her own personal reaction. This includes exercising her restraint on principled grounds; and tolerating what she opposes.

principles rather than the other way round. I argue that what is needed is the education and enrichment of human beings in their understanding of what creating a culture of difference might involve; in their capacity for imagination, compassion, empathy and dialogue; and in their real engagement with those who are different.

Further on in the thesis I suggest ways in which education for toleration in the MOJ faith school might contribute to this process.

### **Conclusion**

This chapter has discussed the critical bearing of the ideas of John Locke, on the particular challenge of religious toleration in twenty first century liberal democratic England. I have argued that both for the state and the individual, the argument concerns issues to do with the tension between the obligations of citizenship and the demands of faith.

The chapter highlights issues raised by this dialectic in regard to the question of just how much and what kind of dissent societies can tolerate. As I have argued, this question was very much at the heart of Locke's thinking, and is at the heart of our own thinking in twenty-first century liberal democratic England as shown by the examples of the Straw Debate, the Kurdish Honour Killing and the rise of unofficial Somali courts.

Central to the argument has been an examination of the ways in which the religious beliefs, traditions, values and practices of immigrant groups impact upon their identity as citizens in a liberal pluralist democracy. To this end the chapter has shown that the kind of toleration Locke advocated was very much based on a rational civil response to religious difference, and on the insistence that the truly religious *persona* acknowledge

her communal responsibility, just as much as his religious identity. This argument is central to the thesis *per se*, and, in particular, to the education of the MOJ faith school pupil as further chapters show.

In relation to religious toleration as a political practice, I have argued particularly in regard to the Straw debate that in a religiously and culturally diverse society, state coercion might, in the attempt to solve all religious and cultural issues politically, prove to be both pragmatically ineffective and morally unjust. On this basis I contend that the limits of tolerance need to be carefully drawn in terms of real dialogue and understanding, both on the part of the state and the believer, in regard to the different ways in which religious beliefs are held, particularly in relation to their possible practical outcomes.

Under the rubric of accommodation and legal pluralism, I have pursued the argument that in regard to religious toleration, Locke's necessary/indifferent distinction highlights the need for greater attention to religious identity and cultural rights in the practice of law. This is a critical focus for further research, because it might reveal at greater depth the nature of toleration involved in the complex dialectic at work in the thick epistemology of difference in contemporary liberal democratic England, and forge new ways to shape a richly diverse civil society, whose members care about the mutual benefit of one another.

Issues in this and the previous chapter have highlighted in the **contemporary context**, agonistic aspects of the demands of faith and the obligations of citizenship. The next part of the thesis explores **from an historical perspective**, the particular impact of these demands and obligations on **Judaic conceptions** of toleration. Thus the next

chapter argues that from the era of Enlightenment and Emancipation in Eighteenth and Nineteenth Century Europe, not only have the demands of faith and the obligations of citizenship continued to challenge the Jewish world, but they have also influenced the nature and scope of religious toleration **within** Judaism itself.



## Chapter 4: The Effect of the Era of Enlightenment and Emancipation in Eighteenth and Nineteenth Century Europe on Jewish Religious Toleration

### Introduction

The two preceding chapters explored the dialectic between immigrant groups<sup>47</sup> and the liberal democratic state, in regard to generalised liberal and religious conceptions of toleration. The current chapter argues more specifically, that a similar dialectic occurred in regard to **Judaic** conceptions of religious toleration, in the context of eighteenth and nineteenth century Enlightenment Europe. To this end, the chapter examines from an historical, theological, socio-political and philosophical viewpoint, the critical nature and impact of dramatic shifts in the attitude of Jews to their religious and cultural traditions, and to their changing relationship with the secular world. Conceptions of religious toleration explored in this chapter relate to these upheavals, and show ways in which the dynamics of accommodation, separatism, and integration, discussed in the previous two chapters, play out in the Jewish context.

### *The Jewish Historical background*

The intellectual and socio-political impact of the era of Enlightenment and Emancipation<sup>48</sup> in eighteenth and nineteenth century Europe has had a far-reaching effect on conceptions of Jewish religious toleration. The accommodation of, or resistance to, modernity and secularization, created a dialectic in terms of which to

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<sup>47</sup>I suggest that even though many faith/ethnic communities have been in England for generations, when push comes to shove they are still considered ‘immigrants’. As later chapters in the thesis show, the stark reality is that when religious or cultural upheaval occurs in wider political society, it might invoke with far reaching and sometimes adverse effect, the hoary chestnut of ‘immigrant’ status for both old and new faith/ethnic communities as those not originally from this country.

<sup>48</sup> An important conceptual distinction is made throughout this chapter and in the thesis in general, between Enlightenment and Emancipation as an historical epoch denoted by a capitalized ‘E’; and its philosophical sense in terms of a transformational religious, intellectual, political, socio-economic process, denoted by a lower case ‘e’.

frame the nature and scope of toleration, within what had, up until this time, been a unified Jewish Orthodoxy.<sup>49</sup>

To best represent the critical differences within Jewish Orthodox outlook, which began to emerge in the historical era of Enlightenment and Emancipation, and to understand their contemporary relevance to toleration, I have chosen three Jewish thinkers paradigmatic for their contrasting views. Moses Mendelssohn (1729-1786), Rabbi Samson Raphael Hirsch (1808-1888), and Rabbi Moses Sofer (1762-1839).<sup>50</sup> I outline their essential differences in synopsis below, and discuss them in greater detail further on in the chapter.

Mendelssohn, considered the father of the movement for Jewish Enlightenment [*Haskhalah*], was the first Jewish philosopher to espouse deep identification of German Jewry with German culture and language. He feared that if Jews would continue to speak Yiddish, and perpetuate the culture of Eastern European Jewry, there would be no place for them in the changing world.<sup>51</sup> In bringing under scrutiny particular aspects of Jewish belief and practice in response to the scientifically oriented world that lay outside it, Mendelssohn offered the first attempt at a modern philosophy of Judaism the consequences of which I argue, echo contemporaneously.

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<sup>49</sup> The Jewish ideological focus of this thesis is modern Orthodox Judaism. References to either right wing ultra-Orthodoxy, or to more left wing brands of Judaism represented by the Reform, Liberal, Progressive and *Masorti* [Conservative] movements, are made only where they are helpful in clarifying the notion of modern Orthodoxy.

<sup>50</sup> Mendez-Flohr and Reinhaus (1995, pp. 6-7), point out that transformations in traditional Jewish life occurred first, and in a particularly intense and comprehensive manner, among the Jews of the Germanic lands. This is reflected by the thinkers I have chosen, who represent key religious, intellectual, social and political shifts foundational to the process of Jewish modernity.

<sup>51</sup> At birth Mendelssohn was named Moses-ben-Mendel, Moses the son of Mendel. As an adult, consistent with his philosophy of acculturation, and his ideological identification with the German language, he changed his name to the German equivalent: Mendelssohn.

In his seminal philosophical work *Jerusalem or: On Religious Power and Judaism* (1783), Mendelssohn argued that the radical accommodation of the secular culture of the Enlightenment, need not involve a rejection of Judaism. However I argue later in the chapter, that by encouraging Jews to adapt to the spirit of an enlightened age, and to integrate their Jewish lives with the modern secularity, Mendelssohn's call for religious enlightenment brought about what Mendes-Flohr and Reinhaus accurately describe as a weakening of tradition, and a demand for the redefinition of Judaism, compatible with the new cultural orientation of 'enlightened' Jewry.<sup>52</sup>

In his campaign for Jewish religious and intellectual enlightenment, and in his ideas concerning political and social emancipation, Mendelssohn stood in stark contradistinction to Samson Raphael Hirsch. I argue further on in the current chapter, that Hirsch could be called accommodation-ist to the extent that he was in favour of Emancipation as a gift of Divine Providence, which offered Jews, as citizens, equal and inalienable rights, and provided them with a broader context in which to live a *Torah* [*Pentateuch* – the five Books of Moses which comprise the Jewish Bible] way of life, by which he meant a life of faith, learning and practice based on the Five Books of Moses. However Hirsch's idea of accommodation-ism, which fore-grounded the formidable challenge of assimilation created by these opportunities, differed significantly from Mendelssohn's.

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<sup>52</sup> Arden Eby remarks, in his interesting article *Mendelssohn and Reform: Redefining the Mitzvot*. [Online]. Available at: [http://www.academia.edu/462440/Mendelssohn\\_and\\_Reform\\_Redefining\\_the\\_Mitzvot](http://www.academia.edu/462440/Mendelssohn_and_Reform_Redefining_the_Mitzvot) [Accessed 16/01/2013], that although there is a widespread view, held both by Orthodox and Reform Jews, that Mendelssohn was either the spiritual ancestor of, or even responsible for, the Jewish Reform movement, [the contemporary ideology of which I discuss in detail in the following chapter in relation to the MOJ faith school as a context of Jewish pluralism], Mendelssohn himself was a practicing Orthodox Jew all his life. However I agree with Eby (p.1), that in providing the underpinning for a redefinition of the *mitsvoth*, which I discuss in detail later in the chapter, Mendelssohn's **philosophical** project, which he crystalized in *Jerusalem' or: On Religious Power and Judaism* (1783), could certainly be considered a precursor to the development of the Reform movement.

As I explain more fully later, Hirsch's brand of accommodation is to be understood as a response to the challenges of Enlightenment and Emancipation from **within** *Torah* Judaism. Hirsch's innovative concept of the relationship of *Torah* and the outside world was a form of conditional co-existence. By this he meant, that as Jews gained increasing opportunities to access the universal public domain, they should interact with it in ways that would enable *Torah* values to flourish. As the chapter shows in detail further on, this twin focus was the corner-stone of Hirsch's philosophy of Judaism, and the foundation of modern Jewish Orthodoxy.

The third Jewish ideological position, beyond the ambit of this thesis other than to juxtapose it in relation to the others as an **ultra-Orthodox** response, is that of Rabbi Moses Sofer, known as the *Hatham Sofer*. He believed that a new kind of ultra-conservative different-ness had to be found in order to preserve Jewish identity, culture and practice, by resisting any attempts to modernise or translate *Torah*. In addition, he insisted that to combat the forces of secularization, Jews were not in any way to change their Jewish name, language, code of dress, customs or behaviour. His radical sectarianism is contrasted later in the chapter, with the views of both Mendelssohn and Hirsch.

#### *The broader Enlightenment context*

To highlight the challenges with which the Jewish world had to tussle, it is important to think about the positions outlined above, against a broader historical backdrop. Tzvetan Todorov (2006), comments instructively on this point

The Enlightenment was at once rationalist and empiricist, heir to Descartes and to Locke, receptive to the Ancients and to the Moderns, to the universalists and to the particularists enamoured with history and eternity, details and

abstractions, nature and art, freedom and equality. The ingredients were ancient but their combination was new. During the Age of Enlightenment, not only were these ingredients brought together to form a whole but, more essentially still, they were taken out of books and applied to the real world. (Todorov, 2006, p.4)

Expanding on Todorov's argument, Sutcliffe (2003, p.11) observes that the Enlightenment was both shaped by, and itself reshaped, a vast gamut of cultural traditions. He argues in regard to Judaism, that this intercultural engagement was uniquely intense and that it led (p.10) to the emergence among Jews, of a radical questioning of the relationship of Jewish difference to the universalistic scientific and political ideals that were in the ascendant in the non-Jewish world. I concur with Sutcliffe (p.11) that in getting to grips with the complex challenge of religious toleration in the Enlightenment era, it is of critical importance not to conceptualise the Judaic and Enlightenment currents as neatly separate one from the other, but rather as inextricably intertwined.

Following this line of thinking, I argue that the enduring challenge of the Enlightenment in relation to religious toleration for Jews, is that, as this thesis shows, it is not monolithic, as Sutcliffe (2003) points out

The core values of the Enlightenment – justice, reason, toleration, self-actualisation, freedom of thought and speech – provide the fundamental grounds on which the entitlements of minorities such as Jews are protected in modern societies. .... Any philosophically coherent exploration of the persistence of prejudice and violence within this tradition must be deeply self-reflexive, acknowledging both the indispensability and the limits of Enlightenment rationality. The disentanglement of Judaism and the Enlightenment can never be complete: it can only enable us to see more clearly the underlying knot that awkwardly holds them together (Sutcliffe, 2003, p.11)<sup>53</sup>.

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<sup>53</sup> It is of striking interest both in terms of the historical significance and the contemporary relevance of this topic that Melvyn Bragg, in a BBC 4 radio broadcast *In Our Time*, aired on BBC 4 on 3 March 2012 [Online]. Available at: <http://www.bbc.co.uk/i/b01djinxx> (Accessed 3/3/2012), discussed the work and influence of Moses Mendelssohn with three scholars who are specialists in this field. The scholars were Adam Sutcliffe, quoted above, Senior Lecturer in European History at King's College, London, Christopher Clark, Professor of Modern European History at the University of Cambridge, and Abigail Green, Tutor and Fellow in History at the University of Oxford. In describing the ways in which

Thus, beginning with a detailed account of the life and times of Moses Mendelssohn, who achieved totemic stature as the key architect of the *Haskhalah*, and as such had great impact on the thought of Samson Raphael Hirsch, and the *Hatham Sofer* in relation to deep schisms within Jewish belief and practice, this chapter attempts three things:

1. To broaden strictly historical notions of Enlightenment and Emancipation, by exploring from a philosophical viewpoint, critical aspects of their intellectual, religious, political and social dynamics.
2. To point up particular challenges involved in the Jewish response to modernity.
3. To offer fresh thinking concerning conceptions of Judaic religious toleration.

### **Moses Mendelssohn and Jewish Enlightenment<sup>54</sup>**

Mendelssohn was born in 1729 into a poor family in the town of Dessau, Prussia.<sup>55</sup> He was eleven years old when King Frederick II [famously known as Frederick the Great],

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Mendelssohn helped to bring Judaism into the mainstream of European culture, the discussants, reflecting the argument in the main text above, did not minimise the religious, political, philosophical and social challenges of doing so. I do, in addition to other material, draw on aspects of this discussion concerning ways in which Mendelssohn in both a personal and public sense, responded to the challenges of the Enlightenment, the impact of his thinking on Jewish and Christian ideas concerning religious toleration in Germany and although not the focus of the chapter, the connection of these ideas with the wider context of central Europe and England.

<sup>54</sup>It is important to note in regard to the substantial and wide-ranging literature in regard to Moses Mendelssohn that the details of his life included in this chapter, [and similarly those concerning Hirsch and the *Hatham Sofer*], have been selected on the basis of their salience to my argument concerning Jewish religious toleration.

<sup>55</sup>Larry Fine (2010) in his article *Moses Mendelssohn the Jewish Reformer* [Online]. Available at: <http://www.jewishmag.com/144mag/mendelssohn/mendelssohn.htm> [Accessed 17/01/2013], offers an insight into the background details of Mendelssohn's early life, which gives some perspective on the political, religious, socio-economic and intellectual obstacles he had to overcome as a Jew. Fine reminds us that Jews were rarely allowed out of their ghetto, and it was rare that a Jew could learn in a German university. They were socially discriminated against in the harshest terms, and taxed at exorbitant rates. Not allowed to come and go in the city as they pleased, they were required to live in the crowded ghetto where available space was limited, which caused the price of living quarters to be raised very high; much higher than what was available outside of the ghetto. Amongst the Jewish population, secular education was frowned upon and even knowing or speaking German was rare; the Jews spoke a dialect called

came to power in 1740. As I show later in the chapter, this historical fact was a formative one in Mendelssohn's religious and philosophical development, because in contrast to the stern rule of his father Frederick Wilhelm I, the 'Soldier King', who had invested all state revenue in the army, and had shut down all intellectual and cultural activities, Frederick the Great regenerated a new and thriving intellectual and cultural environment. A brilliant military strategist, and the ruler who brought about the unification of Germany, Frederick II synthesised the soldierly side of himself with being a musician, a lover of literature and the arts, and an intellectual. He was the close friend of Voltaire (1694-1778), leading philosopher of the French Enlightenment, who influenced Frederick's already liberal religious views.<sup>56</sup>

Feiner, (2010) in his rich, detailed and moving account of the life of Mendelssohn, provides a penetrating insight into the complex pressures of the 'liberal' Enlightenment project on the Jews of Europe

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'*Judendeutch*' which is today called Yiddish. If a *yeshivah* student was caught reading a secular book, or a book in German, he would be expelled from the *yeshivah*; and also from the German city in which the *yeshivah* was located.

<sup>56</sup> Frederick the Great, [reminiscent of Locke – parenthesis mine], believed that everyone should find his own salvation. However I agree with the argument [Online]. Available at: <http://www.hyperhistory.net/apwh/bios/b2frederick2.htm> [Accessed 10/11/2012], that it was more for economic diversity than religious salvation that Frederick encouraged religious freedom throughout all of Prussia; thus he supported any religion, as long as those practicing it were honest people and wished to populate the land, be they Turks or Pagans; and agreed to build them mosques and churches. The BBC discussants observe that Frederick included financially wealthy Jewish merchants in this category, because they were useful as 'court Jews' who contributed financially to the welfare of the court. His policy concerning all other Jews was to divide them into six categories according to their usefulness to the state, and put them into diverse occupations. I argue that due to the influence by his life-long friendship with Voltaire, Frederick's beliefs were typical of a Deist, who

far removed from the idea of God as an unknowable Being, substituted civic duty for spiritual intimacy with the Creator. [Online]. Available at: <http://www.hyperhistory.net/apwh/bios/b2frederick2.htm> [Accessed 10/11/2012].

We shall see the influence of Deism on Mendelssohn's thinking later in the chapter, in exploring the dialectic between his notion of 'eternal' and 'revealed' truths in regard to this worldliness.

The Enlightenment projects' principal success was in placing the modern intellectuals involved in society at the centre. It was the enlightened who in a significant revolutionary step created the public sphere – a sphere of discourse, communication, and exchange of knowledge, ideas and opinions through printed word. It was they who invented critical 'public opinion' which scrutinized public life and which judged ideas and deeds. It was they who ... imbued people's consciousness with the ... chance of progress, and of the promising horizons for a humankind awakening from cultural hibernation and intellectual stagnation.... For the Jews of Europe the Enlightenment also introduced into public discourse 'the Jewish Question' – the debate<sup>57</sup> on how the Jews would take part, if at all, in the New Era (Feiner, 2010 p. 13)

Thus we study Moses Mendelssohn not only to reconstruct the principal benchmarks in his life, or to discuss the essentials of his philosophical thinking, but also to reveal the dilemmas inherent in the Jews' experience of modernity. ... It is to see, on an existential plane, the tension between the philosopher who was a household name, able to cross the borders of 'otherness' into non- Jewish circles, and the Berlin Jew who felt oppressed in the Prussia of Friedrich II (Feiner, 2010 p.15)

In addition to the broad influential changes described above, there were some much closer to Mendelssohn's own life. Educated in the intellectually and culturally rich town of Dessau, which unusually at that time had its own printing press, Mendelssohn was greatly influenced by the dissemination of the work of the famous and much followed Spanish mediaeval rationalist *Torah* scholar, philosopher and physician, Moses ben Maimon (1135-1204) [known as Maimonides or the RaMBaM]. However, I argue that in some instances, both in terms of the rationalization of textual form and their rationalist content, these writings provided points of departure for Mendelssohn beyond the RaMBaM's original meaning, which very much points up arguments central to this thesis concerning the critical difference between **reformulating** a topic or concept, and

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<sup>57</sup> As discussed in detail later in the chapter.



**losing sight of its essence.** Cases in point are illustrated in the footnote below through selected examples of the RaMBaM's key works.<sup>58</sup>

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<sup>58</sup> **Works of the RaMBaM:** A full list of Maimonides's works can be found [Online]. Available at: <http://www.britannica.com/EBchecked/topic/358539/Moses-Maimonides/4479/Works>. For the purposes of this chapter however, I have selected four of Maimonides's major works which I describe in synopsis below. These illustrate the points made above, concerning the distinction between reformulating a concept and losing its essence; and, as I explain, show substantive ways in both their form and content in which they influenced Mendelssohn. Before considering them, it is important for their elucidation, to understand the meaning of the terms *Mishnah* and *Talmud*. During the Great Revolt [66-70 C.E.], and the Bar-Kokhba rebellion [132-135 CE], the Jewish community suffered horrendous losses. Well over a million Jews were killed and the leading *yeshivoth*, - advanced institutions of Jewish learning, along with thousands of their rabbinic scholars and students, were destroyed. The online historical source on *Jewish Oral Law: Talmud, Mishna, and Gemara*. [Online]. Available at: [http://www.jewishvirtuallibrary.org/jsource/Judaism/talmud\\_and\\_mishnah.html](http://www.jewishvirtuallibrary.org/jsource/Judaism/talmud_and_mishnah.html) [Accessed 21/3/2010] explains that in the year 200 C.E. the decline in the number of knowledgeable Jews, and the fear that if the Oral law, which had been passed down through the generations from the time of Moses, was not written down, it would be forgotten, lead the leading sage of the generation, Rabbi Judah the Prince, to record in the Oral Law in writing. This codification, without which tradition many Biblical laws would be incomprehensible, was set down in the 63 tractates of the *Mishnah* – **Rabbinic law**. During the centuries that followed, the *Mishnah* was studied exhaustively by generation after generation of rabbinic sages; and their discussions and commentaries on the *Mishnah*, comprised the *Gemarah*. The *Mishnah* and the *Gemarah*, which together form the *Talmud*, were redacted in 400 C.E. to form the Jerusalem *Talmud* [*Talmud Yerushalmi*]. From 200 – 750 C.E. leading Babylonian sages compiled a far more comprehensive editing of discussions on the *Mishnah*, together with all their argumentation and discourse. This became the Babylonian *Talmud* [*Talmud Bavli*], the most authoritative compilation of the Oral Law. It was far more extensive than the Jerusalem *Talmud*; and thus when people speak of studying the *Talmud* they mean the *Talmud Bavli* rather than the *Yerushalmi*.

#### **Selected works of the RaMBaM:**

*Sefer ha-Mitsvoth - Book of Commandments* (c. 1167/1170) sets out the RaMBaM's innovation for the first time in the history of Judaic ideas, of separating biblical and rabbinic laws whilst clearly grounded in the veracity of both; and his cataloguing and classifying the 613 biblical commandments in the *Torah* into positive and negative precepts. I argue later in the chapter that these ideas were critical to Mendelssohn's categorical distinction between Sinaitic revelation and the veracity of the Oral/Rabbinic law.

*Sefer ha-Maor; Perush ha-Mishnah - Book of the Lamp* (1168) the RaMBaM, always the rationalist, explains, as a commentary on the *Mishnah*, in a clear, concise and accessible way aimed at everyone from non-specialists to scholars, the purpose and relevance of rabbinic law. Guttman, Rabin and Frank (1995, p.10), observe that the RaMBaM does this by setting the study of the *Mishnah* in the broader context which he first discusses from a philosophical point of view, by passing from purely *Talmudic* topics to the final destiny of man and his share, except for those who held certain heretical views, in the world to come. Once he has done this, Guttman et al point out that Maimonides goes on to enumerate the basic teachings of Judaism, incumbent on every Jew; and states that a share in the world to come is achieved **by applying these teachings in practice** to specific cases discussed in the *Mishnah*. Clearly details of the myriad examples of the application of rabbinic law to practical life are beyond the ambit of this thesis. However an interesting and important example, relates to significant changes, over time, in rabbinic law concerning the way in which marriage was contracted [see *Seder Nashim; Tractate Ketuboth and Tractate Kiddushin*]. These changes brought about a change in the status of women through their emergence from subordination as either their father's or husband's chattel, to a person with growing autonomy, and consensual rights in marriage as a negotiated relationship, at a time in history when the general historical status of women was greatly subjugated to that of men. Thus, contrary to Mendelssohn,

as I argue later in the chapter, the RaMBaM considered it absolutely unacceptable that the flow of Jewish life should be seen as separate to the laws designed to regulate it.

***Mishneh Torah – Code of the Torah (c.1185), known as the Yad Hazakah - The Strong Hand*** authoritatively codified the vast and complex canon of *Talmudic* [Rabbinic], and post-*Talmudic* Jewish law. This signalled a significant departure from Jewish intellectual and rabbinic tradition that would certainly have been noticed by Mendelssohn and his teachers, in which the RaMBaM, by boldly paring down large tracts of discursive and homiletic rabbinic argumentation, stated clear-cut practical decisions on matters of *halakhah*. I contend however that Mendelssohn's argument is flawed concerning the RaMBaM's Thirteen Principles of Faith [first enunciated by Maimonides in his commentary on the *Mishna* in *Tractate Sanhedrin* (1995, 10:1 p. 90 a) in regard to which Mendelssohn states (1873, pp.100-101) that 'all human knowledge can be reduced to a few, fundamental concepts, which are laid down as the bases; and the fewer there are the more firmly the structure will stand' Mendelssohn fundamentally misunderstood **as absolute** Maimonides reduction of the Thirteen Principles of Faith into three main categories essential to Judaism: 1. the existence of God; 2. His providence and reward and punishment; 3. the divine origin of the *Torah* . However Mendelssohn missed the critical point, stated clearly by the RaMBaM that the remaining tenets, which he considered to be integral subdivisions of the three broader categories above, in fact formed the Thirteen Principles of Faith which are as follows

1. The existence of God.
2. God's unity and indivisibility into elements.
3. God's spirituality and incorporeality.
4. God's eternity.
5. God alone should be the object of worship.
6. Revelation through God's prophets.
7. The preeminence of Moses among the prophets.
8. The Torah that we have today is the one dictated to Moses by God.
9. The Torah given by Moses will not be replaced and that nothing may be added or removed from it.
10. God's awareness of human actions.
11. Reward of good and punishment of evil.
12. The coming of the Jewish Messiah.
13. The resurrection of the dead

The RaMBaM [*Talmud Sanhedrin* 1967, 10:1 p. 90 a] further explains the Thirteen Principles of Faith in terms of the circumstances in which a person would lose their portion in the World to Come: a) if they deny the resurrection of the dead (which encompasses the principle of reward and punishment); b) if they deny that the *Torah* is Divine; c) they hold improper notions about God's existence. [For a full list and learned exposition of the Thirteen Principles of Faith see: Kaplan, A. 1975; and Fendel, Z. 1985]

In the final work selected, Maimonides's philosophic masterpiece, ***Moreh Nevukhim - Guide of the Perplexed (c.1186/1190)*** his rationalist argument is that the ordinary mind, content to accept what is familiar, does not pay attention to the difficulties a tradition may contain. For the RaMBaM, such unreflective acceptance cannot qualify as faith at all, because it entirely depends on belief in those who established the tradition. Belief is commitment to what one understands; it cannot be mere conformity. Significantly, he argues that the complex nature of theological problems will be much more obvious to the more questioning; especially those who have read scientific and philosophical literature. He cautions that responsible intellectual leaders must work creatively within the framework of *Torah* to discover this for themselves; and show others how these problems can be addressed. The RaMBaM's ideas would certainly have been compelling for Mendelssohn in the era of the Enlightenment, thus I argue it important to point up the critical difference between them.

The RaMBaM contends that to develop the kind of understanding necessary to grasp the simultaneous interaction and yet separateness of human and Godly, progress needs to be nurtured through study, writing and teaching. He argues that this presents a serious obstacle, because it is not responsible to introduce people to problems whose solutions they might not grasp; and blames the teacher for the misunderstandings of his pupils or followers. This is relevant further on in the chapter in relation to my argument concerning the effect of Mendelssohn's philosophy on Jews far less learned and sophisticated than he. [See Mendelssohn, (1783, p.103, 104), in regard to his extraordinary argument against always being tied to authoritative books; and in favour of being able to discuss and communicate ideas, whether

From age ten Mendelssohn's obvious intelligence was recognised, and his Jewish knowledge was nurtured by the famous Talmudist Rabbi David Fränkel, who added greatly to his Hebrew language skills, expanded his knowledge of the teachings of the RaMBaM, and introduced him to the political and social issues of Enlightenment and Emancipation. Mendelssohn also became fluent in German. In 1743, Fränkel left Dessau to take up a rabbinic post in Berlin. Mendelssohn, who was then fourteen years old, followed his mentor.

In Berlin, supported by the Jewish community as a prodigious emerging talent, Mendelssohn was introduced to Jewish philosophers Israel Samoscz and Aaron Salomon Gumpertz, [who was the first Jew to graduate from a German university, as a medical doctor]. Under their guidance he studied Latin, Greek, English, and French, and read the works of the Enlightenment philosophers Gottfried Wilhelm Leibniz, Christian Wolff, and John Locke whose *Essay Concerning Human Understanding*, (1690), he read in the original Latin.

Larry Fine (2010) notes in his online article *Moses Mendelssohn the Jewish Reformer* quoted above [Online]. Available at: <http://www.jewishmag.com/144mag/mendelssohn/mendelssohn.htm> [Accessed 17/01/2013], that in 1750, Mendelssohn decided to end his studies with Fränkel, and not to receive ordination as a Rabbi. He chose to become a tutor for the sons of a wealthy Jewish Berlin silk merchant named Isaac Bernhard, and was able to extend his residence

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'understood correctly or incorrectly [it] does not matter, it is enough that he knows it, bears it upon his lips, and can talk about it more boldly than the honest old man who perhaps has the ideas rather than the words at his command'. Was this Mendelssohn's unique formulation of the oral law? The point to grasp here I argue, is that un-clear and unreflective thinking in regard to faith is probably just as common today as it was in Maimonides's time. However, in the Enlightenment era in which Mendelssohn lived, I contend that a greater threat to faith was the widespread exposure to reason in the form of uncertainty and/or doubt, which as the current chapter shows, led to unprecedented religious fracture.

permit as an indentured member of the merchant's household. The merchant liked Mendelssohn, who, tutoring Bernhard's children, earned enough money to purchase books. His reading included Spinoza, Aristotle, Plato, Newton, Rousseau, and Voltaire, whose thinking shaped Mendelssohn's ideas in substantive ways, which never left him.

Before moving on to consider the impact of Mendelssohn's philosophy on Jewish religious toleration, it is important at this point to highlight two critical aspects which underpin the difference, both in philosophy and religious outlook, between the way in which Mendelssohn and Maimonides understood the concept of human reason, and the notion of the Oral [Rabbinic] Law. I argue that in the RaMBaM's particular conception of rationality, there is no contradiction between his faith in reason and his conviction that human perception is limited. Guttman, Rabin and Frank, (1995, pp.7-8) observe that for the RaMBaM, faith in the power of reason was combined with a profound consciousness of the limits of human understanding.<sup>59</sup> This suggests an early pre-Kantian argument, in that reason itself enables the realization of its own limits, and sharply contrasts with Mendelssohn's extreme Deistic substitution of the civic for the spiritual, as I argue later.

Unlike Mendelssohn as we shall see, Guttman et al (1995 p. 9, p. 11) point out that the RaMBaM was not concerned to harmonize modern philosophy with *Torah* by importing extraneous ideas. Rather the purpose of his philosophical exegesis, similar to Hirsch as I discuss further on, was that in order to come to an understanding of the notion of divine

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<sup>59</sup> See Maimonides's Introduction to *Guide of the Perplexed* in Guttman, Rabin and Frank (1995, p.43), and (p.56) for an extract from *Guide of the Perplexed: Book 1* where he states in regard to the limited power of reason, that we live in a deep night, which is broken by a sudden illumination, but this light disappears as quickly as it comes.

revelation, it was important to uncover the philosophical content and meaning within the *Torah* itself.<sup>60</sup>

Both Maimonides and Mendelssohn believed that knowledge of God [as a First Cause or an Unmoved Mover], was theoretical knowledge, and true knowledge was gained through communion with God. However, they differed profoundly in their conception of the way in which these two notions related to daily Jewish life. This critical difference [the further significance of which I shall discuss], stemmed from Mendelssohn's distinction between Sinaitic revelation and the veracity of the Oral/Rabbinic law, in contrast to the RaMBaM's belief, grounded in the idea of **both** Sinaitic revelation **and** the veracity of the Oral/Rabbinic Law, that God simultaneously transcends, and is immanent within, the physical everyday world. This view is expressed through learning *Torah*, performing *mitsvoth* [the divine commandments], and living a life according to Jewish legal standards - a *halakhik* life.

#### *Mendelssohn's case for the freedom of religious conscience and civil admission*

Although John Locke died about a quarter of a century before the birth of the *Hatham Sofer* and Moses Mendelssohn, and over a century before the birth of Samson Raphael Hirsch, there is evidence to suggest, from Mendelssohn's own writing, that Locke's liberal religious ideas had some impact on him. Acknowledging that Locke lived in what Mendelssohn describes as a period of deep confusion similar to his own,

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<sup>60</sup> A good example of Biblical exegesis of this kind is the plethora of penetrating and scholarly rabbinic commentaries on various aspects of the *Torah* which are published within it, alongside the passages to which they specifically refer. These were added to through the ages and are too many to enumerate here; most famously they include Rashi [Rabbi Shlomo Itzhaki] (1040 –1105); and the Ramban [Nahmanides] (1194 – 1270).

particularly in regard to protecting the liberty of religious conscience, he wrote in *Jerusalem or: On Religious Power and Judaism*

In his [Locke's] letters concerning toleration he proceeds from the basic definition: A state is a society of men who unite for the purpose of collectively promoting their temporal welfare. From this it follows, quite naturally, that the state is not to concern itself at all with the citizens' convictions regarding their eternal felicity, but it is to tolerate everyone who conducts himself well as a citizen, that is, who does not interfere with the temporal felicity of his fellow citizens. The state as such is not to take notice of differences of religion, for religion as such has no necessary influence on temporal matters, and is linked to them solely through the arbitrary measures of men. (Mendelssohn, 1783, pp. 37-39)

Concerned to balance civil and churchly authority, so that they did not become burdens on social life, Mendelssohn, in his idea of religious and civic synthesis, pursued a different tack from Locke. This was based on his fundamentally different conception of religion not as separate from, but conjoined with the state.

As soon as a man recognises that outside of society he can fulfil his duties toward himself and towards the author of his existence as poorly as he can fulfil his duties towards his neighbour, and, hence, can no longer remain in his solitary condition without a sense of wretchedness, he is obliged to leave that condition and to enter into society with those in a like situation in order to satisfy their needs through mutual aid and to promote their common good by common measures. The common good... includes the spiritual as well as the earthly. One is inseparable from the other... By the formation [*Bildung*] of man I understand the effort to arrange both actions and convictions in such a way that they will be in accord with his felicity; that they will educate and govern men. (Mendelssohn, 1783, pp. 40-41)<sup>61</sup>

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<sup>61</sup> Allan Arkush, (1994), translator of the edition of Mendelssohn's *Jerusalem: Or on Power and Religion* cited in this thesis, states in his book *Moses Mendelssohn and the Enlightenment* that at heart Mendelssohn was a Reform Jew, and as the leader of the *Haskhalah* movement, was naturally intent on the reformation of Judaism.

While posing as someone who sought to restore ancient original Judaism, he was, in reality trying to fashion Judaism unlike any had ever seen before.... Mendelssohn strove, above all, to modify the scriptural religion to which he owed allegiance so that it could serve as a civil religion. (Arkush, 1994, p.273)

Eby, (Online at: [http://www.academia.edu/462440/Mendelssohn\\_and\\_Reform\\_Redefining\\_the\\_Mitzvot](http://www.academia.edu/462440/Mendelssohn_and_Reform_Redefining_the_Mitzvot) (accessed 16/01/2013), p.2), thinks that in fundamentally reorienting of the meaning of the Jewish commandments, Mendelssohn ceded a great deal of theological ground to the notion of Reform Judaism.

In contrast to Mendelssohn, we have seen in the previous chapter that Locke argued that the salvation of souls and the issue of temporal felicity had necessarily to remain separate. This idea formed the basis of his argument against religious persecution by the state, embodied in the *persona* of the civil magistrate.<sup>62</sup> Contrary to Locke's view, Cohen (2006, p. 3) points out that in Jewish thought care of one's soul is **not** considered to be an entirely a private matter. Whilst inward persuasion is certainly critical to religious Judaism, it is not predicated on the Cartesian notion of the dualism of body and soul, upon which Locke built his theory of the separation of the material and the spiritual, but upon the Judaic notion [see the arguments of Maimonides elucidated above], of the fluid interaction between the inner and the outer – the unity of body and soul. Inner purpose and intention ensures the proper performance of the *mitsvoth*, and at the same time performance of the *mitsvoth* produces the proper inner state.

Crucial to arguments in this thesis, is the idea that, in the reciprocal interchange of flourishing Jewish life, the individual and the community need one another. The well-being of both the Jewish and the wider community depends on the individual Jew engaging with others in an interpersonal relationship of care and responsibility, as set out in the *Torah*. It is a religion grounded in, but not subsumed by, practice. This double focus is central to modern Orthodox Judaism, and is the basis of the idea that a

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He argues that the overwhelming emphasis of Jewish literature had been to treat the *mitsvoth* as bearing intrinsic significance, not as pointing towards some other realm where true meaning resides. I agree with Eby, that as soon as the letter of the law becomes a means to an end, the question of the law's significance shifts from the status of law to whether other means might do the job better than the traditional ones. This question preoccupied early Orthodox responses to Reform such as those of the *Hatham Sofer*; and relates, as we shall see later in the chapter, to Mendelssohn's treatment of divine legislation as means-ends oriented.

<sup>62</sup> As discussed in the previous chapter, Locke encapsulated this thought in his *Letter Concerning Toleration* in relation to the light of reasonable evidence and to the proper care of souls, which he argues could not be committed to the civil magistrate because the power of the magistrate consisted only in outward force; but true and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God. (*LT* in Horton and Mendus 1991, pp. 18 - 19)

knowledgeable and practicing Jew has a valuable role to play not only in her own community, but also as a usefully contributing member of wider society.

However I argue below, that Mendelssohn's accommodationist-assimilatory theory, enshrined in the notion of the **absolute** porosity of the boundaries between Jewish particularity and secular universality, took the idea of Jewish holism too far, and upset the balance of the double focus just described. As this chapter shows, in response to Mendelssohn's ideas, which were especially powerful because they came at a time in history when, even for the ordinary citizen, religion was in a state of flux, the boundaries between the religious and secular spheres began to founder, and the Jewish community began to fragment.

To support my argument, I offer below selected examples of ways in which Mendelssohn's ideas concerning religious toleration lead toward Jewish assimilation, and the dramatic effect of this on the Jewish community.

#### *Toleration or assimilation?*

Contra Spinoza (1635-1677) who in his *Tractatus Theologico-Politicus* (1670, Ch.111 pp. 59-64) accorded Mosaic Law only political, not divine or eternal significance,<sup>63</sup> Mendelssohn, drawing heavily on the philosophy and theodicy of Gottfried Wilhelm Leibniz (1646 – 1716), stated that Mosaic Law was the embodiment of what he called 'eternal truths'<sup>64</sup> and, as such, was the independent legislator of the personal life of the

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<sup>63</sup> Throughout his philosophical works, Spinoza denied the immortality of the soul; rejected the classical notion of a providential God immanent in the universe, and claimed that Mosaic Law was neither given by God, nor was binding on Jews.

<sup>64</sup> In his *Monadology* (1714) Leibniz states that the universe consists of an infinite number of substances called monads. He defines the rational soul as the most highly developed of these monads, because it has both self-consciousness and reason. The thrust of Leibniz's argument is that the rational soul can know



Jew, separate from land and state (Mendelssohn, 1783, pp. 90-91, 93, 99). Altmann (1983, p.24), in his introduction to Mendelssohn's work *Jerusalem or: On Religious Power and Judaism*, notes that Mendelssohn makes this point with particular regard to the significance of **Jewish ceremonial law**, the body of commandments he considered to be **indifferent**<sup>65</sup> in the Lockean sense of **unrelated** to either public reason or morality, because it concerned Jewish ritual and symbolic practice<sup>66</sup> made obligatory by Mosaic legislation. Far from being indifferent in the trivial sense, Mendelssohn argued (p.118) that ceremonial laws represented the particularizing elements of Jewish existence, and were of vital importance as long as the need for Jewish distinctiveness persisted.

I argue that Mendelssohn's plea for the importance of Jewish distinctiveness flies in the face of his strong political conviction that Jews should, through full liberty of conscience, divest themselves of religious obstacles to social and political emancipation and civil admission. The clash between his theological and political philosophy resulted I contend, in an equivocal notion of **indifference**, in that Jewish rituals came to be seen as obstacles **irrelevant** to life in mainstream civic society, and indicated that in the public context Jewish distinctiveness **was no longer needed**.

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necessary and permanent truths. He distinguishes between two kinds of truth: truths of reason, and truths of fact. Truths of reason are necessary, permanent truths. Truths of fact are contingent, empirical truths. He thinks that truths of reason are *a priori*, while truths of fact are *a posteriori*. However to qualify as truths, both must have a sufficient reason. Complicating the argument in regard to knowable truths, Leibniz claims that the **ultimate reason** of all things is found in a necessary and universal substance, which he says is God. According to Leibniz, every monad is produced from a primary unity, which is God, and every monad contributes to the unity of all other monads. Thus for Leibniz there is only one **necessary substance**, and that this is God. Perhaps this idea lies at the root of Mendelssohn's ideas concerning Jewish ceremonial laws which he considered replete with inner meaning, as discussed in the main text that follows, which corroborated Leibniz's idea that God's existence is logically necessary.

<sup>65</sup> The indifferent status of these laws, which, Mendelssohn argued, were unrelated to either public reason or morality, because they concerned Jewish ritual and symbolic practice made obligatory by Mosaic legislation, must come from God who, as Leibniz argues, is the real, infinite, and supreme monad.

<sup>66</sup> For example, those laws central to sustaining Jewish religious life, such as *shehitah*, and Sabbath observance, the enduring importance of which has been discussed in the previous two chapters.

In regard to religious toleration, it is instructive to compare Mendelssohn's conception of indifference with Locke's. As discussed in Chapter 3, Locke's notion of indifferent things was concerned to limit **government encroachment**, and to create a **space for religious practice free from state interference**. It rested on the view that the direct relationship between the individual and God contained all the **necessary** components for religious worship. Following this line of thinking, particular religious practices were of significance only to those who adopted them, and were in the public civil sense **objectively indifferent**. In contrast to Locke, Mendelssohn's idea of religious practice as indifferent, aimed at **full liberty of conscience**, and his purpose was to create a **space for civic admission, free from religious practice**. Implicitly critical, as we have seen above, of the strict bifurcation between religion and the state, which jarred with his conception of a more holistic person and a more this worldly orientation, I argue that Mendelssohn, torn between strong Jewish faith, practice and identity, and his fear of its limiting influence on full Jewish intellectual and civic emancipation and participation, personally embodied the conflict between the 'inner' Jew as private, practicing and knowledgeable, and the 'outer' Jew he expressed through the public rationalist philosophy of Judaism.<sup>67</sup>

Walker (2000, p.111), following Michael McConnell (2000, pp.90-110), casts an interesting light on Mendelssohn's position by invoking the notion of secular neutralism. On Walker's view, the intent of secular neutralism is to force all citizens to put aside their sectarian loyalties and convictions in their capacities as citizens, but to allow everyone complete freedom to practice religion in private. 'Don't ask, don't tell.' Walker observes that this would require that Jews implement Mendelssohn's principle

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<sup>67</sup> As this chapter progresses, it reveals the internal dissonance of Mendelssohn's argument by showing that in practice, the conflict between his idea of Jewish distinctiveness and civic emancipation, cut across this neat inner/ outer theoretical distinction.

to be a ‘man in the street and a Jew at home’. I agree with Walker that this kind of argument forces religious citizens to truncate their identity.<sup>68</sup>

I argue that Mendelssohn’s position was untenable for a flourishing and sustainable Jewish way of life, especially for those without his knowledge, intellect or background, for whom the obscure ceremonial aspects of Judaism were historical remnants of not the least personal relevance. In **relegating** Jewish distinctiveness to the ceremonial aspects of the religion, Mendelssohn misunderstood its substance, which was not as Sacks (1990, p.5) observes, a religion of private confession or a voluntarily adopted set of domestic rituals but rather an enveloping culture, the content of the traditional educational curriculum, and the legislative norm of a self-governing community with a precise set of distinctive practices all of which were antithetical to privatisation. I agree with Sacks that Mendelssohn, perhaps unaware of the **far-reaching** magnitude of the change he was proposing, effectively drained Jewish practice of its inner substance and dismantled its public domain. I contend that the practical result of Mendelssohn’s thinking was that it led to religious Judaism being uprooted, and re-orientated toward secular citizenship.<sup>69</sup>

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<sup>68</sup> As one of the hallmarks of religious toleration, the question concerning the extent to which a minority has to change its religious and cultural habits in response to the demands of the host society is central to this thesis. Examples discussed in the previous chapter, show ways in which the pressure to conform might be applied from **outside** the religious/cultural group. In the current chapter, I argue in regard to Judaism, that Mendelssohn’s ideas exerted a similar degree of pressure from **within** the group.

<sup>69</sup> Linking the Judaic with the more generalised discussion of toleration, I cite Blommaert and Verschueren (1998, pp.146-147), who highlight the unproductive effect of **homogeneity** on a discourse of tolerance where homogeneity is defined as the dominant ideology of the host society, and directs our thinking about foreigners in that society. The authors, whose argument I corroborate, particularly in regard to the values espoused by the Enlightenment, maintain that through abnormalizing the foreigner, [or indeed, I argue, if Mendelssohn’s view is adopted, of the foreigner possibly **abnormalizing herself** in feeling coerced to relinquish religious values], homogeneity contains an *a priori* rejection of diversity, and entails the central thesis that foreigners disturb the existing order, threaten the *status quo* and their presence alone turns them into a problem. In regard to the social and economic Emancipation of the Jews in eighteenth and nineteenth century Europe, this idea becomes more significant in cases where Jews adapted to all kinds of social norms as understood by the host society, where, as Blommaert and Verschueren put it, identified ingredients of homogeneity were augmented by official rhetoric, for example Joseph II’s (1781) *Edict of Tolerance* which is discussed later. I capitalise further on the conceptual relevance of the notion of homogeneity by arguing for its expansion in relation to religious toleration. As this chapter, and indeed arguments central to the thesis show, not only does homogeneity

*Mendelssohn's notion of the privatisation and voluntariness of religion*

The effect of Mendelssohn's notion of the privatisation and voluntariness of religion was anything but neutral for pre-modern Judaism, in which unified community, self-government and prescriptive religious practice had been the norm. His ideas set in motion an unprecedented degree of evaluation and reflexive-ness about the very principles of Jewish faith, and what it meant to be a Jew. Personal religious belief and practice was juxtaposed with the newly emerging public rationality. This new rationality was intolerant of the past, and of ideas of absolute authority. Knowledge had to depend on reason, scientific evidence and demonstrable truth.<sup>70</sup>

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seem to be an impediment to any solution of societal problems between the state in relation to groups and individuals outside it who are different; but by extension, it might also be the underlying cause **within** groups, of sudden huge internal friction and fracture, caused by the upheaval of long held spiritual, intellectual, political, socio-economic, cultural and traditional beliefs and practice, in response to a changing secular and Judaic world.

<sup>70</sup> In 1735 as a critical part of his Jewish Enlightenment project, Mendelssohn, in order to bring the Hebrew Bible into modernity, re-translated the Wertheim Bible to become the first Jewish Enlightenment Bible. In order to bring Jews into contact with the German language, the Bible was in German printed in Yiddish characters. Mendelssohn suffused his translation with the ideas of Enlightenment philosophers Gottfried Wilhelm Leibniz, and Christian Wolff, and so brought Jews into contact with enlightenment thinking. As a development of this project Mendelssohn, together with a team of scholars, embarked in 1770 on a second translation of the Hebrew Bible; the purpose of which was to emancipate the Hebrew Bible from Christian readings by primarily challenging the Christological beliefs of the Lutheran Bible. Surburg, (1982), [Online]. Available at: <http://wlsessays.net/files/SurburgChristology.pdf>, [Accessed 3/02/2012], explains that for Luther, Christ was the heart and centre of the Scriptures; and the locus that treats of Christ's person and work is known in systematic theology as 'Christology'. Surburg observes that Luther realized that the Old Testament was important for religious knowledge and belief. I argue that we see below in Luther's *Werke*, an example of the kind of Christological idea Mendelssohn would have challenged, as it puts Christ at the centre of the Hebrew Bible and reconceives the Five Books of Moses - *Pentateuch* as part of the Christian gospel

We should let the worthless babblers go who despise the Old Testament and say it is of no further use; when, as a matter of fact, we must derive the ground of our faith from it alone. For God sent the prophets to the Jews to bear witness to the coming of Christ. Therefore the apostles everywhere convinced and convicted the Jews out of their own Scriptures that this was the Christ. Consequently, the books of Moses and the prophets are Gospel too, since they first preached and wrote about Christ what the apostles afterward preached and wrote about Him. (Luther, M. (1893) *Werke: Kritische Gesamtausgabe*. In Surburg (1982, p.3) *Luther and the Christology of the Old Testament: Back to Luther! The Hermeneutical Basis for Luther's Old Testament Christology; Sources for Luther's Old Testament Christological Views; The Different Kinds of Christological Data in Luther's Works* [Online]. Available at: <http://wlsessays.net/files/SurburgChristology.pdf> [Accessed 3/02/2012].

Finally, the *Biur*, which was a sustained and bold project in which Mendelssohn and Naphtali Herz Wessely (1725-1805) were involved together with others scholars in radically simplifying the commentaries on the *Torah* so that they were based on rational explanation rather than on complex

Thus, as Jews began, through the process of emancipation and civic equality to participate in the social, cultural and political sphere, their religious life, beliefs and values began to fragment in the way they were interpreted and applied, and most crucially, began to carry different meanings. For example how was the term *mitsvah* to be understood? Was it an act done in response to a specific Godly directive, or was it done out of loyalty to historic tradition? Was it done as an act of Jewish solidarity, or was it freely chosen as an act of Jewish identity? Was it in fact an act worth doing at all? Outer political schisms were accompanied by inner ontological and epistemological fractures, leading to both personal and philosophical questions concerning: the authority of *Torah* particularly in regard to divine revelation and legislation, and Jewish identity and the relationship to wider society.

From a liberal philosophical viewpoint, this intense critical reflection might be considered a positive good. However, the particular focus of my argument is on its devastating practical impact on traditional Judaism. In pressing for the goal of emancipation from a broadly tolerant accommodationist viewpoint, which *ab initio*, as Sacks, (1990, p.6) remarks, ruled out the continuity of a unified Jewish community, Mendelssohn set in motion the seismic Judaic sea-change, the influence of which was to be felt on into the nineteenth and early twentieth century and, I argue, beyond. This expressed itself in the disappearance of the self-governing powers of the Jewish community, the replacement of traditional schools of *Torah* learning with Jewish

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discursive meta-commentaries [reminiscent of Maimonide's method], highlighted the partition between Jews who embraced the traditional rabbinic world; and those who embraced the modern.

The BBC discussants observe that these three projects were seminal in creating a 'cultural alloy' which brought the Hebrew Bible into a lasting conversation with the Christian and German religious and cultural environment. However the traditional rabbinic authority was outraged at Mendelssohn's instrumental and subversive approach in exploiting both the Hebrew Bible and the Hebrew language, to put Jews in touch with the German language and Enlightenment ideas. The *Jewish Encyclopaedia* [Online]. Available at: <http://www.jewishencyclopedia.com/articles/3347> [Accessed 23/02/2013 shows the vast influence of Mendelssohn's 'biuristic' school which spread from Poland to Alsace; and from Italy to Amsterdam, London and Copenhagen.

schools modelled on their secular counterparts,<sup>71</sup> increasing parental choice of public schools for their children, and the abandonment of internal as well as external marks of Jewish distinctiveness and expression. As the following chapter argues, all these factors have had a crucial and lasting impact on the development of the MOJ faith school.

*Toward a universal and humanistic idea of Jewish religious toleration*

In 1769 Mendelssohn was publicly challenged by Johann Kaspar Lavater (1741 –1801) a young Swiss clergyman from Zurich, to embrace Christianity or recant his Judaism. Feiner (2010, p.84) describes the way in which this came about. Lavater, who belonged to the enlightened circles of Europe and greatly admired Mendelssohn, had visited him in Berlin several times, had numerous discussions with him and the two men had become friends. However Lavater had kept hidden from Mendelssohn the intense eschatological and millenarian agenda according to which he believed that all Jews needed to prepare for the major transformation of society that would be brought about by the second coming of Jesus. Lavater's aim was to show publicly that if Mendelssohn, one of the greatest Jewish minds in Europe at that time, was unable to support his beliefs, this would open the floodgates to the kind of mass conversion that Lavater wanted.

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<sup>71</sup> In 1782 Wessely wrote an open letter known as *Divrei Shalom V'eme't* [*Words of Peace and Truth*] to all Jewish communities within the Hapsburg Empire. This letter was a response to Emperor Joseph II's 1781 *Edict of Tolerance*, which promised Jews all kinds of civic access, including social and economic integration, and the ability to send their children to public schools and universities. In exchange, however Joseph II, utterly intolerant to Jewish belief and identity, demanded complete assimilation. He outlawed the use of Hebrew and Yiddish in communal records of the Jews, abolished rabbinical legal autonomy (1784), forced Jews into military service (1787), and demanded Jews take on German-sounding personal and surnames (1788). Wessely was very enthusiastic about the Emperor's Edict. The BBC 4 discussants highlight the fact, that as a participant in the formulation of the *Biur*, he typified the new kind of Jewish Enlightenment intellectual - a *maskhil* – [member of the *Haskhalah*], and a Jewish assimilationist. Like Mendelssohn, he believed that a proper education [*Bildung*], the particular characteristics of which were the inculcation of the right kind of character; and culture, would enable anyone to rise through the ranks of society because he would be useful. Wessely rejected the idea of the traditional Jewish scholar – the *talmid chakham*; and emphasized the re-education of Jews to become enlightened men, able to fit into modern society. In his view, this called for a complete reversal of religious and secular learning; with the secular as the primary basis and the religious as a secondary concern. Following chapters will show that this controversy is still very relevant within contemporary Jewish education.

To this end Feiner (2010, p. 84) writes that in the final conversation they had before the public challenge towards which Lavater was working, concerning which Mendelssohn was entirely unaware, Lavater pressed Mendelssohn to reveal his views on Christianity, assuring him that no public use would be made of anything he said. Mendelssohn replied with extreme caution, and in accord with the contemporary trend of tolerance toward Christians to which several Rabbis including the respected and strictly Orthodox Rabbi Jacob Emden subscribed, that although he [Mendelssohn] had little direct knowledge of Christianity, he bore no animus toward Christians and respected the morality of Jesus' character.

In 1769, five years after this conversation, Lavater sent Mendelssohn a copy of a newly published book entitled *Philosophical and Critical Inquiries Concerning Christianity*, written by the Christian naturalist theologian and philosopher Charles Bonnet from Genoa, which Lavater had translated into German. Feiner (2010, p.85) remarks that Bonnet's work held less interest for Mendelssohn than did the translator's preface, where on the first page, based on their private conversation in which Mendelssohn had stated his philosophical respect for the moral character of Jesus, Lavater publicly challenged the 'German Socrates' to refute Bonnet's work, anticipating nothing less than Mendelsson's conversion to Christianity. This public confrontation attracted attention across Europe, where the entire German speaking, reading public became involved in considering the merits of Judaism against the merits of Christianity.

Shocked and affronted by Lavater's betrayal of friendship and trust, Mendelssohn refused to enter this disputation which was clearly designed to put him, as the Jewish proponent, at a disadvantage. Instead he published a response, which proudly affirmed his loyalty to Judaism, while at the same time making a bid for it as one of the many

religious paths to salvation which he reiterated in his philosophical work *Jerusalem or: On Religious Power and Judaism*

Brothers, if you care for true piety, let us not feign agreement where diversity is evidently the plan and purpose of Providence...Reward and punish no doctrine, tempt and bribe no one to adopt any religious opinion! Let everyone be permitted to speak as he thinks, to invoke God after his own manner or that of his fathers, and to seek eternal salvation where he thinks he may find it, as long as he does not disturb public felicity, and acts honestly toward the civil laws, toward you and his fellow citizens. (Mendelssohn, 1783, pp. 138-139)

On the basis of the freedom of conscience, and as a way of avoiding the endorsement of the exclusivity of any one single religion, Mendelssohn gave religious pluralism and religious choice the broadest possible scope, and framed his idea of Judaism in terms of the universal and humanistic approach of natural religion. I argue however that this kind of religious toleration is of the live-and-let-live kind, which fails to provide an adequate basis for toleration, as discussed in the second chapter of this thesis. As Mendus (1989, pp.8, 9) observes, simply to allow the different practices of others, whilst not objecting to them, disapproving of them, or finding them repugnant, is not necessarily to display tolerance, but only to favour liberty, license or to show indifference.

Thus in offering the unmistakably assimilationist choice to follow any religion or none, Mendelssohn struck a new and **libertarian** chord, which compounded with his own opaque notion of Jewish distinctiveness, left a controversial and confusing legacy to the Jewish world which was in such turmoil at that time. Feiner (2010, p.208) instructively notes that as the cultural and social amalgamation with the German bourgeoisie accelerated, many young Jews considered Judaism increasingly irrelevant to life. He highlights the historical irony that after all Mendelssohn's battles against those who wished to save his soul through conversion, four out of the six of his own children



eventually converted to Christianity, and embraced social acculturation and assimilation.

### **Rabbi Samson Raphael Hirsch and Rabbi Moses Sofer**

Mendelssohn's modus, which as we have seen, drew on philosophical ideas **extrinsic** to Judaism, was heavily criticised by both Rabbi Samson Raphael Hirsch and the *Hatham Sofer*. The basis of their criticism was that they believed, each in their particular way, that Judaism had to be understood from **within** a *Torah* perspective. Underscoring this position was what might be termed **cognitive exclusivity**, which, from the religious viewpoint, denies that the scientific or political interpretation should be the exclusive one.

Describing himself as 'enlightened-religious' (Rosenbloom, 1976 in Sacks, 1990, p.7), Hirsch had most unusually been educated at the local non-Jewish grammar school in Hamburg rather than in a religious institution, and had grown up with a striking rabbinic role model of the Jewishly and university well educated Isaac Bernays. Sigmund Freud, (1960, pp.17-22), considered Bernay's singular innovation to be, that he offered a reformulation of the tradition through a critically reflective and philosophical approach from within Judaism. Bernays saw religion not as rigid dogma, or desirable just because it had been declared holy, he understood religion to be the object of profound reflection, in regard to both its deeper meanings, and its application to the modern world. Hirsch espoused this view, and, on becoming the Rabbi of Oldenburg, Moravia in 1830, adopted the new style of rabbinic gown, and made the synagogue services more attractive and accessible to 'enlightened' Jews by speaking in German, introducing a choir, and making several liturgical changes. Not least amongst these changes was, like Mendelssohn, that he translated both the prayer book and the *Pentateuch*

from Hebrew into German. However like the RaMBaM, he based his commentaries on philosophical meanings from within *Torah*, rather than on those outside it.

Hirsch keenly observed the very real tension within Judaism between emerging modernity and the rabbinic responses to it, and argued that to make sense of the world outside it Judaism must refer to the categories **intrinsic** to it. His innovative response encapsulated in his notion of *Torah im derekh eretz – Torah and the Way of the World* was critically important to Judaism at that time, and following chapters show that it was seminal in the formation of the contemporary idea of modern Jewish Orthodoxy.<sup>72</sup> The nature of Hirsch's innovation was that it encouraged Jews to take an active role in society, not as an entirely alternative mode of being, but **as the extension of the Jewish mission to be a living example of both a people attached to the Divine, and exemplary citizens.**<sup>73</sup> As such he was certain, unlike his Reform protagonists<sup>74</sup> that the traditional belief and *halakhik* standards of traditional Jewish Orthodoxy could stand the challenges of civil life without compromising its inner essence.

Thus Hirsch was able to launch a counter-offensive to the goals of both Enlightenment and Emancipation, and the influence of the Jewish Reform movement through the contrasting aspects of **conditional toleration** from within Judaism of the relationship of

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<sup>72</sup> In the discussion below, concerning the complexities of the term 'modern Orthodox', this particular aspect of Hirsch's thinking is followed through in the formulation of the contemporary modern Orthodox Jewish view. I argue particularly in Chapter 6, that Hirsch's view is especially relevant to the educational aims and institutional ethos of the MOJ faith school in bringing an unchanged and eternal *Torah* into a paradoxically intimate relationship with the prevailing, shifting, and temporary conditions of wider society.

<sup>73</sup> This idea is central to arguments in this thesis.

<sup>74</sup> The chief protagonists at the inception of this historic conflict in Enlightenment Germany were Samson Raphael Hirsch and Abraham Geiger (1810-1874). Katz (1998, p.21) writes that Geiger deviated from the basic principles of Jewish Orthodox faith and its view of the Oral Law as the legitimate elaboration and interpretation of the Written Law; and thus began the on-going, complex contemporary debate between Orthodox and Reform Judaism, of the submission or non-submission to Sinaitic law, the details of which are beyond the ambit of this thesis. I touch on these ideological differences again in the following chapter, in the discussion concerning the MOJ faith school as a microcosm of religious pluralism.

the Orthodox Jew and the secular world' and **intolerance** to the aggressive and destructive effect of the Jewish Reform movement which he considered to be the product and effect of intellectual enlightenment

The crucial aspect of Hirsch's argument in regard to **conditional toleration** was that the old Rabbis, in wanting desperately to mitigate the effects of emancipation, mistakenly clung to the old set of circumstances - *ancien regime* - of the past century, which were in complete conformity with *Torah* as they knew it and lived it. Hirsch maintained that this increased the tension for Jews between *Torah* and the irresistible force of the **new** circumstances, so that, as I have explained in the section on Moses Mendelssohn above, they began to identify *Torah* learning and lifestyle with the outmoded and gradually disappearing circumstances of the past century.

A revolutionary in his own way, Hirsch unlike Mendelssohn, did this by turning against the circumstances rather than against *Torah*, and brought *Torah* to rule over what he saw as a new set of circumstances. However the Orthodox community of *Adath Jeschurun* to which he belonged would on no account accept or tolerate Hirsch's notion of 'outreach' into the secular world. This resulted in Hirsch's secession from the main *Jeschurun* community to create his own unit of it through which he could achieve his ideals. As Katz (1998, pp.26, 27) explains actual physical separation from 'the mother community' was complex and not actual in terms of state regulations in regard to the financial and institutional organization of religious institutions at that time. Hirsch's secession was ideological and he needed to create a 'new platform' from which to implement *Torah im derekh erez*. It is interesting to note that a common feature in modern orthodox synagogues in England in the twenty-first century is the creation of alternative groups within but separate from the 'main' synagogue. These groups may

wish to express the character of their prayer service and religious practice differently within Orthodoxy for example in relation to gender equality, or greater community participation in the service, or as discussed in detail in the next chapter, in relation to the Jewish or public education of its children. This contributes to the pluralism internal to Jewish Orthodoxy which might at times be conflictual.

The nub of Hirsch's intolerance to Reform Judaism was, as Katz (1998, p.10) states, that Jews who were no longer willing to maintain the severe restrictions they felt the religion placed upon them, viewed the Reform brand of Judaism as an excuse to throw off the burden without a crisis of conscience. It was comfortable for them to hear the rulings of 'experts and authorities' to the effect that the validity of the tradition in which they had been raised had been abrogated by the new circumstances that had arisen. Those who upheld this approach wished to detract from the old without replacing it with anything new. Katz (p.10) writes that Hirsch contrasted the Orthodox and Reform camps by portraying their average representatives: the Reformer is one who is open to compromise in his opposition to Orthodoxy, the Orthodox is one for whom compromise with the opposition is a deadly sin. In contrast to Mendelssohn for whom all religious pluralism was valid, Hirsch's argument was that upon finding himself in an environment in which Reform prevailed, the Jew who adhered to tradition in all its details could not assimilate. I contend that Hirsch introduced a new and enlightened Jewish educative methodology for engendering this adherence to Jewish orthodoxy which I discuss immediately below.

#### *Jewish educational reform*

In his seminal volume *The Nineteen Letters on Judaism* (1836), a highly effective format of short letters from 'Naphtali' [alias Hirsch], to his fictitious young questioner 'Benjamin,'

Hirsch, following Bernay's example, raises all the burning Jewish issues for young disaffected and resentful German Jewry of the time, **answering them from within Judaism.**

He addressed such questions as:

What is man in this God filled world? What should the world in me and around me mean to me? What should my relationship be to this world? What should I be as man-Israel? (Hirsch, 1969, Letters 4 and 2; pp. 37, 27)

In tackling these questions head on, Hirsch clearly demonstrated his belief that, contrary to Mendelssohn's thinking, it was not Jewish **religious**, but Jewish **educational** reform that was needed. The primary task was to provide a deep and meaningful understanding of Jewish belief and practice, and of Jewish texts and the contemporaneously relevant philosophical concepts they embodied.<sup>75</sup> At the same time as inviting and encouraging searching and questioning within Judaism as an intellectual faith, Hirsch's central idea was that whilst there are reasons for *Torah* laws, our obeying them should not be conditional on our intellectual understanding, but because they are divinely given.<sup>76</sup>

In developing the idea of how to achieve the proper kind of reflection through striving to understand the extent and bearing of both the written and oral law on Jewish belief and practice, Hirsch in *The Nineteen Letters* (1969, pp. 13-14)<sup>77</sup> asks a far deeper question than what is involved in merely obeying a law. His question is in regard to the qualitative nature of

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<sup>75</sup> Chapters 6 and 7 highlight the crucial educative importance of first developing a deep comprehension of one's own faith, which then enables one to meaningfully convey to others its value and significance, and to appreciate that other faiths are similarly of deep value to their adherents.

<sup>76</sup> Arguably a similar point could be made about secular life, where someone would not be free to break a civil law just because they did not understand or agree with it, but would need to obey it because of its law given-ness unless the state were demanding of them something they felt to be deeply morally wrong.

<sup>77</sup> This is the ultimate question the MOJ faith school must ask regarding its graduating pupils, not only concerning what knowledge they will have but also the kind of people they will be, and their behaviour toward others.

human beings: What will human beings be, and how will they behave, who recognize an account of *Torah* Judaism as a basis and rule of life given to them by God?

Hirsch addressed this question in his magnum opus *Horeb* (1962, p. lii, pp. lvii –lxx), by means of an innovative classification of the divine laws, which provides a unique formulation of classical Judaic concepts. This material provides a rich resource for further research in formulating an innovative Jewish Studies curriculum in the contemporary MOJ faith school in England.<sup>78</sup>

### *Sectarian intolerance*

Both Hirsch and the *Hatham Sofer* fought against Mendelssohn's argument for the freedom of religious conscience coupled with the assimilationist choice to follow any religion or none, and proposed each in his own particular way, the response of Jewish secession. They argued that to be forced to associate with a non-traditional Jewish community, infringed the very religious liberties on which the modern state was based!

The *Hatham Sofer* argued that the *Haskalah* movement was a significant danger to traditional Judaism; and like Hirsch in Germany, he considered the strong Reformist tendencies growing in Pressburg, Hungary to be a threat to the very foundations of Judaism. In addition, he understood the principle of *Torah im derekh erez* quite differently from Hirsch. Fiercely intolerant to accommodating the customs of society within Jewish life, he saw Hirsch's direction as having the reverse effect: the assimilation of Jews into society. From the *Hatham Sofer's* point of view, this was

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<sup>78</sup> As Chapter 7 shows I have not chosen to develop Hirsch's schema, but have chosen instead to develop the examples of *Tsedakah* –charity as justice and *Gemiluth Hesed* – deeds of loving-kindness as the basis for a Jewish Studies curriculum resource which focusses on contributing outward to wider society. This is because I think that the appeal of their universal elements enables them to be well understood as making a valuable Judaic contribution to liberal democratic society as a community of tolerant practice.

antithetical to both Jewish survival and continuity, which had historically been predicated on different-ness, and based on the separateness of Jews as a people apart. Hence he advocated total adherence to traditional forms of Judaism and saw emancipation, assimilation and consequent secularization, as a threat not only to Jewish religion and culture, but interestingly also to Jewish autonomy (in this regard see my argument in Chapter 2 under the heading *Autonomy and illiberal groups*). Thus he believed that a new kind of ultra-conservative different-ness had to be found in order to preserve Jewish identity, culture and practice and enshrined this belief in the acronym of *shalem* [whole, complete] which indicated that Jews were not in any way to change their Jewish name [*shem*], language [*lashon*], or code of dress, customs and behaviour [*malbush*].

To thicken up the complexity of conceptions of Jewish religious toleration across the contexts of secession, accommodation and assimilation, it is necessary to point up the nature of the *Hatham Sofer's* contribution more exactly. Radically sectarian, the *Hatham Sofer* was vehemently intolerant of translating the *Torah* from its holy Hebrew tongue into German. This, to him, was the ultimate project of secularization. Like Hirsch later on, he criticised the form and content of Mendelssohn's modern philosophy of Judaism which applied the **extrinsic** categories of metaphysics and aesthetics to the understanding of Judaism, instead of the **intrinsic** understanding of Judaism through studying its central biblical, legal and philosophical texts, commentaries of the sages and rabbinic argumentation.

Intolerant too of innovative rabbinic responses from within *Torah* to the outside world, the *Hatham Sofer* argued that the accommodationist, Reform and assimilationist influences in the era of Enlightenment and Emancipation were a threat to the very fabric of traditional Judaism. In this regard, he invoked the discussion in the fourth section of the *Shulhan Arukh, Yoreh Deah 230*, concerning the biblical law of *Hadash* – ‘New’ grain (*Book of Leviticus/Sefer Vayikra* 1999, 23: 14 (1999)). In synopsis for the purpose of relevance to this thesis, the discussion centres around the law stating that newly planted grain harvested before that season’s Omer offering of barley grain was given in the Temple in Jerusalem at Passover was considered *Hadash* ‘new or ‘too unripe’ and thus unsuitable to qualify either as an offering in the Temple, or to be eaten. On this basis the *Shulhan Arukh* rules that ‘*Hadash* – is forbidden by the Torah’. Playing on the double meaning of the word ‘*hadash*’ as it applies to the principle of new grain, and which also means ‘*new*’ in the Hebrew language, the *Hatham Sofer* used this ruling to dismiss the accommodationist, Reform and assimilationist influences as *Hadash*, ‘new’ innovations forbidden by the *Torah*.

With reference to the broader contemporary principle of *Hadash*, which the *Shulhan Arukh* states stands as both a biblical and a Rabbinic law both **after the destruction of the Temple** and outside the land of Israel, the famous slogan of the Sofer-Hungarian school, ‘*Hadash* is forbidden within the *Torah*’ - introduced a significant ultra-Orthodox Judaic conceptual innovation of intolerance to the ‘new’ influence on *Torah* of Enlightenment and Emancipation ideas, which, like *Hadash*, did not qualify and were not even recognisable as ideas, and were forbidden.<sup>79</sup>

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<sup>79</sup> Although the details are beyond the ambit of this thesis, it is important to state that not all innovation on the part of the *Hatham Sofer* was reactive, but, as the leading figure within the ultra-Orthodox world, he was also proactive and brought about important changes in that context which had wider ramifications. One such change was that he was the first to bring about the professionalization of the Rabbinate both in terms of Rabbinic qualification and expertise (see Online at:



In evaluating the effect of the accommodationist-secessionist dialectic through the nineteenth to the twenty-first century, Sacks (1990, p. xii) suggests that from radical **accommodation** came new modes of thought and social interaction, which gave rise to a series of revolutionary new forms of Jewish existence: Reform, Conservative, Progressive and Liberal Judaism, Yiddish and Hebrew culture, Jewish socialism and secular Zionism. On the other hand, from radical **secession** came an intense revival of *halakhik* Judaism and the renewed study and application of Jewish law. Friedman (1992, pp.183-186) observes that the *yeshivoth* of Eastern Europe, were less committed to living tradition as it had come to be practiced by Jewish communities, than to the strict adherence to learned stipulations and the stringencies of *halakhik* decisions. He points out that this created a new legalistic norm, and, paradoxically, created a rift between the world of the yeshiva as a totally self-sufficient institution of powerful scholarship, and the world of the traditional Jewish community with its rich diversity of customs and artefacts which had been handed down through the generations.

This chapter has shown that accommodation drew heavily on the intellectual assumptions of the historical Enlightenment, and secession was fiercely intolerant to them. To embrace modernity was to abandon tradition, and to preserve tradition was to reject modernity. I contend that it is precisely at this polarized juncture, that the contribution of the MOJ faith school is most significant; both within Judaism, and in relation to liberal democratic society. To understand the nature of this contribution it is necessary to explore the complexities of the Judaic term ‘modern’ Orthodox.

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[http://www.jewishvirtuallibrary.org/jsource/judaica/ejud\\_0002\\_0018\\_0\\_18795.html](http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0018_0_18795.html) accessed 18/05/2014) Another significant innovation concerned his efforts (see Online at: [http://www.jewishvirtuallibrary.org/jsource/judaica/ejud\\_0002\\_0001\\_0\\_00557.html](http://www.jewishvirtuallibrary.org/jsource/judaica/ejud_0002_0001_0_00557.html) accessed 18/05/2014) to mitigate the plight of the *agunah* – a chained wife – who according to Jewish law is unable to remarry until her husband, who has disappeared without trace, is proven dead. This is still an issue of concern in the contemporary Jewish world upon which global disasters impact, such as the bombing of the Twin Towers in New York on 9/11/2001, and other terrorist bombings world-wide.

### **The complexities of the term ‘modern’ Orthodox**

If, as I have argued above, the *Hatham Sofer's* Orthodoxy was just as much an innovative response to the far reaching effect upon Jews of Enlightenment and Emancipation as the more tolerant Orthodoxy of Mendelssohn and Hirsch, then all three could be termed ‘modern’ in the descriptive sense of responding to modernity. However, of the three, I argue that only Mendelssohn, in his unconditional embrace of secular modernity, could be considered **ideologically** modern, whereas Hirsch and the *Hatham Sofer* could not.

Sacks (1990, pp. 114-115) introduces a more radical and contested sense of the word ‘modern’, which although it goes beyond the thinkers I have considered so far, is useful in exploring the limits of the extent to which Jewish Orthodoxy can be modern, and still be considered Orthodoxy. This sense of the word ‘modern’ refers to the deliberate attempt to integrate modern consciousness within Jewish tradition, by thinkers who have argued that at least some of the values embedded in contemporary liberal society, such as personal autonomy, democracy, role equality between the sexes and pluralism, can be accommodated by *halakhik* Judaism. David Hartmann (1985) is an example of one such thinker upon whose radical philosophical idea of covenantal anthropology, and its encouragement of human initiative and human adequacy, I draw in Chapter 6 in regard to innovative ideas concerning toleration in the MOJ faith school curriculum.

Hartman, (1985, p.13), describes his approach to rabbinic texts as selective. He writes that his concern is to locate specific tendencies, or possibilities, within the rabbinic tradition, that could be supportive of a covenantal religious anthropology, which would

be capable of responding adequately to the challenges of modernity. Sacks questions if a selective reading of tradition can still be considered as tradition, because rather than let it speak with its own authoritative voice, it is an attempt to tailor tradition to a set of *a priori* ideological assumptions. I challenge this view, by arguing in Chapters 6 and 7, that Judaic concepts **can** be both extended **and** used selectively to great effect particularly in regard to new conceptualizations of toleration, and in providing substantive curricular content which, I contend, does not lose, but enhances, the traditional conceptual essence.

I have argued earlier in this chapter that the difference between the **reformulation** of something and **losing sight of its essence** will always require sensitive judgment. Thus in regard to curriculum innovation, the crucial issue to the fore-front of the minds of heads of Jewish Studies, rabbinic advisors, head teachers, teacher practitioners, curriculum developers and consultants working in or with a MOJ faith school, is the critical ideological and evaluative question concerning **the extent to which Jewish Orthodoxy can be modern, and still be Orthodoxy.**

The crux of the matter is that from within traditional Jewish Orthodoxy which is where the MOJ faith school locates itself, there is, as Sacks observes, no middle ground between Orthodoxy and heterodoxy, or between *halakhik* and *non-halakhik* Judaism. So how is the balance to be struck? I suggest the clue may lie in a closer examination of Hirsch's notion of *Torah im derekh eretz*.

*The influence of Hirsch's principle of Torah im derekh erez, on the notion of 'modern' Orthodoxy*

Hirsch's principle of *Torah im derekh erez* consists of twin strands **both of which** are seminal in getting to grips with the essence of the term 'modern' Orthodox. The one strand is that *Torah im derekh erez* was a particular response to the prevailing circumstances. The other strand is that *Torah im derekh erez* was a permanent ideology which Hirsch himself regarded as a religious duty. I explain this as follows: throughout Jewish history traditional communities have responded differently at different times. Some have been more tolerant than others in their response to questions such as: is the ideal *Torah* life one which is wholly devoted to study or, could it combine with a worldly occupation? How restrictive or open a policy should there be in regard to conversion to Judaism? What is the role of women in Jewish religious life? What are the critical issues of Jewish responsibility in regard to conflicts between the obligations of faith and the demands of citizenship?

From the viewpoint of *Torah im derekh erez*, these contemporary challenges have demanded a specific response at a particular time from within *Torah* - [*hora'ath ha'sha'ah*]. However the matter is a complex one in terms of where the boundary of latitude is drawn, and invokes the notion of toleration in regard to Jewish ideology and *halakhah*, and the implicit impact of this on practical action and Jewish life.

Sacks (1990, p. 118-127) notes that there are areas of Jewish law where rabbinic tradition allows wide latitude of application, which depends on the careful assessment of the *halakhik* authority, and on the particular place and time. Different communities

may reach different rulings, because of their varying culture and context. However rulings are never divorced from context, and they ask searching questions concerning the consequences of a particular decision for the continued flourishing of traditional Jewish life and values. This, I argue, is precisely why the *Hatham Sofer* so tightly segregated the context of Jewish community life to approximate *stasis*, and limited the extent to which it engaged with the social processes at work in the culture of various communities, and the different types of rulings needed in response to Jews living life in the secular world. He saw that the closer Jewish Orthodoxy came to these contexts, which were constantly changing, the more it had to re-invent itself.

If *Torah im derekh erez* was to be understood as the fluid process of what Sacks describes as the on-going critical dialogue that must always occur at the interface between Judaism and its environing culture, then the *Hatham Sofer* considered it a serious threat to the preservation of the values and traditions of what he perceived to be authentic Judaism as it was practiced in the ultra-conservative Orthodox community. Thus his definition of *Torah im derekh erez* necessarily differed from Hirsch's, because it was about constructing an impenetrable 'fence' around the community of Jewish learning and practice, [*Torah*]which secured and protected it from the inroads of both secular, and emerging Judaic, modernity [*derekh erez*].

However, if unlike the *Hatham Sofer* but like Hirsch, we take *Torah im derekh erez* to be a process of Jewish Orthodox response to modernity, as well as an ideology, then how exactly does it work? It can neither systematically accommodate every new thing under the banner of modernism; nor can it systematically forbid it under the banner of

sectarianism. Each issue then must be taken on a case by case basis, and argued from within *Torah* categories in relation to the contemporary context. This is done by combining the particulars of the case with the relevant traditional *Torah* argumentation as it is found in biblical and rabbinic texts, and then applying the deeply considered modern Orthodox *halakhik* response to the contemporary context.

Crucially, biblical and rabbinic tradition is built on the principle of *Talmudic* argumentation, most famously exemplified by the moderate Hillel and the strict Shammai.<sup>80</sup> Such argumentation reflects within it conflicting opinions, and varying judgements, in response to changing circumstances. Holding fast to belief in one God, in the revelation of His *Torah* and of the obligation to fulfil His divine commands, modern Orthodoxy is about the application of a single *Torah* to varying circumstances. Historically, within the body of classical Judaic writings, a vast body of rabbinic *responsa - teshuvot* has grown in response to specific questions of Jewish law. This began in the Middle Ages when local rabbis would be confronted with difficult issues. They often wrote to the rabbis most respected as world authorities to get answers, including in their correspondence their own detailed understanding, gleaned from studying the classical sources, of how the law should apply. The experts would give a

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<sup>80</sup> Hillel [110 BCE -10 CE], and Shammai [50 BCE–30 CE] lived during the reign of King Herod [37-4 BCE]. This was an oppressive period in Jewish history because of the Roman occupation of Israel. I argue these sages parallel the *Hatham Sofer* and Hirsch. Shammai like the *Hatham Sofer* was extremely strict in his application of Jewish law and was concerned to limit Jewish contact with the Romans, as in it he saw the danger of complete assimilation. Interestingly Hillel's view which like Hirsch was more accommodationist in the sense explained above prevailed. It was thought that Shammai's view was too strict for the Jewish community to follow in practice. Hillel's rulings were often based on compassionate concern for the welfare of the individual. Disciples grew around them and formed the Houses of Hillel and Shammai between which the *Talmud* records over 300 disagreements. Significantly these arguments are termed arguments for the sake of Heaven – [*makhloket*], because they scrupulously applied traditional categories to their decisions, which were always made with strict reference to the *Torah* framework of God's revealed wisdom, and they argued not for personal victory, but to discover the truth of the matter in regard to Jewish continuity.

detailed and reasoned written answer, either supporting or rejecting the local Rabbi's interpretation, and the advice of the expert would be followed.

Contemporaneously, hundreds of rabbinic *responsa*, the details of which are clearly beyond the ambit of this thesis, address topics such as: eugenics, abortion, euthanasia, homosexuality and a whole host of conflictual issues, in both private and public contexts. All these are always made with strict reference to a *Torah* framework and to the parameters of Jewish law, and provide an instructive and fascinating documented account of a broad, deep and reasoned discourse of religious toleration and its limits.

Thus, as a modern Jewish Orthodox process, I argue that *Torah im derekh erez* is about a mature *halakhik* response to diverse and often conflicting arguments within both biblical and rabbinic tradition, and the knowledgeable, deliberated application of *Torah* to changing circumstances. It must, as Sacks observes, recognise the existence of other contexts which may evoke different judgments, and I contend in regard to toleration, be prepared to defend its limits in this regard; or indeed to expand or change them. I argue that the critical importance of this process is that it creates a **discourse of toleration**, which as following chapters show, undergirds the ideology and ethos of the MOJ faith school.

## **Conclusion**

By comparing and contrasting the dramatically different ideological Judaic views of Moses Mendelssohn, Samson Raphael Hirsch and the *Hatham Sofer*, as they responded to the challenges of secular modernity, this chapter has mapped out the scope and nature of Jewish religious toleration in the era of Enlightenment and Emancipation in eighteenth and nineteenth century Europe. Through providing an account of the seismic religious, intellectual, political, socio-economic and cultural shifts that took place within

the secular and Judaic world at that time, the chapter highlights points of connection and dissonance between them as two contrasting contexts of toleration. I argue this relationship is critical in getting to grips with the twin task of the modern Orthodox Jew, who as a believing, practising, knowledgeable member of the Jewish community, must at the same time contribute meaningfully and usefully as a citizen of wider liberal society.

Underscoring this point, an important distinction is made in the chapter between the **historical** and **philosophical** notion of enlightenment and emancipation. This is in order to draw attention to the far reaching effects of religious and intellectual transformation on the notion of ‘modern’ Jewish Orthodoxy. I contend that this distinction is central to the proper understanding of the ideology and ethos of the MOJ faith school. I argue, following Sacks, that one of the most serious contemporary threats to Judaism, as a living tradition, is the divorce of *Torah* from Hirsch’s central notion of *derekh eretz*. It is precisely through the idea of what Ellenson (1992, pp. 21, 22) describes as the **hyphenated identity** of the modern Orthodox Jew, that successful living with a particular tradition in a modern, pluralist world is able to take place. I contend that educating its pupils to achieve this goal is one of the central and most urgent tasks of the MOJ faith school in twenty-first century liberal democratic England. To succeed, it must be able to develop what Ellenson calls a ‘new language’ through which to awaken and defend ancient faith and tradition.

To this end, I argue that the MOJ faith school, which, as the following chapter shows, comprises a microcosm of internal pluralism, and thus provides a critical context of religious toleration, has the capacity to bring Ellenson’s vision to fruition.



## **Chapter 5: The Modern Orthodox Jewish Faith School in England as a Context of Religious Toleration**

### **Introduction**

The focus of this chapter shifts from the context of the European Enlightenment to contemporary England. Mirroring several aspects discussed in the previous chapter, the current chapter argues that through modernity to the present day there has been a continuing pressure on Jews in England to anglicise through education. As in eighteenth and nineteenth century Europe, this has presented a significant challenge to the preservation of Jewish faith, learning, identity and culture.

The current chapter explores this challenge and shows that it is compounded by the attractive possibility for Jews, of other excellent education opportunities in the wider English school system. It examines the impact of this possibility on the waxing and waning of the importance of Jewish day school provision within the diverse sectors of the Anglo-Jewish community.

The chapter explores critical ways in which the MOJ faith school constitutes a microcosm of pluralism.

### **The influence of accommodation and sectarianism on the development of the Modern Orthodox Jewish faith school**

The Institute for Jewish Policy Research [JPR] Report (2001) *The Future of Jewish Schooling in the United Kingdom: A Strategic Assessment of a Faith-Based Provision of Primary and Secondary School Education* [Online]. Available at: <http://www.jpr.org.uk/publications/publication.php?id=138andsid=140> [Accessed 4/7/2007], marks the starting point of Jewish day schooling in Britain as the

establishment in 1732, of the Jews' Free School [known today as JFS]. Following the 1870 Elementary Education Act, JFS headmaster Moses Angel described the School [which in 1871 had a roll of 2,600 pupils], as an institution designed for the anglicization of immigrant children. Finestein (2002, pp. 58-68), observes that the goal of anglicization had become the focus of increasing national debate, and debate within the Jewish community, in regard to the benefits or otherwise of mixed-faith schooling. This debate intensified in response to the 1870 Elementary Education Act, which established a national education system, and provided official funds to voluntary schools, which were mainly run by religious groups. The Act also led to the setting up of local school boards to build Board Schools, broadly Christian in nature, in areas where voluntary provision was inadequate.

*The effect on Jewish schooling of the 1870 Elementary Education Act*

Prior to the 1870 Education Act, children attending non-Jewish schools were exposed to Christian religious instruction. This changed from 1870 onward, because the Cowper-Temple clause, which forms section 14 (2) of the 1870 Education Act, Online at: <http://www.educationengland.org.uk/documents/acts/1870-elementary-education-act.html> (accessed 16/04/2013), laid down that in the Board Schools, no religious catechism or religious formula distinctive of any particular denomination should be taught. In addition, Section 7 (2) of the Act, permitted the withdrawal of children from

religious instruction on grounds of conscience, and Jewish pupils availed themselves of this clause to withdraw from Christian religious instruction.<sup>81</sup>

On 28 March 1870, to further ensure complete freedom from any proselytizing influence, the Jewish Board of Deputies successfully urged a ‘time conscience clause’ on the Liberal Government’s Education Department, which stated that parents of every child in Elementary schools be informed of the fixed hours appointed for religious instruction, so that they could withdraw their children. A further request was made and granted, for the Jewish children, as well as children of every other religious denomination, to be exempted from attending Elementary school on Saturday, which was of course the Jewish Sabbath.<sup>82</sup>

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<sup>81</sup> At the time of writing, the right of the withdrawal of pupils of any religion from denominational instruction which differs from their own, is effected in British state schools today in the form of ‘determinations’ which are monitored by SACRE [Standing Advisory Council on Religious Education]. Every Local Authority (LA) is required by law to have a SACRE. Its origins go back to the Education Act of 1944, but the Education Reform Act 1988 and the Education Act 1996 strengthened its place in an LA. The responsibilities of SACRE, on which I currently sit as the Jewish representative for the borough of Camden, are:

- ▼ Advising the Local Authority in matters concerning the teaching of Religious Education and Collective Acts of Worship. It also has a monitoring role in this subject.
- ▼ Deciding on applications for determinations of cases in which requirements for Christian collective worship is not to apply
- ▼ Can require the Local Authority to review its Agreed Syllabus.
- ▼ Is required to publish an Annual Report of its work

<sup>82</sup> These requests were not merely informal agreements. They were incorporated in the amendments moved to Forster’s Bill, which preceded the Education Act, in the House of Commons by Sir John Simon, with whom the Jewish Board of Deputies worked in harmony on these issues. The quintessentially Lockean ideal of the toleration of religious diversity, and the reciprocal respect of the denominational institution for national education law, is expressed in the wish to develop as a centre of both religious and secular excellence. This relationship continues today between government offices and the MOJ faith schools network in England.

*The development of a Jewish sub-system within the state school system*

Finestein, (2002 pp. 65-66), draws attention to an extraordinary phenomenon that arose almost by default in the Board Schools, and provided an unexpected solution to a possible, but not ideal, source of Jewish education. Special facilities for the provision of Jewish education were instituted by the London School Board in schools with a majority of Jewish pupils. This involved Jewish instruction for Jewish pupils by teachers on the staff, on the school premises during school hours or thereafter. In addition, the London School Board appointed Jewish head teachers and Jewish teachers to some of its schools in Jewish districts. Several Jewish managers were appointed to Board schools, and there were notable Jewish members of the London School Board itself.

However dissatisfaction with the Jewish-ness of some Board schools arose in some quarters, and, as Finestein (2002, pp. 66-67) argues, it became grounds for the intolerance of the unrestricted entry of alien [i.e. Jewish] immigrants. He observes that Sir William Evans Gordon, noted restrictionist and local Conservative MP, wrote in *The Alien Invasion* (1903, pp. 33-37), that in the Christian Street Board School in Whitechapel, only 15 out of 927 pupils were Christians. He opined that, because the children in the foreign quarters of the East End were far more numerous than would be the case if the inhabitants were English, a greater number of schools had to be built, involving the extensive destruction of houses and property and the further displacement of the [local] population. I argue here, as in previous chapters, that anti-immigrant rhetoric of this nature reflects the power and control relationships between immigrants and the host population, and has fuelled the discourse of intolerance with which we are not un-familiar in twenty-first century England.

*Shifting attitudes within the Anglo-Jewish community to formal Jewish schooling*

Alongside this external political current was an **internal** one from within the Jewish community itself, [with which mirror dynamic we are becoming familiar as a leitmotif in this thesis]. Finestein (2002, p.63), notes that there was a stream of middle-class Jewish opinion which did not believe that Board schools were the answer to Jewish education. This view, on the basis of religious toleration, led to the idea of creating separate faith schools, and Jewish parents were encouraged to have no scruples in sending their children to Jewish schools.

Despite this development, striking indifference in the Jewish community still prevailed, and the majority of Jewish children continued to be sent to the Board schools and English Public schools began to exert their allure. Thus the notion of anglicization became an issue of sharper focus within Anglo-Jewish community in terms of varying degrees of commitment to religious education *per se*, and concerning different opinions in regard to the kind of religious education Jewish children should have.

Whilst some parents opted for no Jewish education whatever for their children, others chose traditional forms of **supplementary** Jewish education via the *Heder* system, initially run by the Jewish **ultra**-Orthodox community for its own children. This system was largely reviled by the Anglo-Jewish establishment, because, with untrained teachers, and in under-funded premises, it was considered a barrier to anglicization. However it continued to thrive, paradoxically providing the model on which the contemporary modern Orthodox Jewish *Heder* system is based, albeit with greatly improved physical facilities, curricula and enhanced teacher training.

Currently, the *Heder* network, which, like the MOJ faith schools, is under the denominational aegis of the United Synagogue<sup>83</sup>, offers supplementary Jewish education to all Jewish children up to age 13 whether or not they attend Jewish schools, and alongside, offers adult and family education programmes. Often, though not always, the *Heder* experience, together with sound teaching and charismatic leadership and the opportunity to join a synagogue community, has enhanced the Jewish identity, knowledge and observance of parents and children who may have considered themselves disaffected or unaffiliated. In some cases, the whole package has been a catalyst in the choice of a full-time Jewish education for children, in others it has been a salve for having to think further about any Jewish education at all. Of course it must be said that there are many English Jews who consider formal Jewish institutions and practices of any kind irrelevant to their lives, and have chosen to remain entirely outside them.

*The significance for denominational schools of the 1944 Education Act*

The next significant landmark for Jewish education was the 1944 Education Act [full text to be found [Online]. Available at <http://www.legislation.gov.uk/ukpga/Geo6/7-8/31/introduction/enacted> (Accessed 16/04/2013), which aimed at providing universal secondary education. This was in part a response to leaders from **all** denominations for whom the basis of good citizenship was a common theme.

In this regard, Finestein (2002, p. 77), draws attention to the writing of the President of Corpus Christi College Oxford, Sir Richard Livingstone who, in his *Education for a World Adrift* (1943, pp. x-xi), highlighted in relation to educational reform, issues of equal opportunity, and the calibre of human beings education should produce, both of

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<sup>83</sup> The United Synagogue is the modern Orthodox denominational body under whose aegis most modern Orthodox synagogues, schools and *Hadarim* [plural for *Heder*] in England fall.

which themes emerge [although from a different viewpoint], as key elements of this thesis. Livingstone, whose principles resonate with my argument in Chapters 6 and 7 concerning the importance of the vivid connection between belief, values and lived practice in the integrated life of a religious Jew as a tolerant and contributing citizen in liberal democratic society, wrote that knowledge is important but still more so is the power to use it. He considered that most important of all was what a man **believes**, what he thinks good and bad, and whether he has **clear values** and standards that he is prepared **to live by**.

The 1944 Education Act formally aimed to **enhance the influence of religion** on all schoolchildren. Subject to the by then traditional and continuing conscience clauses, and crystallising the principle that had been initiated by the 1870 Education Act, children in both secondary and primary schools who were withdrawn from attendance at religious instruction classes, were allowed their own denominational instruction on the school premises, and in school hours, by teachers appointed and paid for by the denomination. Parents of Jewish children in primary schools were entitled to have them withdrawn for this instruction, to nearby alternative accommodation if available.

In offering state support for voluntary full-time day schools under denominational auspices in accordance with parental wishes, the spirit, approval and provision of the 1944 Education Act had the effect of reducing the critics' case against Jewish day school education. It became more attractive to parents, and offered the Jewish community real support in extending its denominational school system. It was now important for these schools to secure adequate **funding from the Jewish community**, and to develop as centres of religious and secular excellence in order to qualify for

**government funds** and become voluntary aided. This formed a real foundation for the development of the MOJ faith school.

### *The National Curriculum 1988*

To qualify for voluntary aided status, faith schools, in addition to following their specific religious education curriculum, had, like all other maintained schools, to follow the National Curriculum framework. This set out core and foundation subjects, programmes of study and assessment procedures, and aimed to ensure that teaching and learning was carried out in a balanced and accountable way. Many Jewish faith schools successfully rose to the challenge of achieving voluntary status at both primary and secondary level, and have become centres of both secular and religious excellence well up in the national league tables.<sup>84</sup>

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<sup>84</sup> To highlight the relationship between the aims of the National Curriculum in regard to spiritual, moral, social and citizenship education and the Jewish Studies curriculum, and also to show that the MOJ school is involved in exactly the same secular requirements as all other maintained schools in England and Wales, of both faith and no faith, I include brief details below of the current requirements of the National Curriculum at both primary and secondary level.

#### **PRIMARY CURRICULUM**

For these and further details of both the primary and secondary curricula see *The Evolution of the National Curriculum: from Butler to Balls* [Online]. Available at: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmchilsch/344/34405.htm> [Accessed 5/12/2012].

27. At both Key Stage 1 [Year groups 1-2, pupils aged 5-7] and Key Stage 2 [Year groups 3-6, pupils aged 7-11], the primary curriculum continues to be structured around the subjects as specified in 1988:

- The 'core subjects' of English, mathematics and science.
- The 'foundation subjects' of art and design, design and technology, geography, history, ICT, music and physical education.

**28. Primary schools must also teach religious education, the syllabus for which is determined, [as I have indicated above], with the participation of SACRE's at local authority level. They are encouraged, but not required, to cover appropriate personal, social and health education [PSHE] and citizenship topics.**

#### **SECONDARY CURRICULUM**

34. **The new secondary curriculum is distinctive in being underpinned by a set of statutory aims. The aims state that the secondary curriculum should enable young people to become:**

- **Successful learners who enjoy learning, make progress and achieve.**



*The effect on formal Jewish education of the government Green Paper (2001): Building on Success*

In February 2001,<sup>85</sup> the government released a Green Paper entitled *Building on Success* [Online]. Available at: [http://dera.ioe.ac.uk/9964/1/Schools-building\\_on\\_success.pdf](http://dera.ioe.ac.uk/9964/1/Schools-building_on_success.pdf) [Accessed 16/04/2013]. In a drive to modernize secondary schooling in particular through a more tailored approach to education, it specifically welcomed the development of faith based schools. Though contested from that date onward,<sup>86</sup> *Building on Success* was a proposal by the government to reduce the amount of capital funding costs to faith, voluntary and other community groups, for the construction of new school buildings.<sup>87</sup>

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- **Confident individuals who are able to live safe, healthy and fulfilling lives.**
  - **Responsible citizens who make a positive contribution to society.**

[For each heading there are around 10 statements, including, for example, on learning how to learn, having secure values and beliefs and sustaining and improving the environment].

35. The subjects included in the secondary curriculum remain broadly the same as those in the primary curriculum. At Key Stage 3 [Year groups 7-9, pupils aged 11-14], pupils also study citizenship and modern foreign languages. At Key Stage 4 [Year groups 10-11, pupils aged 14-16], pupils study English, mathematics, science, citizenship, ICT and physical education. Alongside this they must be able to take at least one subject from each of the four entitlement areas of arts subjects, design and technology, humanities and modern foreign languages. **In addition, at Key Stages 3 and 4 schools must teach religious education, sex and relationship education,** [see Levin, 1994 *Towards Developing a Sexuality and Personal Relationships Curriculum in a Jewish Orthodox Secondary School* – M. A. Dissertation: Institute of Education London University]; **drugs education and careers education. At Key Stage 4 they must also provide work-related learning.**

36. At Key Stage 4 pupils sit GCSE or equivalent examinations.

<sup>85</sup> Ironically, on 9/11 of the very same year, the terrorist attack on New York came like the crash of a huge tidal wave. One of the many unfolding results of this cataclysmic event the world over, was that faith schools were singled out as a source of division and conflict.

<sup>86</sup> For selected examples of current government legislation and critical responses of the Association of Teachers and Lecturers [ATL] Education Union in regard to the contested issue of faith schools, see Appendix 2]

<sup>87</sup> Although Michael Gove's current drive, initiated in the Schools White Paper (DfE, 2010) [Online]. Available at: <https://www.education.gov.uk/publications/standard/publicationdetail/page1/CM%207980> [Accessed 16/04/2013], to create a 'new school system' through setting up state funded Academies and Free schools, mirrors to an extent the ideas in *Building on Success*, I argue it is flawed in regard to Free Schools. This is because, whilst the whole point of these schools is that they have the government's blessing to be set up by independent groups, such as faith groups, parent groups, teachers, communities, charities or businesses, whose ethos and goals they reflect, admissions requirements **which apply to faith schools in general have been applied to faith Free schools.** I argue that this policy is underpinned by intolerance to faith schools, because whilst giving with one hand it takes away with the other.

I disagree with the ATL view that considers the existence of denominational schools within the state sector to be anomalous in England, which it describes as a country statistically progressively secular yet diverse [see Appendix 2, and the Association of Teachers and Lecturers [ATL] (2007). *Educational Union TL Position Statement in Regard to Faith Schools*. Online at: <http://www.accordcoalition.org.uk/wp-content/uploads/2008/08/microsoft-word-positionstatement-wordversion.pdf> [Accessed 25/4/2010]. I argue that the MOJ faith school, which, as a microcosm of toleration, includes a diversity of the individuals within its own community, and educates its pupils to become tolerant citizens in wider society, provides an example, as following chapters show, of a faith institution with the capacity to make a valuable contribution to liberal democratic society as a community of tolerant practice.

I argue in this and the following two chapters that as a faith school paradigm, and perhaps as a transferrable model, the MOJ faith school **is able** [contrary to the ATL's

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Faith Free schools have to publish oversubscription criteria which allow for 50 per cent of places to be allocated to children without reference to faith if the school is oversubscribed. This is to ensure that such schools not only add additional faith places, but also add places for the broader local community. If a school is **under** subscribed every child who has applied must be admitted - whether a faith or non-faith applicant. It is not acceptable to keep places empty simply in order to control the intake. (*Free Schools FAQ*. [Online]. Available at: <http://www.education.gov.uk/schools/leadership/typesofschools/freeschools/freeschoolsfaqs/a0075643/free-schools-faqs-school-admissions#faq8> [Accessed 12/12/2012].

Recalling my argument in Chapter 3, concerning the coercive nature of government admissions policies in regard to faith schools, it is interesting to note that the Jewish Leadership Council Commission on Jewish Schools (2008). *The future of Jewish schools*. [Online]. Available at: <http://www.bod.org.uk/content/CoJSReport.pdf> [Accessed 12/12/2012] expresses similar concerns. [See Appendix 3] This is in regard both to **admissions quotas** (p. 52, section 5.2-5.4) discussed above; and **admissions codes** or policies p.53. 5.5-5.7). The two aspects of the admissions code which have caused most concern within Jewish schools are a) are the oversupply criteria; and b) issues arising from the information requested on the admissions forms. I highlight these in some detail in Appendix 3, because, at the time of writing, they are current and on-going, and as this chapter shows, they have significant bearing on the nature of the MOJ faith school as a context of religious toleration.

stated position – see Appendix 2], to provide a good starting point for pupils to be educated as citizens in wider society, which in the ATL's own words, and as this thesis shows, is beginning to acknowledge the dangers of segregation, the importance of community cohesion, and of shared understandings and values.

### **The Modern Orthodox Jewish faith school as a microcosm of religious pluralism**

Jewish religious pluralism in twenty-first century England is marked by sharp **ideological**<sup>88</sup> differences **within** ultra and modern Orthodox Judaism and critical **theological** differences **between** Orthodox, Reform, Liberal-Progressive and *Masorti* [Conservative]<sup>89</sup> groups. The aim of this chapter is not to give a detailed analysis of these distinctions *per se*, but to illustrate ways in which they might impact upon the MOJ faith school as a context of religious toleration<sup>90</sup> given the fact that pupils from all or any of these groups might be present in the MOJ faith school.

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<sup>88</sup>I use the word **ideology** in relation to groups within Jewish Orthodoxy, because although they share a **theology**, the way in which they implement it will often differ greatly. This can be seen in the previous chapter in relation to the *Hatham Sofer* and Samson Raphael Hirsch for example. However between Orthodoxy and Reform, Liberal-Progressive and *Masorti*, there are distinct ideological **and** theological differences.

<sup>89</sup>The term **conservative** was meant to signify that Jews should attempt **to conserve** Jewish tradition, rather than reform or abandon it; and does not imply the movement's adherents are conservative in the political sense. Because of this potential for confusion, a number of Conservative Rabbis have proposed renaming the movement, and outside of North America, in many countries including Israel and the UK, it is today known as *Masorti* Judaism.

<sup>90</sup>One such illustration was the landmark case brought in the High Court against the JFS school in July 2008 [see High Court judgment. [Online]. Available at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2008/1535.ht...> [Accessed 7/07/2009] by a Jewish father known in the court as 'E', on behalf of his son 'M', because the school refused to accept the child on the basis that his mother, who was originally Roman Catholic, had undergone a Progressive conversion which was not recognized according to Orthodox *halakhah*. It must be understood that as an Orthodox institution its plural clientele had, up until this date, subscribed to the school's unequivocal base line for admission, which was that a child had to be Jewish according to Orthodox *halakhah* which considers **Jewish status to be conferred by matrilineal descent** - being **born to a Jewish mother**, or by being **born to a mother converted by a Jewish Orthodox Beth Din**. Reform and Liberal-Progressive Judaism however subscribe to **both** matrilineal **and** patrilineal descent, and consider a person to be a Jew if they were born **either to a Jewish mother or to a Jewish father**. In addition to issues of descent, **criteria for conversion** are widely divergent across the plural streams of Judaism. Thus with reference to the JFS case, the Progressive conversion of 'M's' mother was not valid according to Orthodox *halakhah* and thus she was not considered by the school to be Jewish. The highly complex ramifications of this case are outside the immediate focus of this thesis. However I raise it here to draw attention to the crucial need for further research concerning religious toleration in regard to the Supreme Court judgment in December 2009 [see Supreme Court ruling. [Online]. Available at: [www.supremecourt.gov.uk](http://www.supremecourt.gov.uk) [Accessed 21/02//2010] in which JFS lost the case, following which it had to accept pupils whose Jewish *halakhik*

*Key theological elements of the Reform, Liberal-Progressive and Masorti movements in England*

Before providing the bare bones of these theological differences, it is important to note that they are not as clear cut as they seem. This is because, within each theology, there is a **religious spectrum** which causes apparent fluidity and blurring of boundaries. For example those on the right of any one spectrum might seem closer to modern Orthodox Jewish practice in many ways than those in the middle. Whilst those on the left of any one spectrum might, if anything, see themselves as cultural Jews, not as religious ones at all. These differences are significant as shown by the wide-ranging scope of parental attitudes reflected in interviews recorded further on in the chapter, and create an enormous challenge for the MOJ faith school, both as a microcosm of Jewish pluralism, and as a context of religious toleration.

*Reform Judaism*

The Reform Synagogues of Great Britain [RSGB] was established in 1840. Its historical roots lay in Moses Mendelssohn's response to Enlightenment and Emancipation, and were developed within German Jewry by those Jews who sought to further **reform**

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status was entirely at odds with its own. In the words of Lord Roger's **dissenting** Supreme Court judgement [see Dissenting Supreme Court judgment. [Online]. Available at: <http://www.thejc.com/uk-news/25046/jfs-lords-say-discrimination-law-flawed> [Accessed 21/02/2010].

The decision of the majority means that there can in the future be no Jewish faith schools which give preference to children because they are Jewish according to Jewish religious law and belief. [Online]. Available at: <http://www.thejc.com/uk-news/25046/jfs-lords-say-discrimination-law-flawed> [Accessed 21/02/2010].

Jewish belief and practice. In light of continuing modern scholarship<sup>91</sup> they denied Divine authorship of the *Torah*, concluding that the *mitsvoth*<sup>92</sup> set out in the *Torah* were no longer binding on Jews as according to Reform theology, they had not been given by God to Moses. Thus the traditional body of Orthodox Jewish *halakhah* was no longer taken to be normative. The Reform view does however consider the high ethical standards and principles of justice in the *Torah* to be binding on a human level<sup>93</sup> on the

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<sup>91</sup> In regard to Reform, Liberal-Progressive and *Masorti* Judaism I understand the term **modern biblical scholarship** to mean the not entirely un-contentious application of, for example, archaeological, historical, philosophical and literary interpretations to Biblical texts. Reminiscent of both the Lutheran Reformation and the Enlightenment project under Mendelssohn, modern biblical scholarship commands the use of science, archaeology, history, and philology amongst other disciplines, to investigate and reveal new understandings of the bible. Alan Richardson (1963) explains this development succinctly

During the century and a half in which modern methods of study have been applied to the task of biblical research the achievement of scholarship has been positive and immense. Inscriptions and documents contemporaneous with the biblical writings have been discovered, ancient languages can now be read whose existence was unknown or barely suspected by scholars a hundred years ago. It is today possible to compare biblical religious and social ideas and practices with those of other ancient peoples who lived alongside Israel and who influenced and were influenced by the development of Jewish and Christian thought and worship..... At the same time the development of the critical, literary and historical study of the biblical books themselves has brought about a complete revision of traditional notions about their relation to one another. .... One thing has happened as a result of the rise of modern biblical research in the nineteenth century, and it affects every school of biblical interpretation in the western world today: it is no longer possible to ignore the discoveries of the scientific investigators, the archaeologists, philologists and workers in the sphere of the history of religion. (Richardson, (1963) [Online]. Available at: [http://histories.cambridge.org/extract?id=chol9780521042543\\_CHOL9780521042543A009](http://histories.cambridge.org/extract?id=chol9780521042543_CHOL9780521042543A009) [Accessed 20/4/2010].

Recalling Mendelssohn's efforts to free the Hebrew bible from Christological interpretation, see the article entitled *Modern Biblical Scholarship, Philosophy of Religion and Traditional Christianity* by Professor Eleanor Stump [Online]. Available at: <http://www.leaderu.com/truth/1truth20.html> (Accessed 20/4/2010) who writes

Operating in conjunction with the related disciplines of archaeology, classical languages, and near-Eastern studies, this approach has made significant contributions to our understanding of the historical context in which the biblical texts were composed..... To many outsiders what has been at least equally noteworthy about this approach is the havoc it has wreaked on traditional Christian and Jewish beliefs. In their effort to discover and present what is historically authentic in the Bible, the practitioners of this approach have in effect rewritten the Bible. They have cut the Old and New Testaments into a variety of snippets; some they have discarded entirely as not historically authentic, and others they have reassembled in new ways to form what these scholars consider the truly original historical documents or traditions. (Stump, E. [Online]. Available at: <http://www.leaderu.com/truth/1truth20.html> [Accessed 20/4/2010].

<sup>92</sup> What for Orthodoxy are core commandments for example: to observe the Sabbath, to circumcise a male child, to adhere to the kosher dietary laws etc.

<sup>93</sup> It is interesting to note over the last two centuries that the Reform movement has developed a considerable body of *halakhah* of its own; and a Reform tradition has developed which has been

basis of their basic truth, and the appeal to one's higher nature. For example in day to day practice the Reform view advocates that

The individual's personal autonomy overrides traditional Jewish law and custom. People are encouraged to navigate their own way through a multiplicity of choices, offered through textual study and discussion, and there is an extremely positive attitude toward modern secular culture. In contrast to Orthodox Judaism, Reform Judaism advocates what it considers to be a 'non-fundamentalist' method of understanding the 13 Principles of Jewish Faith,<sup>94</sup> coupled with the belief that no Jew need accept all, or any particular one of these principles. (Reform Judaism [Online]. Available at: [http://www.fact-index.com/r/re/reform\\_judaism.html](http://www.fact-index.com/r/re/reform_judaism.html) [Accessed 3/3/2010])

### *Liberal and Progressive Judaism*

The Union of Liberal and Progressive Synagogues was founded in London in 1902 by Lily Montagu and Claude Montefiore. Its historical roots arose in early nineteenth century Germany, as an attempt to reconcile the basic principles of Judaism with the Enlightenment values of rational thought and scientific evidence.

As Jews emerged into Western society, Liberal Judaism affirmed the desirable compatibility of the practice of Judaism and a Jew's participation in modern society. Liberal Judaism's main departure from traditional Judaism concerns revelation. Liberal Judaism believes that the Hebrew Scriptures including the *Torah* are **a human attempt** to understand the Divine Will rather than an expression of the Divine Will itself; and uses Scripture as the starting point for Jewish decision making, aware of the fallibility of scripture, and of the value of

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expressed in an expanding *halakhah*. The Reform movement has its own *Beth Din* as do the Orthodox, Liberal-Progressive and *Masorti* movements.

<sup>94</sup>Maimonides *Thirteen Principles of Faith*, mentioned in the previous chapter, are important to note here, because in contrast to the Reform view, Orthodox Judaism holds them to be obligatory and a central pillar of Jewish belief.

knowledge outside of Scripture. Online at:  
[http://www.liberaljudaism.org/lj\\_whatliberaljudaism.htm](http://www.liberaljudaism.org/lj_whatliberaljudaism.htm) (accessed 3/3/2010)

### *The Masorti Movement*

The *Masorti* movement was founded in Britain in 1964 by Dr. Louis Jacobs, and has its roots in the school of thought known as Positive-Historical Judaism, developed in 1850s Germany as a reaction to the more liberal religious positions taken by Reform Judaism. I argue that the differences between *Masorti* and Modern Orthodox Judaism are far more subtle and nuanced in regard to the balance between the Divine and human element than those of Reform and Liberal, and hence, ‘squeeze in’ as it were, between them.

Clearly in line with Jewish religious philosophers from Moses Mendelssohn onward, Jacobs sought to reconcile, and clearly contextualize, the concepts of Judaism with the prevalent thought and society of the modern world. In his seminal book *We Have Reason to Believe* (2004), which aroused serious controversy within the Jewish Orthodox world of which he unequivocally counted himself a member, Jacobs set out the *Masorti* view as follows:

A true Jewish Apologetic eschewing obscurantism, religious schizophrenia, and intellectual dishonesty, will be based on the conviction that all truth, ‘the seals of the Holy One, blessed is He’, is one, and that a synthesis is possible between the permanent values and truth of tradition and the best thought of the day. (Jacobs, 2004, p.9)

On Jacobs's view the critical difference between *Masorti* and traditional, or what he terms 'fundamentalist' Jewish Orthodoxy, centers around the principle that whilst *Masorti* Judaism holds that the laws of the *Torah* and *Talmud* are of divine **origin**, it recognizes as integral the **human element** within them. Rejecting the traditional Orthodox notion of the Oral Law Jacobs (2004 p.99), asserts that whilst Judaism stands or falls on the belief in revelation, there is no 'official' interpretation of the exact manner in which God spoke to man. Thus in his textual analysis of the *Torah*, in contrast to the traditional Orthodox view, Jacobs invokes modern scientific biblical criticism, defined above, and **documentary hypothesis**, which argues that *Torah* derives from multiple sources and can be treated as a series of historical documents. Rather than having been given by God to Moses at Mount Sinai together with the Oral Law as Orthodox rabbinical traditions have it, Jacobs's view is that the *Torah* was given and evolved over an extended historical period.

Jacobs eschews the traditional tendency to simply gloss over what he describes as the inconveniences of the thoughts of the modern critics – a view which as can be imagined from what has gone before in the previous chapter, rankled with many in the Orthodox camp. He defends his position by avowing (2004, p.64) that there is nothing to deter the faithful Jew from accepting the principle of textual criticism, nor (p.68) to preclude the possibility of a **synthesis** between the old knowledge and the new knowledge. On Jacobs's view (p.50) *Torah* is both creative in the lives of Jews, and is, in turn, created by the Jews.



Consonant with the ATL requirement for faith schools, which cautions against the homogenisation of groups through a faith identity that fails to recognise the diversity within [see Appendix 2 under the heading ‘**Equalities**’], but with a different nuance I argue, [because the ATL means **different faiths** rather than **difference within one faith**], that the diverse composite described above of the Orthodox, not-yet-Orthodox or the never-to-be-Orthodox pupil and parent body of which the MOJ faith school is comprised, [vividly shown in the parent interviews below], certainly shows the school to acknowledge diversity. This brings crucial and interesting factors to the fore, amongst which is, that if a key defining feature of the school is that it is a microcosm of Jewish pluralism, and as such, a context of religious toleration, then it must find effective ways in which to respond to the challenging task of engaging with religious views within it, which compete with its institutional theology and ideology.<sup>95</sup>

I argue that by using its internal pluralism to best advantage, the MOJ faith school, as an Orthodox Jewish institution, and as a transferable faith school model, might blaze a new trail in contributing to ideas concerning toleration and citizenship in twenty-first century liberal democratic England. Chapters 6 and 7 offer detailed and innovative ways in which this might be achieved, through developing creative new ideas around the topic of religious toleration from **within the Jewish Studies curriculum**, and then without losing their essence, by **extending Judaic concepts outward**, to show how they might contribute to and enhance ideas concerning religious toleration in pluralist society. To date, no such curriculum has been developed in MOJ faith schools at either primary or secondary level.

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<sup>95</sup> Which, [consonant with **both** ATL meanings of diversity], might include the views of non-Jewish pupils, or pupils of no faith, whose entry into the school might be required by current government admissions quotas and admissions codes.

*The wide-ranging scope of parental attitude and school choice reflected in parent interviews recorded in the JPR report*

The JPR report (2001, Chapter 9: pp.1-7), the findings of which remain strikingly relevant, reflects the complexity of issues in regard to pluralism and to the breadth of outlook discussed above, in a series of in-depth, qualitative parental interviews. These interviews are instructive in gaining an understanding of the many different reasons that influence the choices Jewish parents make in regard to their children's schooling.

Four central themes emerged: academic standards, ethos, geographical location and other added values. There was no simple hierarchy of parental wants and requirements. Parent requirements differed, depending on factors such as religious observance, whether their child had particular special needs [SEN], or geographical distance from a preferred school. The report states that the possibility of an ideal option for parents was often mitigated by a range of factors, including local school provision, availability of places, issues of *halakhik* Jewish status and school fees.

Interestingly, the JPR research revealed that a number of parents admitted that their decisions were made primarily on the advice of their friendship circles, and by word of mouth particularly at primary level. Several interviewees spoke of prevailing fashions in terms of which schools were considered best.

Most parents interviewed said that in choosing a Jewish school, academic excellence within both the Judaic and the National curriculum was very important. A parent of an MOJ secondary school child said:

We chose this school because it has a good standard and because it's a Jewish school, but we wouldn't have sent him to a Jewish school if the exam results weren't good enough. (JPR report, 2001, Chapter 9, p.2)

An important factor for parents of children in state aided Jewish schools was that since the introduction of league tables and OFSTED reports, there had been publicity about high academic standards. Thus parents were able to compare performance data for different schools.

Alongside academic achievement the principal selling point for schools was their institutional ethos. Overall, three aspects of ethos emerged from the interviews as being of particular importance to parents: social and cultural factors, religious factors and issues of isolationism/multiculturalism.

Parents described the MOJ faith school as encouraging a strong sense of identity, the sense of being part of a community, providing continuity with home, as an environment in which the school calendar is geared to a Jewish way of life and thinking, and as a place in which a lifelong network of friends and contacts would be created.

One couple spoke of how the Jewish education of their children fed back into their own, largely secular lives:

The good thing about our school is that it incorporates Jewish education for the children at a very early age, which helps us as parents when they're growing up.... They keep us in line. For me, I find they remind me of my upbringing.... It gives them the real building blocks of Judaism, and it incorporates it into their everyday schooling. (JPR report, 2001, Chapter 9, p.3)

Alongside these social and cultural factors, a number of parents said the religious component of the school ethos attracted them. The JPR report says that unsurprisingly, such interviewees tended to be more observant, and wanted their children to be fully equipped religiously, and to socialize principally with other religious Jewish children:

It was important that...my children would feel comfortable in many Jewish contexts, that's what sending your children to a Jewish school does – so that they'll always be able to *daven* [traditional Yiddish word for pray], they'll always be able to follow a service so that however far they stray, if they choose to stray, they've got the foundation. (JPR report, 2001, Chapter 9, p.3)

Other parents felt that:

In the Orthodox world, the study of texts is the currency, to be able to pick up a text and study it [is important]. (JPR report, 2001, Chapter 9, p.4)

An interesting example of ideological dissonance within the school population, was reflected by a parent who described how she had originally sent her son to a MOJ faith school, but moved him to a **more** religious school, because she found it extremely awkward when it came to socializing with the other Jewish children in his class:

I didn't want my child to feel different at parties and at homes where the kids didn't eat *kosher* [keep the Jewish dietary laws]. (JPR report, 2001, Chapter 9, p.4)

While a number of parents spoke positively about the attractions of formal Jewish education, others raised concerns that their children might become too insular and isolated from the 'real world' if they did not mix with those from other religious and cultural backgrounds. The JPR report gives these three contrasting responses amongst others:

Two parents, whose eldest child had attended a Jewish primary school but was now at a non-Jewish secondary, believed that:

The world in which we're living isn't strictly Jewish and it's not good to have them blinkered. They need to be a bit streetwise and a bit worldly. (JPR report, 2001, Chapter 9, p.4)

Other parents had **no** fears about isolation from the wider world

It's one of the reasons why we sent them to Jewish schools! Maybe we **are** isolationist, but we are not isolated from the wider world; they read newspapers.... We are actually **choosing** to put barriers round our children; we have deeply held beliefs we are promoting. (JPR report, 2001, Chapter 9, p.4)

A third parent spoke of how she had attended a non-Jewish primary school as a child, and had felt isolated and different. Only when she became a pupil at a Jewish secondary school did she feel happier. When she had her own children, she determined that they should not feel as isolated as she had, so had sent them to Jewish schools. In this way, the educational background of parents did seem to be an important influencing factor in how schools were chosen.

A common theme in many interviews was the negative experience of parents who had themselves been through the part-time *Heder* system when they were young, and wanted their children to receive a better Jewish education.

To get an idea of the extent to which, and the manner in which the MOJ faith school is able to accommodate these diverse beliefs and values, and in line with current government admissions quotas and codes/policy might accommodate the possibility of

pupils of other faiths or no faith entering the school, it is necessary to focus in detail upon the school as a context of religious toleration.

### **The Modern Orthodox Jewish faith school as a context of religious toleration**

We shall see below that the broad terms in which the MOJ faith school in England frames its prospectus, takes into account that the parental and indeed the pupil choice of the school may not be based predominantly on its theological or ideological criteria, but rather on its academic, social or cultural ones. Whilst they may differ in the extent to which they are prepared to endorse the bigger picture of what the school stands for, pupils and parents must certainly value it for the reasons they have chosen it. Thus, even if pupils come from backgrounds different to the school's in terms of their religious ideology, or their degree of Jewish commitment and practice, the school expects pupils and their parents to be respectful of the ideology and ethos which provide its *raison d'être*.

In terms of the most basic and minimal requirement of religious toleration, the MOJ school is justified in the hope and expectation that pupils and their parents will demonstrate positive support by, for example, not undermining or disrupting its values base through flagrantly disobeying its rules, not bad mouthing or ridiculing the school's religious principles even if they have difficulty relating to them, or in social and other more public contexts outside the school, refraining from flouting the values of the school to peers and others. This expectation would apply equally to non-Jewish pupils, and to pupils of no faith who might enter the school, who might have difficulty in regard to accepting all the school's aims, and as discussed later, might not be able to relate to some of them at all. Thus toleration as forbearance is important to **all** parties involved, and the school as tolerator on the one hand, and pupils and parents as

tolerators on the other, are required, in their mutual support of one another, to accommodate one another's differences.

In the best case scenario, I argue that this balance is maintained because at the very least, toleration seems prudent to all parties, and to most seems good and even positively desirable. However, in the worst case scenario, where differences are unable to be resolved and tolerance has broken down, the school sees itself as justified in altering, suppressing or eradicating any offensive behaviour through punishment and/or exclusion. Similarly parents have the right to withdraw their child from the school.

To gain a more complete picture of the school's aims in accommodating the competing values within its pupil and parent body, whilst remaining true to its religious principles, I consider it useful to look at examples of relevant extracts from an MOJ primary school and a secondary school prospectus.<sup>96</sup>

#### *The MOJ faith school prospectus*

Four hallmarks identify MOJ faith school ideals, and underpin both the primary and secondary school prospectus. These are reflected through the curriculum in age appropriate ways. I describe these hallmarks as follows

1. Belief in one God and in the observance of His *Torah*, attesting both to belief in Divine revelation, and to the acceptance of the *Torah* [both written and Oral law] as the religious and ethico-legal centre piece of observant Orthodox Judaism.

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<sup>96</sup> I contend that these prospectuses shape up well in regard to the points made in the Second Cattle Report (2004) [see Appendix 2] concerning faith schools and citizenship education; and to the ATL (2007) desiderata for faith schools [see Appendix 2], concerning community cohesion, attention to internal and external diversity, a broad-based OFSTED inspected curriculum, and active responsibility toward the common good.

2. The principle of *Torah im derekh erez* which embodies Rabbi Samson Raphael Hirsch's central principle of learning and observing Torah laws combined with being prepared for a worldly occupation, civility and knowledge of secular culture and commitment, as a tolerant and exemplary citizens, to wider liberal democratic society.
  
3. The ideal of religious Zionism, which is expressed through developing in the pupil's world view, the concept of the centrality of Israel, their love of Israel, and their connection to it as the Jewish homeland. This goal is achieved in diverse ways, for example: through teaching the Hebrew language, through *Torah* study, prayer and the celebration of Jewish religious, national and cultural notable days. Teaching and learning will include examining the sharply nuanced distinctions between religious, socialist/secular and political Zionism through learning about the often fraught history and the geography of Israel, and the dilemmas of its modern conflicts.<sup>97</sup> The MOJ faith school facilitates and enhances pupil's experience and knowledge of Israel through extended visits by selected year groups, listening to and engaging in discussion with, speakers with diverse views on Israel who are invited to the school, pupil debates around current Israel events, participation in Jewish learning and social welfare projects in Israel through school charitable projects to support needy causes in Israel, and by encouraging commitment to the idea of living in Israel as both observant Jews, and as usefully contributing citizens.

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<sup>97</sup> A detailed discussion in specific regard to Israel is not the topic of this thesis. However it is important to recall in regard to toleration and its limits, that within the MOJ faith school which constitutes a pluralist context, pupils will have conflicting views concerning the often thorny and complex issues to do with the extent to which modern Israel and her neighbours might [or might not] gain from accommodation, rather than from shutting each other out. In addition pupils will be encouraged to discuss and evaluate ways in which diverse strategies for peace might or might not be realistic across the fault lines of diverse enmities, both within the State of Israel and outside it. For an important and balanced contemporary contribution to this debate see Shavit, A. (2014) *My Promised Land: the triumph and tragedy of Israel*.



4. Involvement within the Jewish community, and with wider liberal democratic society, through regularly responding to a wide range of Jewish and non-Jewish communal needs, and to domestic and international emergencies. This response might take the form of collecting money, food and/or clothing for particular causes or individuals.

The first three of these hallmarks are likely to elicit differing and perhaps conflictual religious and political responses from amongst the MOJ faith school's diverse pupil and parent body. Patricia White's (1983, pp. 88 – 95), conception of the school as a **political microcosm** is instructive here, because it capitalises on the school's positive function to provide educational opportunities, of an age appropriate nature, through which to raise pupils' political awareness, foster their acquisition of political attitudes, and encourage their active participation in their education toward becoming tolerant citizens. Whilst she remarks that there is room for debate over precisely what aspects of political education should be the responsibility of the school, White's idea is crucial to the notion of toleration in this thesis, because it highlights the fact that the MOJ faith school is **not only a religious but also a political context**.

By saying that...education is set within a political framework, I mean that the structure of the education itself expresses a certain political stance. The education has the structure it does because this is the way the community<sup>98</sup> thinks it can best realize the values and attitudes to which it is committed. If a child within the system asks why it takes the form it does..... in the particular organization of her school... the answer must come back in political terms..... It is a matter for educational judgment as to when, as part of the child's political

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<sup>98</sup> The political education of MOJ faith school pupils must develop their understanding that their school is the way it is not only because it is a school within the modern orthodox Jewish community, but also because it is a MOJ faith school in liberal democratic contemporary England. This is an important way of developing pupils' understanding of the ideas of toleration presented in this thesis which, at the appropriate time and place in the Jewish studies curriculum, might involve pupils in evaluating for example the strengths and shortcomings of admission arrangements as discussed in the thesis.

education, one makes explicit the political framework of the education she is experiencing. (White, 1983, p. 88)

On White's view, I argue that as a political context, the ideals of the MOJ faith school must remain clear and consistent with its ethos. In terms of religious toleration, the school must decide how and where to draw the line in accommodating the competing voices within it. The examples provided below of a) the *Wolfson Hillel Primary School* and b) the *JFS Secondary School* illustrate ways in which MOJ primary and secondary schools all of which comprise the diverse pupil/parent mix described above, currently incorporate these issues within their prospectuses and curricula. Taking into account the promotional nature of school prospectuses it is understood that they provide only a snapshot of a school's aims and aspirations. It should not be uncritically assumed that they describe the sum total of actual practice in the school.

A. *Wolfson Hillel Primary School - 154 Chase Road, Southgate, London N14 4LG*

Wolfson Hillel Primary School is a co-educational voluntary-aided school based in Southgate, London. Established in 1992 the school draws pupils from many surrounding areas including Barnet, Woodside Park, Muswell Hill, Finchley and Borehamwood. [It] caters for a total of 478 pupils, with 60 children in Reception. Wolfson Hillel is committed to the practice of Orthodox Judaism. The school follows the National Curriculum. Children learn to become confident and independent with the skills and knowledge they will need to take their place in the ever-changing modern world. Coupled with this is the Jewish Studies curriculum underpinned by a deep love of Judaism, community and Israel. [Online] Available at: <http://www.findajewishschool.co.uk/jewish-primary-schools/wolfson-hillel-primary-school.php> [Accessed 19/12/2012].

The Prospectus 2012/13 [Online]. Available at:

<http://webfronter.com/enfield/WolfsonHillel/> [Accessed 19/12/2012] states:

### *School Vision and Ethos*

- Wolfson Hillel Jewish Primary School values every child in a caring Jewish environment.
- By working in partnership with parents, we engage children on an exciting learning journey to develop their spiritual, moral, intellectual, creative, social, emotional and physical potential.
- We aim to equip children with the skills to become confident in their Jewish identity, able to take their place in the wider community.

### *Curriculum*

- The school seeks, through good quality teaching, to ensure that all pupils make good progress in their learning in both the secular and Jewish Studies curricula.
- The founding principles of the school underpin the organisation of the school. [These aim] to help pupils develop their 'Jewish identity' by fostering opportunities for them to engage in Jewish learning, traditions and culture. At the same time there is a clear focus on raising standards and progress for all pupils in the secular curriculum so there is great emphasis on the core skills of reading, writing and mathematics. This starts in the Early Years Unit with a priority on communication, language and literacy skills as well as personal, social and emotional education.

### *Jewish Studies [LK]<sup>99</sup> curriculum<sup>100</sup>*

The school's Jewish Studies curriculum seeks to transmit Jewish values, knowledge and skills, thus ensuring that graduates of the school are well equipped and motivated to continue their studies and their Jewish way of life. This is achieved through the study of five modules, namely:

- Hebrew language
- Jewish way of life
- The Jewish year
- *Tefillah* [prayer]

<sup>99</sup> LK stands for the words *Limmudei Kodesh* which in Hebrew means - Jewish Studies.

<sup>100</sup> Where links are natural and meaningful, the school endeavours to integrate National Curriculum and LK curricula within the context of a whole school teaching ethos See [Online] Available at: <http://webfronter.com/enfield/WolfsonHillel/menu/mnu1.shtml> [Accessed 23/12/2012].

- *Torah*

*Aims of the Jewish Studies curriculum:*

- To develop in the children knowledge, skills and attitudes to enable them to function as committed Jews in everyday life as part of the Jewish community.
- To instil a moral and spiritual dimension, enabling the children to perform good deeds and live honest and upright lives.
- To encourage children to be Jewishly active, and to be proud of their Jewish heritage.
- To ensure progression and continuity in the LK curriculum throughout all the stages of development.
- To ensure that children from all backgrounds<sup>101</sup> can benefit from teaching which is sensitive to their needs, and which is offered in a non-judgmental way [without compromising *Torah* values].
- To develop a love and appreciation of *Eretz Yisrael* [Israel].

*B. JFS Secondary School - The Mall, Kenton Middlesex HA3 9TE*

The school serves 2,100 students aged 11 – 18. Students come from across London and Hertfordshire and represent an extremely broad spectrum of the Jewish community.

The prospectus states (Online at: <http://www.jfs.brent.sch.uk/> accessed 23/12/2012)

**School vision and ethos**

As a leading Jewish Secondary School in the UK the school is committed to the development of:

- Students who achieve academic excellence.
- Students with a strong sense of identity with Judaism and Israel.
- Students who are thoughtful, tolerant, responsible and caring.

*Curriculum*

Offering a full gamut of National curriculum subjects<sup>102</sup> the prospectus states:

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<sup>101</sup> Clearly this refers to the pluralist clientele within the MOJ faith school, including non-religious Jewish pupils; pupils of no faith and those of other faiths.

<sup>102</sup> See [Online]. Available at: <http://www.jfs.brent.sch.uk/what-we-teach/curriculum> [Accessed 23/12/2012] for the details of all subjects offered at GCSE and A level; and the general prospectus [Online] Available at: <http://www.jfs.brent.sch.uk/> [Accessed 23/12/2012] for details of the broad range of extra-curricular activities and individualised additional needs tracks JFS offers.

Our curriculum is broad and varied and offers our students the opportunity to study a diverse range of subjects. We pride ourselves in the quality of our teachers and in the variety of specialisms offered [Online]. Available at: <http://www.jfs.brent.sch.uk/what-we-teach/curriculum> [Accessed 23/12/2012].

### *The Jewish Dimension*

The outlook and practice of the School is Orthodox. We are proud that our School:

- Enthuses students with a passion for their Jewish heritage
- Provides opportunity for Jewish growth in an open environment
- Caters for all aspects of the Jewish community

We aim to ensure that Jewish values permeate our School. Our students come to us from diverse backgrounds and with varying knowledge and levels of practice. This diversity is one of our strengths, and the opportunity to have such a broad spectrum of young people developing Jewish values together is one that we cherish.

We have developed many cross curricular links with a variety of departments including Geography, English, Science, Music and Art resulting in a sense of Jewish and Israeli culture and pride throughout the formal curriculum. [Online]. Available at: <http://www.jfs.brent.sch.uk/what-we-teach/the-jewish-dimension#/general-jewish-studies> [Accessed 23/12/2012].

### *The Jewish Studies curriculum*

Formal Jewish Studies engages all students in lively debate on moral issues and dilemmas in today's world. The Jewish texts are used as a springboard to inspire and challenge. Students are encouraged to enhance their connection to their Jewish heritage and to develop a personal relationship with Judaism. Through this progression students develop an appreciation and thirst for increased knowledge and have the opportunity to expand this through our Informal Jewish Education provision. [Online]. Available at: <http://www.jfs.brent.sch.uk/what-we-teach/the-jewish-dimension#/general-jewish-studies> [Accessed 23/12/2012].

An interesting dynamic of the Jewish Studies curriculum is the Jewish Studies Text Programme which reconceptualises the idea of opting out of Jewish Studies. This programme gives students with an interest in textual study, and those who wish for a deeper practical knowledge of the skills synonymous with Jewish learning the

opportunity to **opt in** to a programme of in depth study of Jewish texts. There is an opt out element only in so far as students wishing to embark on the Text Programme, opt out of the general Jewish Studies lessons for an advanced tailor made curriculum, which develops their skills and enhances their knowledge of *Mishnah*, *Gemarah* and many of the commentaries.<sup>103</sup>

### *Social Action*

The prospectus states:

JFS Students regularly raise funds for a wide range of causes, Jewish and non-Jewish, domestic and based in Israel. The charity committee directs the charitable activities of the whole school, is entirely students led and wonderfully vibrant and successful. Our Year 9 Hand in Hand programme provides students with an education in the needs of people less fortunate than themselves and teaches the skills to help young and old. We see this as the start of our students' lives as active volunteers within the community. [Online]. Available at: <http://www.jfs.brent.sch.uk/what-we-teach/the-jewish-dimension#/spirituality-and-social-action> [Accessed 23/12/2012].

In regard to the above aims, it is clear that the distinctive focus of the MOJ faith school is, in regard to its mixed Jewish pupils, to strive for excellence in Jewish education. If pupils of other faiths and of none are required by government admissions criteria to enter it, it is not a primary task, beyond the broad formal and informal education opportunities illustrated in the examples above, for the school to create ways in which to make all aspects of the Jewish Studies curriculum more accessible to these pupils. Indeed I question this as a desirable educational goal both for the school and for these pupils, for whom some of the specific Judaic aims are plainly irrelevant. It could be

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<sup>103</sup>The prospectus notes that students in the Text programme have the further opportunity to join the Enhanced Jewish Studies (EJS) Text Programme. These students take part in extra learning twice a week after school and double the number of hours of Jewish Education. Students in EJS are automatically placed in one of two tutor groups (one accelerated, one mixed ability) and have the majority of lessons together throughout Year 7 and beyond.

argued that creating alternative prayer services and other tracks for children of other faiths within the MOJ faith school, might present an opportunity for toleration, however this discussion is not a focus of this thesis. Rather the point at issue is the ability of the MOJ faith school to teach according to its Jewish ethos and ideology, despite the constraints imposed by its mixed faith pupil body.

Thus I contend that the government's admissions policy which aims to alter the school's religious composition is misconceived as a liberal goal, which flies in the face of any real religious toleration. This is because it misses the point that in contributing to wider society, the central task of the MOJ faith school is to give its Jewish pupils a thorough grounding in their historical, religious and cultural origins, in order to provide them with an essential resource upon which they might draw in understanding ways in which they might **uniquely contribute** to liberal democratic society.

In the chapters that follow, I show through new thinking in regard to the Jewish Studies curriculum, that in guiding, facilitating, or possibly in limiting pupils' association with the public sphere, the MOJ faith school will need to work from the **inside outward** in encouraging pupils first to critically evaluate what they have learned in the family, the Jewish community, the classroom and in the school as a whole.

## **Conclusion**

I argue that the primary and distinctive task of the MOJ faith school, which exists in a deeply secularized climate, is to educate and inspire its Jewish pupil and parent body to become knowledgeable about their faith, and to recognise that their moral framework is grounded in meaningful religious values. This goal will be achieved through designing and delivering vibrant and relevant Jewish Studies curricula, through creating opportunities for innovative informal, adult and family education, and through the

school continuing to maintain itself as a centre of religious and secular excellence. By promoting toleration between the school as a modern Orthodox Jewish institution and its diverse pupil and parent population, and by fostering toleration amongst that population itself, such an education will enable individuals to translate these values into meaningful, positive practical action, in terms of their own personal lives, and in contributing to the life of the Jewish community.

In regard to liberal democratic society, I argue that the MOJ faith school must, through the unique opportunity for curriculum innovation afforded by capitalizing on its own inner diversity, demonstrate how the distinctive religious values it offers might be of benefit beyond itself. In suggesting how it might achieve this goal, I move away from the discussion in the current chapter concerning what the MOJ faith school already **actually does**, to suggest hitherto unexplored ways concerning what the school **might do** to forge critical new pathways in education for toleration.



## **Chapter 6: Toleration in the Modern Orthodox Jewish Faith School Jewish Studies Curriculum**

### **Introduction**

As discussed in the previous chapter, the MOJ faith school Jewish Studies curriculum reflects the religious beliefs, traditions and values of the school. In this chapter I develop the argument that as a faith curriculum, it provides a crucial and largely untapped resource for innovation in regard to education for toleration. Thus in order to create opportunities for pupils to develop their understanding of what might or might not count as tolerant personal conduct and why, the chapter explores innovative ways in which familiar topics already present within the Jewish Studies curriculum might be reconceived in terms of education for toleration, and suggests new topics for possible inclusion.

An important related Jewish Studies curriculum aim discussed in the next chapter is to foster pupils' broader conception of ways in which they might contribute, as tolerant citizens, to the wider liberal democratic context beyond the school.

### *The limits of toleration in regard to innovation in the Jewish Studies curriculum*

My argument in Chapter 4 regarding the impact of Enlightenment and Emancipation on conceptions of Jewish religious toleration shows how tradition constantly goes through a process of reformulation in response to different contexts, because both the shrinking and expanding of tradition takes place in relation to an existential situation. It is an active, interactive and often very fragile process. Thus, I argue that in regard to developing the topic of toleration in the Jewish Studies curriculum, the substantive difference between the **reformulation** of something and **losing sight of its essence**

through **disruptive innovation** is, and always will be, a moot educational point, requiring sensitive, incisive judgment.

In this regard, it is important to highlight two crucial issues concerning curriculum innovation in the MOJ faith school. The first is in regard to the **development of the Jewish Studies curriculum *per se***, the second relates to the **methodology** involved in eliciting the MOJ faith school pupil's critical evaluation of their beliefs. The first aspect raises questions concerning the extent to which it is possible to extend doctrinal concepts before they lose their Judaic essence. The second raises issues in regard to teacher training and the educative methodology involved in encouraging MOJ faith school pupils to probe their own beliefs and values, in order to get a fuller grasp of their meaning and implication. What exactly is at stake here?

Critical reflection might lead either to the reinforcement of beliefs and values, or to their modification. In some cases it may lead to their **rejection**. To what extent is the MOJ faith school able to tolerate this risk in light of its stated ideology and ethos? It might not be prepared to tolerate any risk at all, and might consider it educationally unsound to do so. Serious, responsible, professional discussion and deliberation of a religious, philosophical, educational and practical nature is needed amongst the school's policy makers, practitioners and parents in regard to the core content, development, implementation and delivery of such a curriculum. They will need to decide just how far the MOJ faith school Jewish Studies curriculum might go down this route, the educational wisdom of doing so, and the limits of innovation. I suggest that this thesis might make a significant contribution to these discussions.

However innovative a curriculum is, it will only be as good as its effective delivery in the classroom. In the final chapter I highlight the need for further research into opportunities for MOJ faith school curriculum developers and teachers to receive on-going training and mentoring both to develop their understanding of the theological, philosophical and political ideas undergirding the conceptions of toleration and citizenship offered in this thesis, and to devise effective curriculum frameworks by means of which to teach these conceptions.<sup>104</sup>

I argue that the task of educating for toleration from within the faith curriculum, and setting limits in regard to the reformulation of Judaic concepts so as not to lose sight of their essence, **constitute important aspects of toleration for the MOJ faith school and its practitioners in creating innovative conceptual structures, content and methods of implementation within the Jewish Studies curriculum.**<sup>105</sup> How might this be achieved?

### **Conceptual frameworks for toleration within the Jewish Studies curriculum of the Modern Orthodox Jewish Faith School**

In attempting to construct plausible conceptual frameworks for toleration and its limits within the Jewish Studies curriculum, I examine in detail selected examples of Biblical and other sacred Judaic texts some of which may, and others which may not yet, appear in the current MOJ faith school Jewish Studies curriculum.

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<sup>104</sup> See White, P. (1983, pp.114-117), in regard to political education and teacher training; Picker, L.S. (2012, pp. 313-315) in regard to the on-going need for professional learning; and Efron, E.; Winter, J.S., and Bressman, S. (2012, pp. 331-361]), in regard to an innovative programme of collaboration toward a more effective mentoring model for teachers.

<sup>105</sup> See Levin, L. (1994), in regard to curriculum design and innovation in the Jewish Studies curriculum.

In pursuing this task, the chapter explores elements of tolerance and intolerance in the context of the covenantal relationship **between human beings and God**. Not without overlap, these elements are examined further in the next chapter in the context of the **interpersonal covenantal relationship between human beings**. In both contexts the conceptions of toleration brought to light echo the ethical, legal and political perspectives which run through the thesis as a whole.

In bringing new notions of toleration to light within the MOJ faith school Jewish Studies curriculum, I offer the following conceptual frameworks, the principles of which can be applied, in age appropriate ways, to both primary and secondary school pupils:<sup>106</sup>

1. *Toleration where intolerance is the last resort*

Examples of **thin or minimal notions of toleration** within this framework where **intolerance is the last resort** are interesting, in that in all of them toleration is expressed as forbearance, or as passive acceptance. I argue that these might be judicious forms of toleration depending on their context, and it is critical to be aware of the subtle ways in which they change from positive to negative forms of toleration as the following examples indicate. They include<sup>107</sup> a) to turn a blind eye – which might, whilst wishing to maintain the *status quo*, sometimes indicate apathy in pretending that nothing un-toward is happening; b) to live and let live which might, in some circumstances, border on indifference; c) to put up with something of which one disapproves, not because what is tolerated is valued or respected, so much as resignedly

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<sup>106</sup> Although I make some suggestions concerning age appropriateness in regard to the innovative curriculum topics suggested in this chapter, I am aware that schools might vary in their view regarding the stage at which to introduce them. Hence the detailed articulation of age appropriate differentiation is not intended to be the focus of this chapter.

<sup>107</sup> As discussed in detail in Chapter 2.

gone along with in order to maintain a peaceful life; and might stem from moral lassitude.

In contrast, a **thick or maximal notion of toleration** within this framework is, as I have argued throughout this thesis, to actively acknowledge and give serious consideration to the values or beliefs of an individual, or to a culture or way of life different from one's own, even though one may not agree with it. In this sense toleration stems from knowing what it means to value and respect **one's own** beliefs, culture and way of life, and indeed to have them respected by others. Thus a tolerant attitude and conduct towards others flows from the **principle of valuing and respecting *per se***.<sup>108</sup> I suggest that, according to mystical Judaic interpretation, this maximal notion of toleration flows from the primary character attribute of kindness - *hesed*.<sup>109</sup>

## 2. *Intolerance where toleration is the last resort*

I argue in relation to the framework I am suggesting here that the principle of intolerance where tolerance is the last resort, **[to the extent that tolerance is merely notional and may in fact not actively be implemented]**, which sharply contrasts with

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<sup>108</sup> Clearly, as this and other chapters show, beliefs and values **harmful** to society such as murder, stealing, cheating, rape and the proliferation of knife gangs etc. do not fall under the rubric of things to be respected, and fall into the category of actions toward which we are intolerant. However there might be other issues which are not so clear cut, for example the decriminalisation of certain recreational drugs, the legalisation of prostitution, limits on internet use for children etc. which require evaluation and reflection in order to reach a decision about why and where to draw the line, even though they might invoke our disapproval.

<sup>109</sup> For an elucidation of the concepts of *hesed* and *gevurah* see Schneur Zalman of Liadi, Rabbi (1997, Chapter 3). According to his explanation there are seven main character attributes each of which has seven distinct calibrations or facets formed by linking it with another main attribute. For example within the attribute of *hesed* there is the facet of a) *hesed she b'hesed* [kindness rooted in kindness - pure, absolute kindness] a practical example of which would be taking in two orphaned children to live with you despite your own sizeable family, for no recompense whatever but only out of concern for their well-being, and b) *gevurah she b'hesed* [strictness rooted in kindness] – for example a parent shouting at or smacking a small child who is putting her fingers into the holes of a live electric plug socket. The full gamut of these gradations, the fascinating discussion of which lies beyond this thesis, provides substantive lenses through which to critically reflect upon the nature and balance of toleration and intolerance in the interface with extreme permissiveness on the one hand, and exploitation, cruelty and evil on the other.

the examples of thin or minimal notions of toleration in the framework above], might be applied for example to the irrational crack-down by a state on the civil liberty of its citizens, upon Jews in Nazi Germany and on black people in apartheid South Africa for example.<sup>110</sup> In this instance, I argue that according to mystical Judaic interpretation, intolerance would be described as flowing from the **primary** character attribute of strictness or severity – *gevurah*.

I argue further on in the chapter that a **thick or maximal notion of intolerance** is elicited in regard to absolute intolerance to **the transformation of any human being from subject to object**, by torture or by slavery for example. In this sense I argue that intolerance, albeit in a complex way, emerges in this case as **a positive attribute**, and flows from the attribute of *hesed* – rooted in justice and caring for the oppressed.

I argue that both frameworks show through the notion of nuanced gradation, that neither tolerance nor intolerance is a virtue *per se*, but derives its character from the moral context. In regard to toleration and its limits, I contend that both frameworks, through offering examples which elicit contrasting dispositions, and by creating a very different emotional ethos, challenge both conceptually and existentially, our perception of self, and call for critical reflection on the nature of our feelings and actions towards others.

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<sup>110</sup> See *Iran Police in Fashion Crackdown*. [Online]. Available at: [http://news.bbc.co.uk/2/hi/middle\\_east/3887311.stm](http://news.bbc.co.uk/2/hi/middle_east/3887311.stm) [Accessed 4/12/05] for an account of: Iran's morality police who since the 1979 Islamic revolution under Ayatollah Khomeini have combed the city to enforce Iran's laws which state that all young women must wear the veil and a long coat to conceal their faces and figures on pain of confiscation of items of clothing deemed too revealing, being banned from public places if not properly veiled, paying fines or even facing imprisonment.

In order to link the two conceptual frameworks discussed above to innovation in the Jewish Studies curriculum of the MOJ faith school, I offer examples below, of the **covenantal relationship with God** as a model for toleration.

### **The covenantal relationship with God as an innovative curricular model for toleration**

David Hartman (1985, pp. 21-41)<sup>111</sup> understands the covenantal relationship with God to be expressed through three contrasting paradigms, which contain different dimensions of the relationship between the human being and God. They are

1. Human adequacy and dignity in the partnership with God
2. Human terror and submission to the all demanding might of God.
3. Awe and covenantal self-confidence.

As they manifest in the relationship between God and humankind, they create a complex mix of complementary and antithetical elements. In analysing them, I will draw on the frameworks for toleration described above, and introduce fresh topics to demonstrate new conceptions of toleration.

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<sup>111</sup> The discussion in previous chapters concerning the extent to which Jewish Orthodoxy can be 'modern' and still be considered Orthodoxy is important to recall here in regard to the challenge, within curriculum innovation, of retaining the Judaic essence of a topic. As the curriculum examples suggested above show, the word 'modern' also relates to the deliberate attempt to integrate modern consciousness within Jewish tradition in regard to at least some of the values embedded in contemporary liberal society, such as personal autonomy, democracy, and pluralism, for example; and the extent to which they might be accommodated by *halakhik* Judaism. David Hartmann (1985) is an example of one such thinker, upon whose philosophical idea of covenantal anthropology, the notion that our relationship with God encourages human initiative predicated on human adequacy, underpins the examples explored in the current chapter.

*First paradigm: Human adequacy and dignity in the partnership with God*

- The destruction of Sodom

The example of Abraham negotiating with God over the destruction of the city of Sodom is well known to pupils in the MOJ faith school through their study of *Torah*, although not recast in terms of conceptions of toleration. The Biblical verses [Book of Genesis/*Sefer Bereishit* 1999, 18:17-19] which immediately precede the description of Sodom, describe God's decision to tell Abraham about His intention to destroy Sodom. God decides this because in stark contrast to the values of Sodom, Abraham's noble character traits of educating his family and household to follow God's ways, and living a charitable and just life, are cherished by God, and He sees Abraham as the person through whom all the nations of the world will be blessed.

The Book of Genesis/*Sefer Bereishit* 1999, 18:20 - 21 states

18:20: So God said, 'Because the outcry of Sodom ... has become great, and because their sin is very grave; 21: I will descend and see: If they acted in accordance with this outcry which came to me – then destruction! And if not, I will know.' (Book of Genesis/*Sefer Bereishit* 1999, 18:20 – 21)

In examining the reasons for God's descent to Sodom, various Biblical commentators suggest nuanced interpretations of God's tolerance and its limits, and provide an important preface to understanding the precise weightiness of Abraham's plea not to destroy Sodom.

Shimon, Z. Rabbi (2014) in his article *The Cry of Sodom* [Online]. Available at: <http://vbm-torah.org/archive/intparsha71/04-71vayera.htm> [Accessed 20/05/2014], points out (pp.1-2), that Rashi [Rabbi Shlomo ben Yitzchak, 1040-1105], and the RaSHbaM [Rabbi Shmuel Ben Meir, 1080-1160] suggest that God descended to determine **whether**



**the extent of Sodom's sin matched the 'cry'**<sup>112</sup> which came to Him. If so he would destroy the city, and if not, He would know. Rashi and Onkelos [c.35–120 AD, a famous convert to Judaism to whom the official Aramaic translation of the *Torah* is attributed], explain that the purpose of God's descent was to establish whether or not the people of Sodom had repented from their evil ways.<sup>113</sup> They make the point that God, being all-merciful, withholds punishment and seeks the repentance and return [*teshuvah*] of

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<sup>112</sup> In order for pupils to understand the degree of both Abraham's and God's tolerance and compassion in reaching a minimum number of righteous people in whose merit Sodom would be saved from destruction, and as rich source material in regard to tolerance and intolerance concerning the way in which to treat strangers and the poor [see Sacks, J. 2002, pp. 58-60], it is important to discuss with them the kind of depraved mistreatment and cruelty of Sodom both to strangers, and to their own poor. Rabbi Shimon observes [Online]. Available at: <http://vbm-torah.org/archive/intparsha71/04-71vayera.htm> [Accessed 20/05/2014], that Sodom benefited from rich and fertile land (p.3), and was a very affluent community. However they detested charity and were unwilling to share any of their wealth with outsiders. Because of their selfishness and greed, they forbade the entry of strangers into their land, and were utterly intolerant and viciously aggressive toward them if they entered. The Book of Genesis/*Sefer Bereishit* 1999, Chapter 19 recounts the visit of the two messengers/angels whom God had sent to Sodom to assess the extent evil in the city, and Lot's hosting of them. Upon hearing that Lot was harbouring guests, verses 3-4 describe how all the men in the whole city of Sodom surrounded Lot's house, threatened to break his door down, and viciously demanded that he hand over his guests to sodomite gang rape. Sexual violence, aggression and material greed had become the very law of the city. Rabbi Shimon points out that perversely the law itself was a source of evil in Sodom, and cruelty was an internal attribute governing the peoples' relations with one another. Cruelty towards strangers inevitably leads to cruelty towards neighbours, and thus Sodom had no mercy for its own poor, and acted viciously towards its own inhabitants.

Rabbi Shimon [Online]. Available at: <http://vbm-torah.org/archive/intparsha71/04-71vayera.htm> [Accessed 20/05/2014], cites (p.3) *Pirkei De-Rabbi Eliezer* Chapter 25, which tells the story of Lot's daughter Pelotit, to explain that it was her cry that ascended from Sodom to God and invoked His anger and intolerance.

[*Pirkei De-Rabbi Eliezer* is ascribed to R. Eliezer ben Hyrcanus, and composed in Italy shortly after 833 CE. It is a *Midrashic* commentary on Genesis, part of Exodus, and a few sentences of Numbers. *Midrash* refers to the body of homiletic stories used by the Rabbis as a method of interpreting biblical stories, which goes beyond simple distillation of religious, legal, or moral teachings. It fills in gaps left in the biblical narrative regarding events and personalities that are only hinted at].

They issued a proclamation in Sodom, saying: Everyone who strengthens the hand of the poor and the needy with a loaf of bread shall be burnt by fire! Pelotit the daughter of Lot was wedded to one of the magnates of Sodom. She saw a certain very poor man in the street of the city and her soul was grieved on his account. What did she do? Every day when she went out to draw water she put in her pitcher all kinds of provisions from her house and she sustained that poor man. The men of Sodom said: How does this poor man live? When they ascertained the facts they brought her forth to be burnt by fire. She said: Sovereign of all worlds! Support my right and my cause at the hands of the men of Sodom! And HER CRY ascended before the throne of glory. In that hour the Holy One blessed be He said: "I will go down and see whether they have done altogether according to her cry which is come unto Me" - and if the men of Sodom have done according to the cry of that young woman, I will turn her foundation upwards, and the surface downward (*Pirkei De-Rabbi Eliezer*, Chapter 25 in Shimon, Z. Rabbi, *The Cry of Sodom* p. 3.[Online]. Available at: <http://vbm-torah.org/archive/intparsha71/04-71vayera.htm> [Accessed 20/05/2014].

<sup>113</sup> See the section further on in this chapter entitled: *Teshuvah* [repentance and return].

wrongdoers. I argue that this is a critical feature of conditional tolerance because as we see below in the account of Abraham's negotiation with God, had there been ten righteous people in Sodom God would have saved it [see Book of Genesis/*Sefer Bereishit* 1999, 18:32). However, according to the harm principle as a mediating principle of toleration [as discussed in Chapter 2], a city in which sin was universal amongst its dwellers was doomed by God to destruction.

As it is presented here the encounter between Abraham and God is designed to bring out the crucial importance of negotiation as a tool of toleration, even when faced with a very powerful adversary. Informed by God of His intention to destroy the city of Sodom because of the evil cause of the 'cry' which emanated from it, Abraham [for whom an additional crucial motive to save the city was the protection of his nephew Lot who lived there, and to whom he wanted to give the best chance of being saved from destruction alongside the wicked], brings critical reflection, moral responsibility and compassion into play as God's covenantal partner<sup>114</sup>

Perhaps there are fifty righteous people in the midst of the city; **would You even obliterate and not spare the place** for the sake of the fifty righteous people that are within it? **It would be sacrilege to You to do such a thing**, to bring death upon righteous with wicked; .....**Shall the Judge of all the earth not do justice?** And God said 'If I find in Sodom fifty righteous people in the midst of the city, then I would spare the entire place on their account..... Let my Lord be not annoyed and I will speak: 'Perhaps thirty would be found there?' and He said, 'I will not act if I find there thirty..... 'I will speak but this once: Perhaps ten

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<sup>114</sup> Further Judaic examples of arguing with God which might be discussed with pupils in relation to conceptions of toleration, but which cannot be set out in detail here, include for example: 1. Moses's several attempts to refuse God's mission to approach Pharaoh to ask him to free the Jewish people (Book of Exodus/*Sefer Shemot* 1999, 3:11,13; 4:1,10,13; 5:22-23). 2. Moses's argument with God not to destroy the Jewish people after the sin of the Golden Calf (Book of Exodus/*Sefer Shemot* 1999, 32:9-14). 3. The diverse arguments of the prophet Jeremiah, who remonstrated with God as a just Judge to punish his enemies (Jeremiah 2011, 11:18-23); and who indicted God as being complicit with his enemies (12:1; 15:18 and 20:7).

would be found there?’ and He said, ‘I will not destroy on account of the ten.’ (Book of Genesis/*Sefer Bereishit*, 1999, 18: 23-32)

Bearing in mind the sharp difference between what God is prepared to tolerate in regard to commuting the destruction of Sodom, and what Abraham thinks should be tolerated, we immediately see how McKinnon’s (2006) structures of toleration discussed in Chapter 2 might work in this negotiation. For Abraham, the issue of giving Lot, amongst other possible righteous people in Sodom, the maximum chance of being saved is of great importance and not in the least trivial to him, and he enters into strong negotiation with God. God however is disposed to act to suppress the wicked people of Sodom, which is who He opposes, and clearly has the power to do so. Abraham, as a socially concerned, passionate person aware of his responsibility to others, which, as explained above, are all traits for which God cherishes him, challenges God by appealing to the universal moral principles of justice and compassion, and draws God’s attention to Himself as a just and compassionate Being.

The result of this negotiation is that both God, who wished to destroy the wicked, and Abraham who wished to protect the good, had to adjust the limits of their tolerance in regard to the extent that each was prepared to accept the imperfect result of a proportion of wicked being saved alongside the good. **Abraham as tolerator** considered God’s modified intolerance in the face of such evil as just and commuted toleration right. He was able to accept that if the conscience of the people of Sodom would be moved to *teshuvah* by the ‘cry’ of the oppressed, the city and its people would have been given a second chance. Abraham also understood that if evil had not been utterly pervasive, and there would have been 10 righteous people in Sodom, God would not have destroyed it. Mirroring this, **God as tolerator** knew that Abraham understood the destruction of Sodom in the light of the **commuted nature of the limits**

**of His tolerance, and the expanded limits of His intolerance.** The mutuality of the covenantal agreement is clear here, which, Hartman notes, is expressed through the complex dynamic of **assertion and submission on both sides.**<sup>115</sup>

It is important for the teacher to point out in regard to this negotiation that because of the over-arching and infinite nature of God and the finite and creaturely nature of humankind,<sup>116</sup> the covenantal relationship is entirely asymmetrical and cannot imply the equality of the parties in all respects. In light of this fact, it is very significant for pupils to recognise that on the strength of Abraham's impassioned negotiation, God although an all-powerful adversary does not in the end exercise His power as He originally intended. Thus beginning with the negotiation between Abraham and God, in which, as argued above, both had to modify the limits of their tolerance, teachers might move on to discuss examples more personal to pupils' own lives in which they may have been, or can imagine being, confronted by a powerful adversary, and yet win through.<sup>117</sup>

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<sup>115</sup> In extending the personal relevance of Abraham's **individual** encounter with God, one can see how in the polity, under the **collective** rubric of reasonable pluralism where conditions of freedom of speech pertain, people might arrive at conflicting reasonable evaluative convictions, as indeed God did under the conditions of rational intolerance where He exercised His capacity to change His mind having heard the reasons Abraham presented. On Abraham's part, more than rebelling against God as a partner in the covenantal relationship, he acted both as a listener and negotiator. Thus the balance between assertion and submission in the relationship, and the acceptance of the outcome was effectively achieved.

<sup>116</sup> In contrast to examples later in the chapter to do with human terror and submission to the all demanding might of God, I have taken a deliberately anthropathic/anthropomorphic approach to the Abraham example above which ascribes human passions, feelings or characteristics to a non-human Deity, or describes God for example through human analogy. [I flag here the RaMBaM's violent opposition to literary or anthropomorphic images or descriptions of God: see for example the first part of the *Guide for the Perplexed* Friedlander, M. trans. 1956, Chapters LI-LX pp. 68-89]. However I have used this approach purposefully in order to show how toleration mediated by negotiation, might bring about the **mutual recognition of the separate existence and rights of the parties involved**. In this way the paradigm highlights the innovative idea of human adequacy and dignity before God; and facilitates the discussion of ways in which aspects of this encounter might be relevant to pupil's lives.

<sup>117</sup> It is interesting to compare with pupils, clearly in an age appropriate way, the notion of toleration described in the human adequacy model above, with the **intolerance** manifest in examples of strongly asymmetrical political relations between human beings; for example the South African policy of apartheid. Of course this was in no way based on a covenantal relationship; but the point is that in negotiating the fate of Sodom the principle of toleration went beyond the broad horizon of the political into the realm of individual human worth. God at least respected and affirmed the validity of Abraham's

In inducting teachers and pupils into this discourse of toleration, the example of Abraham negotiating with God demonstrates the critical learning tools involved in negotiation and dialogue, and in standing up for what one believes in. Abraham, in striving to evoke God's tolerance and get the best result, demonstrates that toleration very often concerns the **way in which we speak**. He uses the language of **rational intolerance** to make the point that the world cannot survive if judged according to the attribute of *gevurah*, and to preserve it the attribute of *hesed* is necessary. Passionate about what he believes to be right, he challenges God in strongly **assertive though contained** language, rooted in *gevurah she-be hesed* [which concept is explained in detail earlier in the chapter].

- Chastenings of love [*yisurin shel ahavah*]

The second example under the rubric of human adequacy and dignity in the partnership with God is *yisurin shel ahavah*. This example, more appropriate to MOJ secondary school pupils because of its nuanced conception of toleration, might be less well known or indeed not yet present in the Jewish Studies curriculum. It highlights the critical importance of **dialogue as an instrument of toleration** in creating and enhancing the possibility for compassionate interpersonal relationships through gaining a greater understanding of the other person's point of view.

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identity and the validity of his view. To deny or disregard what was significant to Abraham, would have been a failure on God's part to discern the complex nature of a relationship as a spiritual, intellectual, psychological, emotional, social and political whole; the disastrous results of which, in the socio-political frame, were borne out by the South African example.

The Babylonian *Talmud Berakhot* (1967, p. 5a) shows how three rabbinic teachers Rabbi Jacob ben Idi, Rabbi Aha ben Hanina and Rabbi Yohanan each have different understandings of how to apply the notion of God's chastenings of love.

The first teacher, Rabbi Jacob ben Idi, believes that the highest religious goal is coming to love and understand God through studying *Torah*. If he is prevented from performing that very activity which brings him to an intimate love relationship with God, then he cannot believe that it is God's **love** he is experiencing in his suffering. For the second teacher Rabbi Aha ben Hanina, prayer rather than study is the experience that creates the intimate love relationship with God. If God truly loves him, He will not bring about conditions that would prevent the intimate dialogue of prayer. The third teacher Rabbi Yohanan believes that suffering enables one to achieve greater spiritual heights than either learning *Torah*, or prayer, and God loves those he corrects. Consequently for him, suffering is an expression of God's love, even when it prevents him from engaging in *Torah* study or prayer.

The *Talmud* records these views, but does not decide which the correct understanding of suffering is. Rather, it teaches that people are not obliged to tolerate suffering as a loving gift of God if they do not want such a gift. The important teaching point which emerges here is not an easy one for pupils to accept, because the **suspension of the assumption** that any particular one of these views is correct creates uncertainty, which demonstrates the tension typical of toleration. Thus pupils will be required to engage in a process similar to *Talmudic* argumentation, discussed in detail in Chapter 4, which requires evaluation, rational argumentation and in the end, not necessarily agreement.

From the dialogue below we will see that despite the fact that there is tension between the teacher's own commitment and that of others who have quite different and

distasteful commitments, the teacher **refrains** from acting on his disposition to oppress or interfere with the other person to stop them engaging in practices to which he is in principle opposed.

Rabbi Hiyya ben Abba fell ill and Rabbi Yohanan went in to visit him. He said to him: 'Are your sufferings welcome to you?' He replied: 'Neither they nor their reward.' He said to him: 'Give me your hand.' He gave him his hand, and he raised [cured] him. (*Talmud Berakhot* 1967, p. 5b)

Rabbi Yohanan once fell ill and Rabbi Hanina went in to visit him. He said to him: 'Are your sufferings welcome to you?' He replied: 'neither they nor their reward.' He said to him: 'Give me your hand.' He gave him his hand, and he raised, [cured] him. Why could not Rabbi Yohanan raise himself? They replied: 'The prisoner cannot free himself from jail.' (Babylonian *Talmud Berakhot* 1967 p. 5b)

These examples show pupils how the **process of dialogue** as a tool of toleration between people holding very different views, might open up new possibilities and courses of action.<sup>118</sup> This understanding of toleration not only enables human adequacy and dignity in the partnership with God, similar to the Abrahamic example above, but also facilitates human adequacy and dignity in **the reasoned and compassionate interpersonal relationship between people**.

Critical for pupils to understand in regard to these examples, is that we see sufferers are **listened to** rather than lectured to, and they are not judged in their refusal to accept their suffering as an expression of divine love. The process of question and answer, and of the ability to acknowledge and to validate views other than one's own, creates a new consciousness in the experience of suffering for both the teacher and the student, and reflects the unique spirit of *Torah* argumentation mentioned above. The description of

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<sup>118</sup>As explained in Chapters 4 and the current chapter, it is critical to understand in regard to the sages of the *Talmud* as well as to modern day *halakhists*, that no religious decision is made lightly. We see that the examples below are taken on a case by case basis, and are argued carefully by learned sages of great *Torah* knowledge and religious belief before reaching a conclusion.

**the change** in Rabbi Yohanan [and in the other teachers] is instructive to pupils in relation to living with and understanding suffering, and shows the **critical effect of the dialogic process on levels of tolerance.**

Examination of the dialogue shows the value of honest but controlled expression, compassionate listening and wise judgment, and shows that if when asked ‘are your sufferings welcome to you?’ the sufferer answered ‘neither they nor their reward’, the teacher took the student’s hand and cured him. This indicates clearly to pupils as Hartman (1985, p.198) points out, the complex but very human point that a helping hand may more effectively lead to a deeper relationship with God than could be achieved by unbearable suffering, which might cancel out such a relationship. Thus in Rabbi Yohanan’s case, we see that as a ‘prisoner’ of his initial belief, he could only understand suffering as a sign of God’s corrective love, and was unable, despite his personal experience of suffering, to free or ‘raise’ himself from the prison of his ideas.<sup>119</sup>

By reflecting the moods, emotions, strengths and struggles different individuals go through in making sense of suffering in their relationship with God, I argue the *Talmud* shows that how the notion of ‘chastenings of love’ is used, depends on the ability of the sufferer to cope with interpreting their experience in that light. The examples are important because they demonstrate to pupils that through knowledgeable, deliberative, reflective, creative and participatory thought, speech and action together with others,

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<sup>119</sup> Somewhat in the same vein, the story of Job (Book of Job 2011) provides an interesting addition to the examples above in regard to toleration and suffering. Job, increasingly intolerant of the harsh conventional arguments of his human ‘comforters’ that he has been punished because of his sin, asserts his innocence; and fiercely and directly confronts God, Who in the end, vindicates him. Mirroring the dialogic process discussed in the examples of *yisurin shel ahavah* above, the gruelling process of suffering and argumentation he goes through, both in relation to human beings and God, brings Job to new conceptions of tolerance and justice; and to the recognition of the massive scale of God’s perspective in comparison to narrower purview of human beings.



which is the hallmark of **dialogue as a tool of toleration**, the sufferer and his teachers are brought to a **changed consciousness**, culminating in **new shared meaning and understanding**<sup>120</sup> which shifts the boundaries of toleration.

In a dialogue, each person does not attempt to make common certain ideas or items of information that are already known to him. Rather, it may be said that the two people are making something in common, i. e. creating something new together.... Such communication can lead to the creation of something new only if people are able freely to listen to each other, without prejudice, and without trying to influence each other. Each has to be interested primarily in truth and coherence, so that he is ready to drop his old ideas and intentions, and be ready to go on to something different, when this is called for. (Bohm, 1996, p.3)

These examples add nuance, depth and complexity for both teachers and pupils in thinking about the limits of tolerance, and point up key educational elements of the dialogic process, critical reflection, and the autonomy to choose one's limits. In demanding a dramatic shift in both attitude and expectation, and in calling for pupils to be engaged in a process of intense questioning in regard to what the possible nature of the limits of tolerance might be, both within the theistic covenantal relationship and within the interpersonal human relationship, the thesis breaks completely new ground in Jewish Studies curriculum development.

In further exploring the theistic covenantal relationship as a specific conceptual framework for tolerance, it is crucial to consider the most acute antithesis to the anthropopathic/anthropomorphic examples of argumentation and dialogue discussed earlier in the chapter. This is when, in the face of incomprehensible tragedy, God requires human beings to accept His decree and remain utterly silent. The educational

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<sup>120</sup> As has been discussed in Chapter 3 in regard to the importance of dialogue in fostering the skills of tolerant public debate in children and adults.

goal of providing this sharp contradistinction is to elicit pupils' deep critical reflection in getting to grips with the idea that the sometimes shocking nature of a transcendent God might cause a crisis of faith in the covenantal relationship, and we as human beings, might be called upon to tolerate the intolerable

*Second paradigm: Human terror and submission to the all demanding might of God*

Hartman (1985, pp.45, 46) states that paradigms of terror and submission emerge when the covenantal relationship is threatened by the feeling that in God we encounter a furious and irrational Force whose unpredictability makes it impossible for us to rely on His commitment to us, and which calls into question our whole identity as God's relational partners. Hartman observes that the more acute form of this paradigm is when the experience of God is so overwhelming and incomprehensible that it crushes the covenantal spirit.

This occurs when human beings are forced to submit in terror and resignation before a God Whose ways are unfathomable, Who allows horrible events to occur in which it is impossible for human beings to see any purpose or justice. Such events undermine covenantal mutuality, since they suggest that God reserves the right to act unilaterally in disregard of the spirit of the covenant, wherever it suits Him. (Hartman (1985, pp.41, 42)

To illustrate ways in which the dynamics of toleration and intolerance might work when God, as a destructive force, tests the capacity of the covenantal relationship to its limits, I explore as a possible curricular paradigm, the Biblical example of the death of Nadav and Avihu two sons of Aaron the High Priest who bring a spontaneous gift to God and are devoured by fire in the Book of Leviticus/*Sefer Vayikra* 1999, 10:1-3; 6] <sup>121</sup>

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<sup>121</sup> Further examples to be discussed in this vein in regard to toleration are usefully suggested by Hartman (1985, p.45) and include: 1. The striking down of the people of Beit Shemesh because they had looked in to the Ark of the Lord (1Samuel 6:19); 2. The death of Uzzah, for reaching out toward the Ark of the Lord, to stop the oxen toppling it (2 Samuel 6:19); 3. The account in Rabbinic literature (see Hartman

The sons of Aaron, Nadav and Avihu, each took his fire-pan, they put fire in them and placed incense upon it; and they brought before Hashem<sup>122</sup> an alien fire that He had not commanded them. A fire came forth from before Hashem and consumed them, and they died before Hashem. Moses said to Aaron: of this did Hashem speak, saying: “I will be sanctified through those who are close to Me, and I will be honoured before the entire people”; and Aaron fell silent...Moses said to Aaron and to his sons Elazar and Ithamar, “Do not leave your heads unshorn, and do not rend your garments, that you do not die, and [so that] He [does not] become wrathful with the entire assembly...” (Book of Leviticus/*Sefer Vayikra* 1999, 10:1-3; 6)

This account illustrates Aaron the High Priest’s silence in the face of a punishment which seems intolerably disproportionate to the ‘crime’, and he and his sons are absolutely obedient to the harsh and incomprehensible preclusion of mourning in response to the crushing tragedy of Nadav and Avihu’s death. Accepting without question what God as transcendent and Divine Judge has considered a just punishment, Aaron, deeply enwrapped and remaining within the covenantal relationship with his God, tolerates and accepts the mystery of His response, and takes on the responsibility of effecting atonement as God and Moses decree [see Book of Leviticus/*Sefer Vayikra* 1999, 10:8-15].

To induct pupils into the ultimate form of toleration as restraint required by the counterintuitive model of learning God’s will yet keeping silent at its incomprehensibility, especially in the face of overwhelming tragedy, is an extremely challenging educational goal. The attempt to achieve it requires knowledgeable, wise, skilful and sensitive teaching, undergirded by the philosophical treatment of critical

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pp.38-39; pp. 46-47) of the great learning, and subsequent horrific torture by the Romans, of Rabbi Akiva. I have chosen not to refer to the example of the Holocaust in this section because full treatment of its scope and implications in regard to toleration lie beyond the focus of this particular thesis. However aspects of the discussion above might usefully be linked to the topic of the Holocaust in the formal History curriculum where it is taught, to events in the school calendar to do with Holocaust Memorial Day; and to school visits to Poland, and to Auschwitz and other concentration camps.

<sup>122</sup> Hashem [lit. ‘the Name’] refers to God.

reflection and autonomy within the covenantal relationship as it has been discussed in this thesis.<sup>123</sup>

In regard to education for toleration, the critical educative point is that pupils in the MOJ faith school must be alerted to the fact that we are looking at a very complex phenomenon. We know from our own life experience that there are those who have, unlike Aaron the High Priest in the example above, made the choice to put themselves **outside** the covenantal relationship with God, either because in the face of crisis they have lost faith in Him, or they have never believed in Him. However it is important to educate pupils in becoming tolerant human beings that just as there must be the **right of exit** from a theistic framework, there must be **the right of re-entry** and indeed **new entry**, for example from an atheistic into a theistic framework. In addition there must be the right to **remain** in the theistic covenantal relationship unchanged, or indeed, as has been argued above in regard to the notion of *yisurin shel ahavah*, changed without wishing to exit.

It is important to note that to some Orthodox Jews the notion of shifting the boundaries of toleration in regard to the parameters of the covenantal relationship, to offer the often fraught alternatives of exit and re-entry suggested above would be heretical and totally unacceptable, to others bold, but perhaps admissible. To those committed to the ethos of the MOJ faith school, the frank and delicately balanced discussion of these concepts would seem appropriate, complex without doubt, and requiring great teaching skill. Such discussion is crucial I argue in relation to inducting pupil's nuanced and multi-layered understanding of toleration within religious faith, and the possibility of its bold

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<sup>123</sup> Schools will need to make careful judgments regarding the age appropriate level the paradigms suggested in this chapter might be introduced; which key concept/s to select; and the methodology for doing so. As has been stated at various stages throughout the thesis, appropriate teacher training is crucial.

and dramatically relevant reconceptualization. **These variances in outlook influence the ideological limits to tolerance within Jewish education itself.**

*Third paradigm: Awe and covenantal self-confidence*

- *Teshuvah* [repentance and return]

In thinking about the idea of *teshuvah*<sup>124</sup> in relation to both *Rosh Hashanah* [Jewish New Year] when Jews reaffirm God's Divine Kingship, and in regard to *Yom Kippur* [Day of Atonement] when Jews engage in deeply reflective prayers of atonement and forgiveness, I suggest a subtle and new understanding of toleration.

The concept of *teshuvah* is impoverished if understood solely in terms of *gevurah*, God's strict rejection of a person who has sinned. It is important for pupils to understand that in its fullest sense, the notion of *teshuvah* goes beyond this significant but narrower aspect, to include a redemptive quality of the **individual's return and God's acceptance**. This broader notion of *teshuvah* facilitated by *hesed*, allows space for two crucial aspects of toleration to take place. Firstly, the individual's acknowledgment of her wrongdoing, [which might have become intolerable **to her** either because of her fuller realisation of the nature of the deed or its consequences], is brought about through a deeply self-reflective, and at times perhaps, an almost intolerably agonistic process. Then through profound regret and prayer, she resolves to turn away from it. Secondly, her prayerful resolve to act differently in the future, especially if finding herself in exactly the same position again <sup>125</sup> **commutes God's intolerance of her sin.**

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<sup>124</sup> With which concept Jewish children are familiarised from a very early age.

<sup>125</sup> Personal relevance points for pupils to discuss in relation to the notion of *teshuvah* and toleration, might for example include modifying one's intolerance of another person's views or actions by drawing

The educative point is that through profound regret and sincere resolve to change one's actions, *teshuvah* is designed to bring about a courageous and deep moral shift not only in theory, but more importantly in practice. In the relationship between **human beings and God**, like that of a child and a parent, [which provides a model for the relationship of **human beings towards one another**], it involves the drawing close of each covenantal partner to the other, and enables, through commuted tolerance on all sides, acceptance, return, re-entry, or new entry into the relationship.

### Conclusion

This chapter sets out a ground breaking vision in regard to education for toleration in the Jewish Studies curriculum of the MOJ faith school. In doing so it analyses a discrete strand, not commonly explored in Jewish schooling, of ways in which bold and innovative conceptions of toleration within Judaic paradigms might educate the diverse population within the MOJ faith school in regard to ideas to do with human adequacy and dignity in the relationship with God. For this to be achieved the chapter offers an expanded view of doctrinal issues. Thus although it is entirely possible that the religious notions of human terror and submission to the all demanding might of God, and the notion of awe and covenantal self-confidence, have more particular Judaic relevance, I have wherever possible in the chapter, attempted to offer coherent and morally viable notions of toleration which might suggest important universal human values.<sup>126</sup>

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up new ground rules upon which basis their apology is accepted. Further conceptions of *teshuvah* in regard to toleration might include issues of poor self-esteem caused by not being able to forgive oneself in relation to certain actions because one finds them intolerable; or having gained a bad reputation which one cannot seem to shake off because of the intolerance of others to giving you a second chance. These examples must be distinguished from those of forgiveness which might be entirely unconditional, and are not always predicated upon the effort on the wrongdoer's part to either correct past deeds or resolve to change in the future.

<sup>126</sup> Recalling my argument in the previous chapter in regard to the independent nature of Academies and Free schools, not only in terms of their structure, but also in terms of freedom from the National

In regard to educating pupils to become compassionate listeners and negotiators in a world that must not tolerate the subjugation of any human being through radical evil, this chapter offers significant starting points for the appreciation of innovative conceptions of toleration not only to Jewish faith schools but to schools of other faiths, and to those of no faith. As argued earlier in the thesis in relation to the aims of a discourse of toleration, **all** schools will need to help pupils develop the art of evaluative discourse in order to articulate reflective thinking, and translate it into deliberative action. In addition schools must foster the development of robust human character attributes and dispositions out of which pupils act, and enhance pupil's ability to interact and form relationships with others in both a dialogic and conflictual setting.

Educationally what this involves is the transition from a thin/ minimal to a thick/ maximal notion of toleration, which entails that the elements of self-understanding and critical reflection becoming operative in **all** schools, so that pupils become sensitive listeners to and negotiators with others. If this goal can be achieved, then it seems to me that the ideas reflected in this chapter might well form a sound and fruitful basis for conceptions of toleration **within** schools, and for the establishment of multi-faith school forums, in which to foster pupil dialogue and discussion. Engagement of this kind will prepare pupils for participation in an enhanced quality of tolerant public discourse, and help them in the important task of building communities of tolerant practice as tolerant citizens. The implementation of such a project would enable schools to become amongst the most potent agents for change in twenty-first century liberal democratic England.

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Curriculum to create their own curricula, I agree with Hand (2012), that it is critical for faith schools [Free or otherwise – parenthesis mine], to indicate, as I have begun to do in this chapter, ways in which 'educational and theological considerations might come together in curriculum design' (Hand, p. 551). I develop this idea in the following final chapter of this thesis in regard to aspects of the MOJ faith school Jewish Studies curriculum which might be best suited to contribute to wider society.

I argue that the MOJ faith school might take the first steps in bringing this vision to fruition, through creating from within its Jewish Studies curriculum a distinctive strand in regard to toleration and citizenship, which might in addition forge a critical relational path to schools of other faiths and of none, and to contribute beyond the school context to wider civil society. It is to the development of this idea that I turn in the next chapter.



## **Chapter 7: Towards a Philosophical Framework for the Contribution of the Modern Orthodox Jewish Faith School to Twenty-first Century Liberal Democratic England as a Community of Tolerant Practice**

### **Introduction**

In examining the particular contribution of the MOJ faith school to liberal democratic society as a community of tolerant practice, this chapter explores the role of toleration in the process by which the MOJ faith school pupil might come to view her allegiance as a citizen in twenty-first century liberal democratic England.

A tolerant society is not only created by a political system, but also by the morality and human decency of the individuals who live in it. On this basis I argue in the current chapter that the MOJ faith school is well placed to develop an innovative curriculum for citizenship education **as part of its faith identity**. It is important to state at the beginning of the chapter that the curriculum innovation suggested is relevant to **all** pupils within the school, Jewish pupils, non-Jewish pupils and to those of no faith. This is because its purpose is to induct them into Judaic conceptions of toleration which might, in having wider universal application, be of significant value to them as citizens of liberal democratic society as a community of tolerant practice.

### **Towards a philosophical framework of education for tolerant citizenship in the Modern Orthodox Jewish faith school**

In thinking about how the MOJ faith school might educate and prepare its pupils to enter the public sphere as tolerant citizens, Conroy's (2004) idea of the school as a 'liminal' institution, mentioned in the introduction to this thesis, is important. What Conroy means by the notion of liminal, is that **all** schools are institutions on the border

‘betwixt and between’ the educational context and wider society. Thus to a certain extent, they protect the children and young people within them from the full force of the tussles of the world at large.

Whilst *qua* school, the MOJ faith schools shares in this notion of liminality, I argue that by virtue of its specific ideological frame of reference or heteronomous<sup>127</sup> *nomos*, the MOJ faith school subscribes to an **additional layer of liminality**. This ‘double’ liminality betwixt the school’s heteronomous *nomos* and wider society, presents an extra challenge in educating its pupils to contribute to the liberal democratic context. Choices the school makes in this regard will be influenced by the degree to which it feels able to contribute in terms of its heteronomous *nomos*, and will raise questions concerning which educative aims and expectations might be realistic and desirable in terms of the school’s comprehensive ideological goals.

In regard to this process, which would be new in the context of Jewish education, it is instructive to take into account Spinner-Halev’s (2000, p. 21) argument which defends the choice people make to live illiberal lives, and Raz’s (1988)<sup>128</sup> argument for the harm principle as a mediating principle of toleration. Both these suggest it would be wrong for the state to force the stringent ideal of liberal autonomy<sup>129</sup> on all citizens in all cases, because it might not necessarily be what all members within a liberal democracy need to live what they consider to be good and fulfilling lives. In addition, I contend that Spinner Halev and Raz are concerned to allay the misconception that a life

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<sup>127</sup>The notion of heteronomous citizenship, coined by Lucas Swaine (2010), draws in a nuanced way on Immanuel Kant’s idea [discussed earlier in the thesis in regard to the liberal ideal of autonomy], that any law which flows from an externally compelling *nomos* [for example the Judaic notion of Divine law] must be ‘heteronomous’ – i.e. imposed from the outside, and not autonomous - self-imposed. I show above how the idea of heteronomous citizenship is an important one in regard to the way in which we understand the contribution of the MOJ faith school and its pupils to liberal democratic society as a community of tolerant practice.

<sup>128</sup> See Chapter 2 in the section entitled *Autonomy and the harm principle*.

<sup>129</sup> See my argument for the revision of the stringent notion of liberal autonomy in order to provide a robust basis for toleration, in Chapter 2 in the section entitled **Autonomy as a liberal basis for toleration** and in the sub-sections within it.

of heteronomy is necessarily inferior to an autonomous life, and to highlight the integrity of heteronomous life, which might not lack, as advocates of liberal autonomy might assume it does, crucial elements of the good life.

To this end Swaine (2010, pp.74-75) argues that like her autonomous counterpart, the heteronomous person is able to embrace and identify with her decisions and path in life, enjoy loyalty to her projects and goals, and affirm them as her own. In addition she is able, through serious adversity, to hold fast to her principles and ends, and display a true and unwavering commitment to her beliefs. Later in the chapter I argue in regard to the Jewish Studies curriculum, that the heteronomous person can, in the context of a comprehensive religious education, use the strict *nomos* into which she has been born, or which she has adopted,<sup>130</sup> as an important resource within her tradition to think seriously about various choices with which she might be presented.

In relation to this point it is important to note Brighouse's (2000, p.73) argument, that the perfectionist liberal claim in regard to autonomy is that in order to give them a real opportunity to live well, pupils [as free choosers],<sup>131</sup> must be taught the skills needed to make comparative evaluations between their parents' and others' ways of life. Burt (2003, p.205) remarks that this claim cannot but appear inimical to the comprehensive education offered by a faith school, which calls for children to be protected from what she describes as premature exposure to alternative ways of life

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<sup>130</sup> Those who have adopted the faith may include returnees from within the faith who had given up religious life and then returned to religious Jewish practice; Jews who had never lived a religious life and are moved to do so; and those from outside the Jewish faith who wish to convert to Judaism.

<sup>131</sup> My parenthesis

Too early an invitation to understand one's ends as 'selectable' undermines the possibilities for non-consumerist but still choiceworthy ways of life. (Burt, 2003, p.205)

The critical difference between these two views is that for pupils in a faith school the starting point from which they choose is a thorough grounding in, and then reflection upon, the life which **is theirs**, whilst in the liberal context, the emphasis is on the kind of alternative lives that **could be theirs**. This distinction highlights the seemingly perverse yet crucially important idea argued in Chapter 5, that it is precisely out of their heteronomous *nomos* that the MOJ faith school and its pupils might make the most meaningful, intelligent and unique contribution as tolerant citizens, to liberal democratic society.

*The role of critical reflection in education for autonomy*

In exploring the role of toleration in relation to the process by which the MOJ faith school pupil might come to view her allegiance as a citizen in twenty-first century liberal democratic England, it is important to recall the discussion in Chapter 4, concerning modern Orthodox Judaism as an interpretative tradition. As explained there, this tradition invites the time-honoured strategy of dialogical argument and critical reflection from the position of Jewish commitment, in relation to both Judaic and secular issues.

Lapidus (2011, p. 21) makes the important point which, I contend, applies as much to the previous chapter as to this one, that if we are to stand behind our ideas, then critical evaluation is crucial in invoking the dialectic of commitment as well as encouraging openness to change. Vansieleghem and Kennedy (2011, p.174), highlight Matthew Lipman's conception that knowledge is not static, but the emergent product of a

ceaseless interaction with the environment, and John Dewey's (1933, p. 4), notion of 'experience' as the on-going adaptive human response to a changing environment. In addition the authors note, Dewey uses the word experience not only to explain this interaction, but also to understand thinking as reflection on the consequences of the interaction, and thereby on the possibilities of further experience.

Reflection involves not simply a sequence of ideas, but a consequence – a consecutive ordering in such a way that each determines the next as its proper outcome, while each outcome in turn leans back on, or refers to, its predecessors. (Dewey, 1933, p. 4)

The educational importance of fostering the development of reflexivity within the MOJ faith school pupil is in order for her to recognise, that through the Schonian-like<sup>132</sup> process of action on reflection and reflection on action, she has the capacity to become a **reflective pupil**.<sup>133</sup> I argue that this process of reflexive engagement, which is neither forced nor un-chosen, is the hallmark of **education for autonomy** in the heteronomous MOJ faith school. Lapidus points out that the intention of such critical evaluation is not to be flippant or destructive, rather it is to strive to become knowledgeable, deliberative and constructive. Thus a central task for the MOJ faith school is to educate its pupils to reach a thicker conception of their own arguments through the process of critical reflection and dialogue, and to develop the skills they might require to defend or modify their argument in the face of counter-criticism.<sup>134</sup> In fostering their recognition that

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<sup>132</sup> In his book entitled '*Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions*', Donald Schon (1987) suggests that the capacity to reflect on action, and to act on reflection, engages one in a process of continuous learning; and is one of the defining characteristics of professional practice. This thinking culminated in Schon's legendary notion of the 'reflective practitioner'.

<sup>133</sup> I suggest an addition to this theory in relation to pupils; which is that the development of the capacity in pupils to reflect **in** action [while doing something], and **on** action [after it has been done], gives rise to the very necessary reciprocal notion of the **reflective pupil**.

<sup>134</sup> Rowe (1992 pp. 2-5), broadens in a useful and interesting way the plural contexts with which pupils engage, by suggesting that the educative process involves the exploration of a conscious **personal and interpersonal** journey through six different types of community to which people might belong during the

debate involves both commitment and the openness to change, the MOJ faith school will prepare its pupils to contribute to the sphere of public discourse as tolerant citizens.<sup>135</sup>

### **Effective education for tolerant citizenship in the Jewish Studies curriculum of the Modern Orthodox Jewish faith school**

If, as argued above, there is a unique contribution to be made to the outside world from within the *nomos* of Judaic belief and practice, the innovation of this thesis is to suggest that education for tolerant citizenship is **primarily rooted in the faith curriculum** of the MOJ faith school. Creative curricular links in regard to tolerant citizenship should be established across all subjects, both secular and religious, and as stated earlier in the chapter, all pupils within the MOJ faith school regardless of their faith or belief should be included in this part of the curriculum, the educative aim of which is to enable them to transfer to the context of civic engagement and public discourse the skills, knowledge and understanding gained from the system of Judaic belief, values and practice.

Later in the chapter, through conceptually recasting selected key examples of Jewish values, and offering innovative examples of ways in which they might contribute to wider society, I suggest new ways in which MOJ school pupils might negotiate the fault line between themselves and others, and establish boundaries of toleration within the shared context of the 'we'. Macleod (2010, p.7) points out that there is a significant difference between established ideas of toleration in adult society, and what he terms the

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course of their lives. He enumerates them as the family community; the kinship community; the affiliative community; the school community; the state and the world community.

<sup>135</sup> The wider point to be made here in relation to pupils in **all** schools, is that in standing up for what they believe in, they must recognise that crucial to toleration in the face of conflict is **the dialogic process**. This depends, as argued in Chapter 6 in regard to the example of *yisurin shel ahavah*, on conversation rather than confrontation; and flows from the disposition of toleration where intolerance is the last resort, rather than the other way round.

more provisional nature of conceptions of toleration of the school pupil. However I agree with Bailint (2010 p.132), that whilst education for tolerant citizenship must relate to the skills necessary for adult life, there is no reason to think that these skills cannot be fostered in schools, even if they only become fully realised later on.

White (1983, p.110) remarks that any politically intelligent observer can confirm that primary school children from about age six upward, operate with political concepts and ‘embryonic forms of political argument’. Children even at this early stage, will often have quite passionate views about what counts as fair share, gender equality, how much pocket money they should get, other countries, the government and so on, and are already on the threshold of a political way of thinking. I agree with White that we should capitalise on and advance this capacity, so that at a later stage of political education, to which I add education for toleration

One will .... discuss a number of issues which presuppose that pupils do already feel concern for people beyond their immediate circle and even beyond their national boundaries – issues for example to do with priorities amongst moral responsibilities or the rights of states to interfere in the internal affairs of other states. Without this concern children quite simply will not see the moral/political problem. This argues for attempting to widen their sympathies early on. (White, 1983, p.110)

Following this line of thinking, effective education for tolerant citizenship from within the Jewish Studies curriculum must actively involve pupils in the quest for the resolution of conflict-based situations which might affect them, and other members of society, in the day to day world in which they live. If, as White (1983, p. 95) argues, this relates amongst other things to the acquisition of political attitudes to authority, to power and to working with others, the following examples, all of which are central to

ideas concerning toleration as it is discussed in this thesis, are important<sup>136</sup> to consider as part of such a curriculum

- Societal issues: concerning for example what is necessary for people to live peaceably together. This takes into its ambit toleration as a political and personal practice discussed in Chapter 2, challenges to Jewish religious toleration in Chapter 4, and innovative notions of covenant and social contract explored later in the current chapter.
- Lockean and contemporary questions: about the kinds of religious and cultural rights and liberties people should have, as discussed in the second chapter concerning religious toleration in regard to contemporary examples of wearing religious dress, and in relation to the idea and current fact of honour killing.
- Judaic religious issues: in regard to the obligations of citizenship and the demands of faith as discussed for example in the first chapter of this thesis in regard to current concerns about *shehitah*, where it is not enough just to know the facts, but through discussion and critical evaluation decide what one might do about them, and be educated in an age appropriate way as to how one might actually go about changing the situation.
- Relationships between citizens: in learning about, respecting and appreciating the bearers of different cultures, values and ways of life, and in creating a culture of

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<sup>136</sup> These examples are not intended to suggest a teaching or learning order, because in the practical context, they might overlap or be happening simultaneously.



peaceful co-existence mediated by the harm principle, in the face of difference discussed in Chapters 2, 3, and further on in the current chapter.

- Real life issues germane to pupils' lives: regarding toleration and the nature of boundaries, such as if I am at a non-Jewish school and need to be away for a Jewish holiday what might the school do about me missing an important test? What if I am unable to play in the club sports team because all the matches are always on a Saturday and that is my Sabbath?
- Politically liberal and secular objections to faith based schools: in relation to the imposition by the liberal state of its views and/or its prejudices on religious groups/institutions discussed in Chapters 3 in regard to Locke's ideas concerning toleration, and in Chapter 5 in regard to the effect on the MOJ faith school of coercive state admissions policies.
- One's purpose as a religious Jew in God's world: What positive difference might I make to the quality of my own life, to the life of my community, and to society as a whole? Explored from very different angles in Chapters 3, 6, and, as we shall see in the current chapter.
- Questions concerning pluralism and the law: What might constitute a just society, what is a law, should there only be one law for all? Why do people break laws? What should happen to them if they do? Who can tell people what to do and on what basis? What kind of power should multi-faith/ multicultural groups have to influence state policy in twenty-first century England? Discussed in Chapters 2 and

3 and with a different nuance in Chapter 6, in regard to toleration as forbearance, and intolerance to human violability and debasement.<sup>137</sup>

In educating pupils to become tolerant citizens in the broadest sense, I agree with Bailint (2010, p.132) that these topics should not be used as convenient short cuts.<sup>138</sup> They must be developed and extended through the primary and secondary school Jewish Studies curriculum as important stages in education for toleration enabling the early introduction of pupils to reflective thinking, and to the discussion of strategies for practical action.<sup>139</sup> Thus the crux of education for toleration at any age is not only to foster ways in which pupils might become tolerant individuals, but also to raise their awareness that as such, their aim is to reduce instances of intolerance in the practical sense. The topics suggested in the lexicon above, which must be taught in age appropriate ways, could be linked with more universal topics in the broader secular curriculum of the MOJ faith school such as bullying, racism and prejudice, rights, responsibility and justice.

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<sup>137</sup> Clearly in the pluralistic context of the MOJ faith school, pupils will certainly look at things differently and will be called upon to deal in appropriate ways with disagreement and the conflict of views which might arise. Most importantly pupils will be inducted into ways in which they might employ critical and reflective reasoning so as to be able to support their view; and they will be involved in stimulating and relevant debate and dialogue. As argued earlier in the chapter, this will begin to induct them into what skills might be needed to contribute to tolerant debate in the public sphere.

<sup>138</sup> In regard to the importance of linking political education with topics across the curriculum, White, (1983), states

Politics is not a discipline like mathematics. It is rather constituted by several areas of knowledge – sociology, history, political philosophy, economics and law – in its central concerns. As well as a broad curriculum, therefore, children, if they are to receive an adequate political education, will need relevant economic, historical, sociological and political education. (White, 1983, p.100)

This view is quite clearly borne out by the eight examples I have suggested above.

<sup>139</sup> The critical relevance of education for toleration at any age is to foster ways in which pupils in all schools faith-based or not might become tolerant individuals. In addition it must raise their awareness and develop their skills and confidence to reduce instances of intolerance in the practical sense [see White, (1996), concerning the crucial importance of educating the civic virtues]. The topics suggested above, which must clearly be taught in age appropriate ways, could at various stages usefully be linked to aspects of the broader secular curriculum to do with bullying, racism and prejudice; rights, responsibility and justice. For example this might involve going to the aid of a bullied individual or group within the school; opposing instances of school injustice such as overly harsh punishment in an appropriately rational way; solving conflict peaceably in the playground, the classroom or on the sports field.

Pursuing the link between Judaic topics and their more universal relevance, I offer under the rubric of **covenant and curriculum** below, innovative examples within the Jewish Studies curriculum which, through conceptual expansion, provide critical starting points for the wider application of Jewish values. In exploring and developing these, the MOJ faith school could prepare the way for the emergence of an original Judaic contribution to the notion of tolerant citizenship in liberal democratic society

### **Covenant and curriculum**

To be viable as a community of tolerant practice, liberal democratic society requires citizens to be committed to its core values. In recalling and going beyond Dewey's (1941) argument discussed in the Introduction to this thesis, that this commitment cannot only refer to a form of government, but must also include the thicker notion of a 'mode of associated living' and 'of conjoint communicated experience', I contend his notion of democracy points the way to the idea of a broader public socio-civic forum of tolerant interaction beyond the school

A democracy is more than a form of government, it is primarily a mode of associated living, of conjoint communicated experience. The extension in space of the number of individuals who participate in an interest so that each has to refer his own action to that of others, and to consider the action of others to give point and direction to his own, is equivalent to the breaking down of those barriers of class, race and national territory which kept men from perceiving the full import of their activity. (Dewey 1941, p. 101)

In order to see how this idea might be developed in regard to toleration within the MOJ faith school Jewish Studies curriculum, I explore new ways in which the particular covenantal relationship between God and the Jews might provide a universal basis for a **tolerant associative relationship** between the MOJ faith school and liberal democratic pluralist society. In response to Sacks's (2002, p.60) observation that the supreme

religious challenge is to see God's image in one who is not in our image, I offer fresh thinking in regard to how selected examples of Jewish values might underpin both the particular Judaic notion of the covenantal relationship, and point toward a more universal idea of covenant. These examples have been chosen according to the principle that Jews, as well as having a responsibility to those of their own faith, have a universal responsibility toward their fellow human beings.

Thus recalling Dewey's idea above of 'a mode of associated living', I define the covenantal relationship between the MOJ faith school and liberal democratic society as **the reciprocal associative relationship** which mutually benefits both *Torah* and the world. I argue below that this reciprocity arises from the capacity of the faith context and the liberal context to benefit one another. In order to better grasp the notion of association I have in mind, it is instructive to note Sacks's (2005, p.9) warning against creating a rift between the holy and the good – that is, between our duties to God and to our fellow human being. He argues that the message of the Hebrew Bible is, that serving God **and** our fellow human beings is inseparably linked, and the split between the two impoverishes both.

Following this line of thinking, the important message of a Jewish values curriculum lies in conveying to pupils that unless the holy leads us outward toward the good, and the good leads back to replenish the holy, the creative dynamism of both faith and morality will be depleted. The educative emphasis of this idea is that it connects the MOJ faith school pupil with *mitsvah* in a new way, not only as a divine commandment or good deed, but also as **the source of Jewish social action**.

*A Jewish values curriculum framework*

In order to show how this might work in practice I discuss in detail later in the chapter aspects of two key practical *mitsvoth* which are familiar within, and central to, the MOJ faith school Jewish values curriculum

- ***Tsedakah* – charity as justice.**
- ***Gemiluth Hesed* – deeds of loving-kindness.**

Through discussing their significance in regard to toleration both within Judaism and in the broader context of their possible more universal application, I refer to Biblical law, selected Rabbinic, *Talmudic*, legal and ethical Judaic texts, and to contemporary rabbinic *responsa*. This approach offers hitherto unexplored ways in which these two *mitsvoth* might make a significant contribution to tolerant citizenship in liberal democratic society.

I preface the discussion by arguing that whilst providing good starting points, charity on impulse, and benevolence as a spontaneous rather than an internalised gesture, are whilst perhaps a heartfelt act on the spur of the moment, insufficient in themselves to form an adequate basis on which to build any kind of lasting covenantal relationship, either within the Judaic context, or between the Judaic and other contexts. To provide such a basis, these values must be deeply rooted in the context of Jewish law, in the Judaic idea of social justice, and sit within the continuum of a Jewish values framework designed to engender an internalised religious, intellectual, emotional and physical disposition out of which the MOJ faith school pupil acts.

Recalling my argument earlier in the chapter concerning the unique contribution the MOJ faith school pupil might make to liberal democratic society by drawing on her heteronomous *nomos*, it is instructive to extend to the religious context Tamir's (1993,

pp.72, 85-6) idea, usefully cited by Kymlicka (1996, p.90), of the value of cultural membership. Tamir argues that in the cultural setting, to which I add the religious one, our actions are not only acts of individual accomplishment, but also become part of a continuous creative effort whereby culture **and faith**, as particular identity and within the context of the general polity, is made and remade. I argue that what is important about this relationship is that because it is rooted in particular social contexts which might not be a 100% part of the other's environment, a relationship is created between the two which gives meaning to both.

Recalling my argument in Chapter 3 concerning the wish expressed by David Cameron (2006), and articulated in the Second Cattle Report (2004), to put an end to the development of isolated communities living parallel lives through opening up single faith schools to those of other faiths and none, and my argument in Chapter 5 concerning task of the single faith school to educate its pupils **through its faith school curriculum**, to become tolerant citizens through developing **a double focus** as Jewish faith school pupils living in a liberal democratic society, I argue here, *contra* both Cameron and the Cattle Report, that it is precisely through conceptions **rooted within its particular faith school curriculum**, the MOJ faith school perhaps as a model to schools of other faiths, might enable the possibility for new associative identities to emerge, and encourage inclusivism instead of isolationism across cultures. Tamir observes that where an institution is informed by a culture which is understandable and meaningful to people, a certain degree of transparency is created which facilitates the participation of that institution in public affairs. In this regard, as argued earlier in the thesis, [see Chapter 5], it is critical that alongside their own faith, identity, history, values and religious practice, pupils explore, as part of their wider social responsibility,

concrete ways in which they might contribute to, and enhance, twenty-first century liberal democratic society in England as a community of tolerant practice.

In order to create what Tamir describes as a sense of belonging within the associative relationship, and to an extent to mitigate the gap which White (1996) has identified in the essential elements of citizenship education caused by insufficient attention to the dispositions that democrats need which have to be shaped to take a particular form in liberal democratic society, and to flesh out the notion I have described as the reciprocal associative relationship which mutually benefits both Torah and the world, I suggest a Jewish values curriculum framework hitherto unexplored, through which to build trust, mutual recognition and mutual responsibility.

To reach a clearer understanding of how this interaction might lead to the contribution of the MOJ faith school to conceptions of religious toleration and citizenship in liberal democratic society I argue for a thicker conception of the Judaic notion of **practical deed**. Thus I suggest below ways in which the *mitsvoth* of *Tsedakah and Gemiluth Hesed* might provide a *halakhik*, moral and ethical<sup>140</sup> basis for a **reciprocal associative relationship** between the MOJ faith school and liberal democratic society.

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<sup>140</sup> In regard to the universal application of Jewish values Avishai Margalit (2002, p.8) makes the instructive distinction between the term ‘**moral**’, which he uses to refer to the universal context of our relationship with strangers or with those not of our community; and the term ‘**ethical**’, which he uses to refer to those with whom we share a special bond of history, memory, family, faith, tradition or belonging. Through examining above the nature of the Judaic values of *Tsedakah and Gemiluth Hesed* I argue that the ‘moral’ in terms of universal legal objectivity, and the ‘ethical’ in terms of the more individualistic concerns of heartfelt loving-kindness might not always be as easily separable as Margalit suggests. This is because although justice demands rational impartiality, whilst deeds of kindness flow from the warmth of personal caring and emotional engagement, justice might elicit an emotional and caring response in the practical situation. It is interesting to note in the large body of literature on justice and caring in the 1980s, which is beyond the ambit of this thesis, that feminist researchers such as Carol Gilligan (1982), in her ground-breaking work in the ethics of care *In a Different Voice*; and Nel Noddings (1984), *Caring: A Feminine Approach to Ethics and Moral Education* argue that the notion of **justice involves caring**; and the dichotomy between them has often been presented too starkly.

*The reciprocal associative relationship*

Through extending the concepts of *Tsedakah* and *Gemiluth Hesed* I suggest below ways in which they might foster a reciprocal associative relationship between the MOJ faith school and liberal democratic society. These examples do not purport to be complete and highlight the critical need to develop further examples of Jewish values within the curriculum. In addition to formal opportunities, there is need for innovative research into opportunities for creative **informal** curriculum projects based in both the Jewish and wider community, which might provide a fruitful basis for sharing and caring. I show through the example of ‘Mitsvah Day’ under the rubric of *Gemiluth Hesed* below, that such projects could provide the opportunity, through joint and collective activities, for cooperation not only between schools and the wider community, but also for cooperation amongst schools of diverse faiths, and between faith schools and schools of no faith.

Lichtenstein (2003, pp.1-19) develops this line of thinking in an interesting way by arguing (p. 1) that a Jewish person must relate to more than one level of expectation and responsibility when seeking to shape her personality according to *Torah* values. The first level concerns the **universal demands** placed upon one simply **as a human being**, and the second level relates to the **specific demands of Judaism**. In regard to these two levels, Lichtenstein refers to the verses in the *Torah* (Book of Genesis – *Sefer Bereishit* 1999, 2:15-17) which describe God placing Adam in the Garden of Eden and charging him with the dual responsibility to cultivate it (*le'ovdah*), and to guard it (*le'shomrah*). Lichtenstein (pp.3-4) considers these as two distinct but equally important tasks. To guard is largely conservatory, to see that things do not change and to preserve what we have been given, like our religious heritage for example. To cultivate however is creative, to develop, to work and to innovate. He suggests (p. 3), that it would not be



stretching things too far if we understand this to apply beyond the Garden of Eden, to the responsibility of human beings in general to be both guardians and cultivators.

In thinking about the universal application of Jewish values to conceptions of toleration and citizenship, I argue that the notion of ‘guardian’ suggests a limit to the extent to which *Tsedakah* and *Gemilut Hesed* discussed immediately below, might as particular Judaic values, include the universal. In addition, for the MOJ faith school as both guardian and cultivator, the extension of Jewish values into the universal context presents a challenge in regard to preserving the relationship between the holy and the good, and in relation to maintaining the conceptual balance between the notion of God’s sovereignty and the sovereignty of human beings.

### *Tsedakah*

The Hebrew word *Tsedek*, which means Justice, is the root of the word *Tsedakah*. It is generally translated as ‘charity’. Lost in translation however, is the innovative Judaic idea that *Tsedakah* means **charity-as-justice**.<sup>141</sup> Thus, the notion of charity is to be understood as a principle of justice to which according to Jewish law, we are legally bound, and it is misunderstood, as pointed out earlier in the chapter, if construed only as compassionate caring or impulsive giving.

The elements of justice included within the Judaic notion of *Tsedakah* are twofold:

#### 1. **Retributive justice:**

- a) In the more obvious sense of the strict requirement by Judaic law to exact, similar to a tax, a certain amount of one’s net earnings and give it away to charity.

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<sup>141</sup> See Menachem M. Schneerson, the Lubavitcher Rebbe, (2011, p.336)

b) In a more nuanced sense in which the *mitsvah* of *Tsedakah* transforms and expands the individual by eliciting her compassion towards others less fortunate, and so makes her worthy of God's reciprocal mercy and protection from Divine retribution.

**2. Distributive justice:** in that this money is to be **shared** with the poor and needy.

It is important to note that the *mitsvah* of *Tsedakah* is not intended to be limitless or to become intolerable for the individual. Hence the concepts above apply within specific Judaic legal boundaries which I define below as boundaries of toleration, and are rooted in an innovative distinction between ownership and possession.

In his scholarly work concerning the complex and subtle laws of *Tsedakah*, and their contemporary application, Taub (2009, pp.5-15) expands on its retributive and distributive character. Complete with extensive Hebrew references to the Code of Jewish Law – the *Shulhan Arukh*<sup>142</sup>, the most authoritative and widely accepted Orthodox Jewish legal code, authored in the 1563 by Rabbi Yosef Karo, Taub (p.6 - 15), discusses the legalities of just how much money should be given in order to fulfill the *mitsvah* of *Tsedakah*. In synopsis below I discuss aspects of these laws relevant to the argument concerning conceptions of religious toleration in this thesis.

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<sup>142</sup> The *Shulhan Arukh* rooted in the Biblical and Rabbinic law which preceded it, shows through extensive commentary and detailed argumentation, how its legal decisions are arrived at. It is the most widely accepted compilation of Jewish law ever written.

The *Shulhan Arukh* is divided into four volumes:

1. *Orah Hayyim*-laws of prayer and holydays
2. *Yoreh Deah*-diverse laws, including those governing *tsedakah* , *Torah* study and the Jewish dietary laws.
3. *Even haEzer*- laws regarding Jewish marriage and divorce.
4. *Hoshen Mishpat*- Jewish civil law.

*Tsedakah as retributive justice:* The *Shulhan Arukh* sets out three percentage categories depending on the level of income - one fifth of one's net income, one tenth of one's net income, or less than one tenth of one's money. How one chooses to distribute this amount is up to the individual. For example one might give part of the amount as lump sum to a charitable cause or institution, and set aside other amounts to give to needy individuals or unexpected causes that might arise.<sup>143</sup>

Recalling McKinnon's argument in relation to **toleration as prudential**, it is instructive to note Taub's (2009, p.9) comment in regard to **the law of upper limit** – *takanath ushah*. He points out the importance of this law in indicating that despite the fact that *Tsedakah* is a great *mitsvah*, the Rabbis, in order to avoid the giver becoming impoverished, put a cap on how much one might give, and ruled that no more than one fifth of one's net income could be given to *Tsedakah*. I argue according to the harm principle, that in **setting a limit to giving** the Rabbis instituted an important principle of toleration as **judicious restraint**. The underlying Judaic concept is that the obsession to give, just as the obsession with individual self-preservation, must be mediated by self-control and tempered with forbearance.<sup>144</sup>

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<sup>143</sup> In teaching about *Tsedakah* it is hugely instructive to introduce pupils to the brilliant taxonomy of the eight levels of charity set out by the RaMBaM (*Mishneh Torah: Sefer Zeraim [The Book of Agricultural Laws] Hilkhoh Matnot Aniyim [The Laws of Gifts to the Poor]* Chapter 10 pp.188-190). Pupils of all ages might be taught in all kinds of creative ways including role play, how charity should be given so as to avoid humiliation and embarrassment. They should explore and discuss what kind of charitable outcome is considered best for the receiver and the giver and why. According to the RaMBaM on the lowest level of *Tsedakah* is the person who gives ungraciously; the next level up is the person who gives less than he could or should, but does so in a pleasant manner; the third level is one who gives only after the poor person asks; the fourth level up is to give a poor person who may be known to one a gift before he asks; higher than this is the fifth level when the receiver knows who the giver is but not vice versa; the sixth level is for the giver to know who the recipient is but not vice versa so as not to embarrass the receiver; the seventh penultimate level is for the receiver not to know who the giver is and vice versa so that the *mitsvah* is done entirely for its own sake; and the eighth and highest level is to help someone to become self-sufficient through his own work.

<sup>144</sup> In terms of toleration mediated by the harm principle **if we are unable to give without disabling ourselves**, then we should give **only as much as we are able**. Thus in regard to someone who is absolutely impecunious, and lives metaphorically in an earthen mud hut with straw on the floor the Judaic

Taub (2009, p.5) observes that whilst the optimum performance of the *mitsvah* of *Tsedakah* is to provide each poor person with their individual needs, this does not mean that the entire obligation to do this falls on one prospective donor alone which might be intolerable. Rather, and this refers back to the principle of toleration as judicious restraint discussed above, the donor only has to contribute what she is realistically able to afford to fulfil the poor person's needs.<sup>145</sup>

*Tsedakah as distributive justice:* Recalling the discussion above in regard to the challenge of extending of Jewish values into the universal context, and in order to pave the way for ideas later in the chapter concerning ways in which the Judaic notion of covenant might provide a foundation for the reciprocal associative relationship, I suggest that examples within Biblical law are educative in regard to ways in which we might, in our relationship with others, preserve the relationship between the holy and the good, and lead to a mutually flourishing relationship with God through maintaining the conceptual balance between the notion of His sovereignty and the sovereignty of human beings.

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idea of *Tsedakah* is interesting. The impecunious person, even though her poverty is intolerable to her, should still be sensitive to the needs of others by being prepared to share **some** of her straw, though **clearly not all**, with a person who has none. The Jewish concept here is that even in these circumstances the impecunious person is able to benefit the other; and in so doing dignify both the self and the other.

<sup>145</sup> A person who has fallen on hard times might, out of embarrassment, not be prepared to make her request publicly, and cannot be forced to do so. Thus she may well approach a prospective donor privately. In this case the donor would be required to give as much as possible within her means. However **the limit of toleration** in this regard is that the poor person must forbear pressurizing the donor unduly, and certainly avoid putting her under financial duress. To protect the poor person's dignity, the donor might with her permission, make a confidential approach to others not necessarily known to the person, or who might not know her, to contribute. This then becomes a collective responsibility and not that of a single donor. The sensitivity to the poor person's feelings is an important educative point, which inducts pupils into compassionate giving within the parameters discussed above, and so begins to educate pupils' emotions in regard to giving which flow from *hesed*, toleration where intolerance is the last resort, rather than just mechanically obeying a law; or feeling good merely because one has done so. It is important to point out that many Jewish institutions such as synagogue communities set up a Free Loan Fund to which their members contribute on a regular basis in order to create a resource to help people should they need to avail themselves of it. It seems to me as the administrator of one of these funds, that this is an entirely worthwhile project, transferrable to wider society, which contributes in confidence to helping people over difficult times. Of course the reasons for approaching and needing the fund are evaluated, but this is done with compassion as well as exactitude. The 'loan' is not expected to be repaid; but on occasion when it is, it is wonderful to see the joy and dignity of the once needy person being able to repay it, or contribute something towards it to help others.

In Biblical times, a just Judaic society was obligated in the constant care of the poor. In acknowledging God as the ultimate Owner of all, it strictly obeyed His commands. Examples of the distributive aspect of *tsedaka* are included in the agricultural laws of *pe'ah* according to which the farmer at harvest was forbidden to reap his entire field, but had to leave the far corner of it for the poor and the stranger regardless of their faith (Book of Leviticus/*Sefer Vayikra* 1999, 19:9). *Leket*<sup>146</sup> which referred to the gleanings of the corn field to be left for the poor, and *olelot* which designated for the poor both the clusters of grapes left on the vine after the picking, and the fallen fruit (Book of Leviticus/*Sefer Vayikra* 1999, 19:10). The law of *shikhehah* required that the farmer did not return for sheaves forgotten in the field, or for those which had fallen off the wagon. These had to be purposefully left for the poor. (Book of Deuteronomy/*Sefer Devarim* 1999, 24:19-20)

When discussing the conceptual relevance of these laws with pupils of all ages it is instructive to refer to McKinnon's structures of toleration in Chapter 2. This is because on a human level, it might not always have been easy for the farmer to provide for the poor and the stranger, especially in a time of meagre harvest, and what he was being commanded to do might have differed from his personal conception of what should be done. After all, in tolerating God's command to give away a regulated but not insubstantial part of his produce to the poor, he himself would lose something. However in order to preserve the higher goal of the relationship between the holy and the good, the farmer strove to overcome his intolerant feelings, and through abiding by the

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<sup>146</sup> *Leket Israel* Online at: <http://leket.org.il/english/> [accessed 23/11/2013] is the name of Israel's largest national food bank and food rescue network. Good food that would have otherwise gone to waste is redistributed to hundreds of non-profit partners caring for the needy.

agricultural laws, struck the often difficult balance between God's sovereignty and the sovereignty of human beings. As a tolerant provider, the farmer was considered virtuous, just and prudent.

Relating these examples to contemporary times, I argue that one of the most realistic, meaningful and practical way of pupils in schools being involved in mitigating the situation of the world's poor is, as illustrated by the examples of Wolfson Hillel and JFS *Tsedakah* projects in Chapter 5, through enhancing pupils' awareness of and involvement with both Jewish and non-Jewish individuals, causes and institutions. Support for these projects is based on the dual responsibility to contribute within, and to extend beyond, the Jewish community in financially contributing to and/ or volunteering for local, national and global charitable initiatives and institutions. The *mitsvah* of *Tsedakah* is transformative both for the giver and the receiver. Through eliciting pupils' concern and compassionate feelings for the real plight of other people, the MOJ faith school through developing their emotions, prepares them to be sensitive, compassionate and tolerant citizens within wider society.

Later in the chapter I suggest ways in which the notion of *Tsedakah*, as a cardinal religious principle of toleration within the structure of social justice and embedded in a covenantal society, might provide us with a powerful tool with the capacity to ameliorate the intolerable economic humiliation of human beings. As such I contend it has a significant bearing on ideas concerning contemporary citizenship education in schools, and on public education within the polity.

*Gemiluth Hesed*<sup>147</sup>

The Judaic term *Gemiluth Hesed* means deeds of loving-kindness. Conceptually the term means **giving of one's self and one's time** in a personal, generous-hearted, caring way rather than giving monetary gifts. As explained in the previous chapter, the disposition of *hesed* enables love, which humanizes and transforms relationships and enables us to feel empathy for the person in need. *Gemiluth Hesed* embodies the Judaic notion of **social action**. In secular terminology it is characterized as **justice and caring**.

The Jewish Studies curriculum of the MOJ faith school currently takes into its ambit a host of examples of *Gemiluth Hesed*, none of which have been considered to date in the light of education for toleration. To name just a few, these include visiting the sick, hospitality to strangers, dowering the needy bride, burying the dead with dignity and taking care of the widow and the orphan. Whilst it is outside the scope of this thesis to treat the many examples of *Gemiluth Hesed* in detail, I argue that it is important to approach them from a slightly different angle in regard to education for toleration.

As an example, when teaching about visiting the sick<sup>148</sup> it is not only important that pupils learn and discuss the particular ways in which the *Torah* and the *Talmud* mandate ways in which that this *mitsvah* is carried out, and how the sick person might benefit,<sup>149</sup> but that pupils also explore possible limits to justice and caring based on the principle of toleration concerning judicious restraint and realistic expectation, and with reference to

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<sup>147</sup> See Chapter 6 for the further elucidation of the concept of *hesed*.

<sup>148</sup> For the Biblical source of this *mitsvah*, in which God visits Abraham on the third day following his circumcision, see Book of Genesis / *Sefer Bereishit* 1999, 18:1. The *Talmudic* obligation to visit and help the sick states

It once happened that one of Rabbi Akiva's students became sick, but none of the sages went to visit him. Rabbi Akiva, however, went to visit him. Because he swept and cleaned the floor for him, the student recovered. The student said to him 'Rabbi you have revived me!' Rabbi Akiva came out and taught, 'those who do not visit a sick person might just as well have spilled his blood'. (*Talmud Nedarim* 40a)

<sup>149</sup> See Telushkin (2000, pp.44-47).

the balance between giving of oneself totally and the parameters of one's responsibility to give, [which is similar to the issue discussed above in relation to *tsedaka*]. In this regard aspects to be discussed with pupils in regard to visiting or caring for the sick, might include the level or type of help we might seek if we feel utterly overwhelmed but still want to continue as the main carer of someone who has been ill for a long time. If we are reluctant to visit a sick person in hospital, to what extent must we force ourselves to do so? How might we be helped to manage our shock, fear or disgust after visiting someone who is seriously ill, and should we visit again? To what extent might we be willing to sacrifice our own needs in relation to a sibling who is terminally ill? Under what circumstances might it be inappropriate for a young person to visit a sick person? What might they do instead of visiting, for example design, write and send a get well card, speak on the phone, skype or face-time if possible. Under what circumstances might it be appropriate to take a young child to visit a sick adult/child, and what might you tell them about how to behave when visiting? How much time might we spend with a school friend who has been ill for an extended period, and what might the best use of that time be? In what ways might we involve other classmates/ friends in this responsibility?

A wider discussion with pupils concerns ways in which the Jewish value of visiting the sick might be carried out into wider society in order to care for all human beings. This might not necessarily be through performing exactly the same actions as in the Jewish context,<sup>150</sup> but because it is based on the universal principle described earlier in the chapter by Sacks (2002, p. 60) of seeing God's image in a person not necessarily in our own image, and carrying out the actions which flow from such a view. As argued in

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<sup>150</sup> Examples might include donating blood; playing a board-game or reading to the homebound; doing some shopping for a neighbour who is unwell; arranging some musical entertainment for one of the children's' wards in the local hospital.



Chapter 2 this outlook is not based on the attitude of ‘live and let live’, but rather on the active principle of helping people to flourish. By narrowing the gap between pupils’ Judaic affiliation and civil society, these ideas provide the curricular impetus to create a **new kind of Jewish religious consciousness** which will make a deep and profound difference to the way in which MOJ faith school pupils, as citizens within civil society, encounter traditional Jewish teaching.

I contend that an innovative example of this new kind of consciousness is the project known as ‘Mitzvah Day’<sup>151</sup> a day of good deeds, first launched as an independent charity in England in November 2008 by Laura Marks. *Jewish Chronicle* newspaper reporter Candice Krieger (November 13, 2008a) reported in her article ‘Laura Marks plans to make Sunday a day to remember’ that Mark’s stated goal of ‘Mitzvah Day’ was

An easy way for people to do a favour for each other particularly now when not everyone can afford to give a lot of money. It's not about writing another cheque, it's about going out and doing something.... We won't change the world but we will make a difference (Krieger, C. (November 13, 2008a). ‘Laura Marks plans to make Sunday a day to remember’. *Jewish Chronicle* [Online]. Available at: <http://www.thejc.com/news/people/laura-marks-plans-make-sunday-a-day-remember> [Accessed 1/12/2013]

Archbishop of Canterbury Justin Welby (November 15, 2013), took up the issue of **hunger and homelessness** which was the theme of this year’s ‘Mitzvah Day,’ and in the comment section of the *Jewish Chronicle* newspaper described it as

A Jewish-led day of social action [which] gives us the opportunity not only to offer an act of kindness, but to do it with others – including those from other religious backgrounds. It allows us to demonstrate in a thoroughly practical way, how we can together work for the common good of our local communities.... It has shown that relationships nurtured through grass-roots social actions partnerships can become lasting partnerships ... Working side by side for the common good can be an excellent way to build bridges and get to know our

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<sup>151</sup> Please note the organizer’s variance in the spelling of the word ‘Mitzvah’.

neighbours.... This year, through Mitzvah Day, more than 50 inter-faith projects are taking place. Many projects are repeats, showing that valuable local community relationships are being built through hands on social action. Let's not forget another crucial ingredient, fun. If these partnerships weren't such a great combination of meaningful engagement and shared joy, people wouldn't be coming back for more. (Welby, J. (November 15, 2013). 'We're all in the Mitzvah Band'. In the *Jewish Chronicle* p. 34

'Mitzvah Day' comprised a huge variety of London-wide and regional activities impossible to enumerate here beyond selected examples which included both adults and children.<sup>152</sup> Initiatives included **joint synagogue and church collections of warm clothes** for local homeless, '**Mitzvah Day**' **shopping** where synagogue members were stationed outside local supermarkets to invite all shoppers to buy and donate one or more items to local charities, for example Doorstep for the homeless in Camden, synagogue members **cooking and serving a hot Sunday lunch**, for example for St. Mungo's charity for the homeless in Mill Hill, and collecting necessary items to carry out a much needed redecoration of three rooms at St. Mungo's, even after Mitzvah day, which recalls the *Talmudic* quotation above, in regard to improving the environment in which the needy person lives, **children baking biscuits** in a synagogue kitchen **for nurses at the Royal Free Hospital** in London, and clearing and cleaning up local parks to improve the environment for the community.

In regard to country-wide projects such as 'Mitzvah Day' it is critical in regard to conceptions of religious toleration and citizenship to examine the extent to which the

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<sup>152</sup>It is interesting to note that Prince Charles' new 'Step Up 2 Serve' plan [Online]. Available at: <http://www.bbc.co.uk/newsround/25035041> [Accessed 1/12/2013] launched in November 2013, aims to get 50% of the UK's young people from 10 – 20 years old involved in volunteering by 2020. Volunteering means things like helping out at local clubs, community centres and activity groups, in their spare time. He hopes volunteering will help tackle problems like unemployment and gangs through young people using their time in purposeful and meaningful projects. 'Step Up 2 Serve' will work with groups like the Scouts and the National Citizen Service to widen the opportunities for young people to volunteer in their community.

*Torah* value of *Gemiluth Hesed* might be said to supplant or supplement universal values.

*The relationship between Torah values and universal values*

This thesis has indicated that according to the Hebrew Bible and rabbinic tradition, there are two main everlasting covenants between God and human beings. The first is the universal covenant between God and Noah, made with all humankind existing at that time, and enshrined in the Seven Noahide Laws. The second is the Sinaitic covenant between God and the Jews, enacted through the giving of the *Torah* at Mount Sinai.

1. The Noahide covenant

The Noahide covenant<sup>153</sup> provides the basis of the universal moral relationship between God and all human beings, and that of human beings with one another and with the natural world. The mutual nature of this relationship is that on the one hand its foundational nature is grounded in God's everlasting promise or pledge to protect human beings, and on the other, it is grounded in the reciprocal human pledge to accept and maintain God's promise of protection by entering into the covenantal relationship, affirming its moral content and agreeing to abide by the Seven Noahide Laws – *Shevah*

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<sup>153</sup> See RaMBaM (1987) *Mishne Torah: the Laws of Kings and Their Wars* 9:1 in which the RaMBaM explains that six Divine Laws were commanded to Adam and the seventh to Noah, and he codifies them into the Seven Noahide Laws. I have chosen not to elaborate further on God's covenant with Noah beyond exploring its possibility as a universal foundation for the kind of social pact which would be helpful in maintaining the balance between communal and civil society [see Sacks, J. (2002, pp. 12, 13; pp.45-66)]. However I do wish to flag the importance of the Noahide Laws as a critical area for important further research in regard to toleration within both the MOJ faith school curriculum, and society as a whole. In this regard see *The Seven Noahide Laws: Universal Religious Belief and Action in a Spirit of Tolerance* CHABAD Research Unit unpublished pamphlet available from [cru@lubavitchuk.com](mailto:cru@lubavitchuk.com) which provides an interesting and useful classroom resource for a framework for tolerance which explores the Noahide laws as **values** which include reflection, respect, justice, education and mutual trust.

*Mitsvoth D' Bnei Noah*. The Biblical source of these universal laws is in the Book of Genesis/*Sefer Bereishit* 1999, 9:4-6<sup>154</sup> and include

1. The prohibition against the worship of false Gods.
2. The prohibition against cursing God.
3. The prohibition against murder.
4. The prohibition against incest and adultery.
5. The prohibition against theft.
6. The command to establish laws and courts of justice.
7. The prohibition against eating flesh from a living animal.

In order to continue and affirm the protection of humankind promised by God, and to bring into being what God wanted from the reciprocal human-Divine relationship, the practical implementation of the Seven Noahide Laws scoped a new dimension within the universal Divine-human relationship. Although initially not chosen by human beings but assigned to them by God, the Noahide covenant set out the terms of the relationship through embedding the limits of God's tolerance in the structures of justice and fairness within society and the natural world. This created the possibility for people to flourish in their relationship with God, their fellow human beings and the broader environment. Thus people **themselves** were enabled to create a civil society out of an uncivil one by actively safeguarding the morality of interpersonal human relationships as vividly illustrated by the example of 'Mitzvah Day' above, and by restoring through rule of law, the balance between human beings and the natural world.

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<sup>154</sup> For a detailed scriptural exegesis of the *Shevah Mitsvoth D' Bnei Noah* see RaMBaM (1987) *Mishneh Torah: the Laws of Kings and Their Wars* (Chapter 9, pp.172-197).

Clearly, the Noahide covenant was intended to be universally beneficial, and provided a **social and moral** structure which was recognised and valued for itself. I argue that on the basis of this universal social pact, and in belonging to the universal community of humankind, Jews could later accept and implement the more particularistic elements of the Sinaitic covenant.

## 2. The Sinaitic covenant

The core content of the Sinaitic covenant between God and the Jewish people is the Ten Commandments – *Asereth Hadibroth*.<sup>155</sup> These divine commandments (Book of Exodus/ *Sefer Shemoth* 1999, 20:2-14) are believed by Orthodox Jews to have been given directly by God to the Jewish people at Mt. Sinai. They and all the other commandments throughout the five books of Moses [totalling 613], which are considered to be ramifications of the ten central commandments, constitute the written law – *Torah She'bikhtav*. The Oral law – *Torah She B'aal Peh*, as has been explained at length in Chapter 4, is far more contractual in nature, and like the Noahide Laws, emerges out of the written law. As we have seen it comprises rabbinic argumentation and rulings concerning how Judaic life should be lived in regard to a plethora of everyday issues including marriage and divorce, business ethics, agricultural issues, religious practice etc.

Like the Noahide covenant the Sinaitic covenantal relationship with God is greater than the sum of its parts, and is always prior and foundational to any contract in relation to it. As explained and illustrated at several stages in this thesis, commitment and adherence to the study and performance of the divine commandments is the way through which

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<sup>155</sup> Known scripturally as the Decalogue, the Ten Commandments are as follows: I am the Lord your God; you must have no other Gods aside from Me; you must not say My name in vain; remember the Sabbath; honour your father and your mother; you must not kill; you must not commit adultery; you must not steal; you must not lie; you must not jealously wish to take anything which belongs to your neighbour.

Jews individually and collectively express their covenantal relationship with God.

Novak's words (2005), echo arguments central to this thesis

Being a community with God makes the covenanted people more than a collectivity, more than a crowd. And just as no individual Jew is anonymous to God, so no individual Jew is anonymous to any other Jew. No Jew can claim God's concern unless he or she is concerned with fellow covenant members. Every Jew is equidistant to God in the covenant. Since God is at the centre of the covenant, any offense to another covenant member is offensive to God. ... In rabbinic teaching, this idea of covenantal interdependence is expressed in the principle all Israel are sureties [*arevim* - responsible] for one another. This expresses mutual responsibility, especially mutual responsibility for the wrongdoing of others. Accordingly one Jew should always try to prevent another Jew from sinning. (Novak, 2005, p. 54)

Thus in the context of my argument for liberal democratic society as a community of tolerant practice, I suggest that the idea of covenant could be the foundation of the **reciprocal associative relationship**. This offers the possibility for society as a whole to benefit from mutual engagement in the relationship, as illustrated by the examples of *Tsedaka* and *Gemiluth Hesed* above. In teaching Jewish values to pupils in the MOJ faith school, it is critical to point out that whilst it is true that there might be individuals or groups in the polity who do not consider themselves party to this covenant because they do not espouse religious values, **they are not excluded from the relationship**, and their participation would be welcomed at any time.

In relation to the universal aspect of the reciprocal associative relationship, it is highlighted clearly above that whilst the particularistic Judaic *mitsvoth* of *Tsedaka* and *Gemiluth Hesed* are grounded in religious values, they contribute to the enrichment of liberal democratic society on an interpersonal basis. Thus I argue that the radical implication of the Judaic notion of covenant as a powerful instrument of mutual flourishing is that like the Noahide covenant, **it becomes the ground of any**

**contractual agreement** necessary to preserve the integrity of difference, and so contributes to the functioning of a tolerant liberal democratic society.

Novak (2005) puts this idea succinctly

The priority of covenant to contract in Judaism is historical, ontological and teleological. Historically any contract presupposes that there is a covenant already in place. Ontologically, the covenant already in place is always more foundational than the contract related to it. Teleologically, a contract is ultimately for the sake of the very covenant that made it possible. The covenant is therefore the past, present and future of any contract. (Novak, 2005, p 31)

### **Social covenant as a basis for the reciprocal associative relationship**

I agree with Sacks (1997, p.64) that one of the key differences between a society based on covenant and one built around the idea of contract, is what holds that society together. I support his argument that a covenant is maintained by ‘an internalised sense of identity, kinship, loyalty, obligation, responsibility and reciprocity’, whilst in contrast, a social contract is maintained by an external force – for example the monopoly within the state of the use of coercive power. Thus, in examining what it might be that leads individuals to form associations and to sustain them over an extended period of time, I argue as illustrated above, through the examples of *Tsedakah* and *Gemiluth Hesed* that it is through the Judaic covenantal relationship that the principle of responsibility and mutuality is extended, and transferred to the inter-human relationships between Jews and the public sphere. Jean Bodin’s (1606), description of the character and process of how this might work is instructive

Whereby it is plainly to be seen, the societies of men among themselves, to have been at first sought out for the leading of their lives in more safety and quiet: and them first of all to have sprung from the love which was betwixt man and wife; from them to have flowed the mutual love betwixt parents and their children: then the love of brothers and sisters one towards another; and after them the friendship between cousins and other kinsmen: and last of all the love

and good will which is betwixt men joined in alliance: which had all at length grown cold, and been utterly extinguished, had it not been nourished, maintained and kept by societies, communities, corporations and colleges: the union of whom hath for a long time maintained many people, without any commonwealth, or sovereign power over them. (Bodin, 1606, p.127)

I contend that if the mutual flourishing of all parties within the polity is underpinned by a mode of associative relationship based on the Judaic notion of covenant as I have described it above, then **this might create the possibility for a new kind of social pact between civil society and communities of difference.** The principle of mutual flourishing must be based on the principle that **existing religious/cultural covenantal identity and commitments** should not be overcome, but **should be left intact by the contracts negotiated within liberal democratic society.**<sup>156</sup> Hence I argue that the notion of social **covenant rather than contract** is useful in linking political and civic society, and religious, cultural and moral thinking.

To support and clarify my argument concerning the nature of the associative relationship suggested by the Judaic conception of social covenant, I argue it critical to contrast it with the form of associative relationship Jean Jacques Rousseau (1762), sought to find within society, through his notion of social contract, seminal within political thinking. Insofar as his primary aim was to achieve economic and political equality within society, the full details of Rousseau's idea of contract lie beyond the parameters of this thesis. However in order to point up relevant ways in which his paradigm differs from the Judaic conception of covenant, I argue as follows:

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<sup>156</sup> Recalling Locke's arguments concerning the limiting of state interference in regard to religious toleration, discussed at length in Chapter 3, it is instructive in relation to the notion of social contract, to bring to mind the two safeguards he applied to the idea of the liberty of religious conscience. The first safeguard was that it should be epistemologically grounded, as has been discussed in this chapter in regard to the reflective pupil, in rational critical reflection on religious thought and action. The second safeguard was about the kind of negotiation which needed to take place between the state and the religious individual or group, concerning their understanding of what is required of religious people in order for them to make a meaningful contribution, as moral citizens, to the public good.



According to Rousseau, this relationship must

Defend the person and goods of each member with the collective force of all...  
(Rousseau, 2004, p.14)

He considered that this kind of civil freedom could be achieved if

The articles of association rightly understood, are reducible to a single one, namely the total alienation by each associate of himself and all his rights to the whole community. As every individual gives himself absolutely, the conditions are the same for all, and precisely because they are the same for all, it is in no-one's interest to make the conditions onerous for others. (Rousseau, 2004, p.15)

Whilst this argument seems to include fair and democratic principles, I argue that Rousseau's notion of social contract is unable to support either the kind of reciprocal covenantal relationship I have argued necessary between citizens and the state in liberal democratic society as a community of tolerant practice, or the contribution of the MOJ faith school to pluralist society in twenty-first century England. I support my argument by posing and attempting to answer, the following questions:

1. How might Rousseau's idea of 'total alienation by each associate of himself and all his rights to the whole community' be understood in regard to earlier arguments in this thesis concerning recasting neutrality as a liberal basis for toleration, in order to shift it from a position of public blindness to public attention and concern for different traditions in order to reflect the political will to redraw societal standards so as to include different identities?
2. How, in terms of toleration and the nature of boundaries, would the idea of total alienation by each associate of himself and all his rights to the whole community

actually work in terms of religious toleration? Mendus (1989 p.34) observes, as discussed in Chapter 3, that since profoundly held religious and moral belief are not merely matters of preference, but guide and inform everything a believer does, the very person as it were would have to be dismantled in order to stamp out, radically manipulate, or transform their belief. In Mendus's view, with which I agree, the enormity of such an action must be recognised as a contravention of human right in any liberal democratic society, and the limits of tolerance would need to be carefully drawn in terms of real dialogue and understanding as to the different ways in which religious/cultural narratives are held.

If, from Rousseau's conception of civic association, we are to understand that any consciously chosen boundaries adopted by a particular faith group or culture must disappear in response to the desideratum for absolute congruence, and the avoidance of making one's conditions onerous for others, then Chapter 4 has shown the dire effects of this kind of thinking on the religious fabric of the Jewish community. I argue here, that Rousseau's thinking is not dissimilar to the broad accommodationist policies of Moses Mendelssohn, and to the enlightened and emancipatory German political goal, to create conditions which were the same for all, which led to the crumbling of the Jewish community, through ceding too much of its religious and cultural identity, far beyond the limits of toleration.

In terms of my own argument, Rousseau's conception of social contract **cannot** provide a viable basis for the kind of reciprocal associational relationship I contend necessary between citizens and a liberal democratic society constructed upon difference. In place of Rousseau's rather narrow social structure of civic association, I argue for the more

generous and flexible notion of **social covenant**, and contend, for all the reasons discussed above, that it provides a viable basis upon which to develop liberal democratic pluralist society as a community of tolerant practice in twenty-first century England.

In specific regard to the unique Judaic contribution to this project, I argue for **the reversal** of Margalit's notion of the ethical and the moral discussed earlier in this chapter, so that **the ethical view**, [which he uses to refer to those with whom we share a special bond of history, memory, family, faith, tradition or belonging] **is now applied to the universal context**, and **the moral view** [which he uses to refer to the universal context of our relationship with strangers or with those not of our community], **is now applied to the particular Judaic context**, according to which the community is able to reflect upon, and judge itself, by objective standards which mitigate isolation and enable judicious integration.<sup>157</sup>

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<sup>157</sup> The ability of a community to reflect upon and judge itself by objective standards which might mitigate isolation and enable judicious integration is discussed widely throughout this thesis. Examples include the kind of religious toleration Locke advocated which, as I argue in Chapter 3, was very much based on a rational civil response to religious difference; and on the insistence that the truly religious persona acknowledge his communal responsibility just as much as his religious identity. This thinking sharpens the boundaries between civic justice and religious identity. In the same chapter, the examples of the Kurdish Honour Killing, the Court of Jewish Law [*Beth Din*] as an arbitral tribunal, and the conundrum of unofficial Somali courts, point up the fragile balance between communal religious moral responsibility and accountability which is very much the concern of the current chapter. [For an instructive Canadian response to this issue see: Kay, 2012, *On Assimilating Immigrants: One Tale from the Front Lines* [Online]. Available at: <http://www.nationalpost.com/m/search/blog.html?b=fullcomment.nationalpost.com/2012/01/30/jonathan-kay-on-assimilating-immigrants-one-tale-from-the-front-linesandq=Pflc> [Accessed 31/01/12]. The argument in regard to judicious integration is developed further in Chapter 4 with specific regard to the dramatic religious, cultural, intellectual, political and socio-economic shifts which took place within both the secular and Judaic world as interrelated contexts of toleration during the age of Enlightenment and Emancipation in eighteenth and nineteenth century Europe. This idea introduces and underscores the twin task discussed in the current chapter, of the modern Orthodox Jew as both a believing, practicing, knowledgeable member of the Jewish community, and a meaningfully and usefully contributing member of wider liberal democratic society. The upshot of the argument in regard to preserving Jewish faith, learning, identity and culture in contemporary England in the face of the continuing pressure to anglicise through education is set out in Chapter 5, in which I contend that the task of the MOJ faith school is to educate and inspire its diverse pupil and parent body to become knowledgeable about their faith; to recognise that as Jews religious values are alive within their moral framework and a source of their deepest commitments; and through the school maintaining itself as a centre of religious and secular excellence, to translate these values into positive practical action in both their individual and communal life.

This reversal, which is supported by several curricular examples in the current chapter, might create the possibility for a new kind of attitude and approach on the part of liberals to religious groups within the polity. Crucial to enabling this view, and central to arguments in this thesis, is the ability of the MOJ faith school to demonstrate compelling ways in which the religious values it offers are of benefit not only to the individual Jew and the Jewish community, but also to the local neighbourhood community, and the wider pluralist liberal democratic community of which it is part. As I have argued in this and the previous chapter, this might be achieved through rethinking the content of the Jewish Studies curriculum, and through broadening the philosophical framework that underpins it.

## **Conclusion**

I have argued in this chapter that the ideology and ethos of the MOJ faith school is predicated on the principle of the covenantal relationship between the Jews and God. On this basis it is founded on strong, coherent moral and ethical traditions which, as this chapter and the thesis in general argue, advocate both communal and universal civic responsibility. The covenantal associational relationship described in this chapter reflects the values of these traditions. In addition, I have expanded the thinking around the *mitsvoth* of *Tsedakah* and *Gemiluth Hesed* in order to offer new ways in which the MOJ faith school might educate its pupils to contribute to both the Jewish community and wider liberal democratic society as tolerant communities of just and caring practice. I have argued in this thesis as a whole, that toleration mediated by the harm principle enables the mutual flourishing of all parties within the polity. Undergirded by this notion I have argued further in this chapter, that the Judaic idea of covenantal associative relationship creates the possibility of a new kind of social pact between

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liberal democratic society and the communities of difference within it, which advocates the avoidance of entering into contracts which threaten citizens' multiple identities. Following this line of thinking, I argue that in order to function as a community of tolerant practice, liberal democratic society must acknowledge the religious/cultural right of whichever community requires it, to educate its pupils according to their religious belief, tradition and practice. Conversely, yet according to the same associative relational principle of social pact underpinned by covenant, I contend that, based on the multiple identity of those of its citizens who are members of both liberal democratic society and communities of faith, the state has the concomitant right to expect the values of faith communities to be of visible and lasting universal benefit to wider society.

My crucial argument in regard to the reciprocal nature of the covenantal relationship, is that **social covenant**, as an instrument of toleration both in regard to the nature of boundaries, and mediated by the harm principle, becomes the **ethical basis of negotiation**<sup>158</sup> between multi-faith multi-cultural communities of difference, and strikes the balance between those communities and the liberal polity. Novak (2005, p.7), remarks that this will enable engagement in on-going negotiation and agreement as to what is necessary for different cultures to express their multiple identities, through justly and peacefully transacting with one another in common social space.

In regard to the complex nature of toleration necessary to support and maintain a robust community of tolerant practice Dunn's (2003), words are apposite

At the centre of this vision are precariousness and onerousness, but also the endless revitalization of human judgement – its incessant collisions and

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<sup>158</sup> See Chapter 6 for the way in which negotiation works as an ethical basis within the covenantal relationship for the discussion between God and Abraham in regard to the destruction of the city of Sodom.

aberrations, but also its enduring capacity for creative recovery. This is overwhelmingly less brash than the ideological materials which have made such remarkable global headway in the last half of the twentieth century. But is also deeper and wiser. It is hard to see how it could ever simply cease to apply. (Dunn 2003 pp. 277-8)

## Chapter 8: Conclusion

This thesis, concomitant with the aims stated in its introduction, has drawn on a broad range of theological scholarship, historical material and philosophical, political and educational thinking to illuminate the contribution of the MOJ faith school in twenty-first century England to conceptions of religious toleration and citizenship. It has suggested innovative ways in which education for toleration within the MOJ faith school curriculum might support this contribution.

Although the primary argument concerning education for toleration in the thesis is rooted in the critical relevance of religious toleration to Jews and other groups who live according to particular beliefs, traditions, values and practices uncommon in wider society, I have argued it crucial to the notion of twenty-first century England as a community of tolerant practice, for pupils in all schools faith-based or not, to have opportunities to discuss these ideas with one another, because of the common identity they share as citizens of wider liberal democratic society. Thus I have emphasized at several stages in the thesis that education for toleration should not only be at the heart of faith schooling, but of **all** schooling.

Bearing in mind that to date, there is no conclusive evidence that an education of this kind would necessarily be better achieved by a mixed or common school, [see for example Gardner, R., Cairns, J., and Lawton, D., (2005) (Eds.) *Faith Schools: Consensus or Conflict?*; Haydon, G. (Ed.) (2009) *Faith in Education: A Tribute to Terence McLaughlin*; Sardoc, M. (2010) *Toleration Respect and Recognition in Education*], my focus has been to suggest ways in which the MOJ faith school, which I

have identified as a new and unexpected context of religious toleration [see Chapter 5], might make a valuable contribution to achieving it from within its faith curriculum.

In the second part of the thesis, I have shown, through particular examples, ways in which innovation of this kind necessitates a dramatic paradigm shift in regard to both teaching and learning in the Jewish Studies curriculum of the MOJ faith school. I consider this to be one of the particular contributions of the thesis, because it illustrates the possibility, **from within the faith curriculum**, to both innovate and recast ideas concerning religious toleration and citizenship, and to extend these ideas so they are able to make a significant contribution to both Jewish and liberal democratic contexts as communities of tolerant practice.

More generally, one of the challenges the thesis holds out to all faith-based schools, concerns the ways in which they might invigorate on-going substantive and creative curriculum development, dynamic teaching and fruitful learning concerning how the topics of religious toleration and citizenship might be broached within their particular faith curricula.

In this regard, Michael Hand (2012, p.546) in exploring the current opportunity provided by the ‘new school system’ [set out in the Schools White Paper *The Importance of Teaching* (DfE. 2010)] suggests an additional rationale for curriculum innovation. He argues that state devolution of as much responsibility as possible to Academies, to which I would add Free Schools [see Chapter 5], in regard to decisions pertaining to their own management and curriculum, has created the opening for religious schools that have achieved Academy or Free School status, to radically rethink the content of their curricula. In examining possible ways in which religious



institutions might capitalize on and benefit from the opportunity for the curricular autonomy provided, I argue Hand (p. 551), adds a new educational justification for both curriculum innovation in regard to toleration in the Jewish Studies curriculum of the MOJ faith school, and for the further development and implementation of ideas in this thesis.

Religious organizations can ask afresh, and from their own theological perspectives, fundamental questions about the aims of education and the worthwhile activities into which children should be initiated, and build distinctive school curricula on their answers to these questions. Unconstrained by either the requirements of the National curriculum or the ideological commitments that underpin it, they are in a position to offer curricula informed by their specific conceptions of human flourishing. (Hand, 2012, p.551)

By providing examples, particularly in Chapters 6 and 7, of what Hand terms the ‘types of activity one might expect to find [in] a religiously distinctive curriculum’, this thesis corroborates his view that ‘devising coherent and innovative faith-based curricula will require a great deal of hard theological, educational, [and I will add philosophical and political] thinking’. This point leads on to the second major challenge of the thesis, which concerns the crucial link between curriculum development and effective teacher practice.

Part of the purpose of any significant academic research must be to point to new horizons, challenges and achievements. Thus, in regard to the contribution of the MOJ faith school in twenty-first century liberal democratic England to conceptions of religious toleration and citizenship, it is my hope that this thesis will make a significant difference to the educational enrichment of both teachers and learners, and indeed parents, and to the qualitative enhancement of diverse human beings in their larger understanding of one another as together they build a community of tolerant practice.

In this regard, I suggest this thesis provides a good basis for the further development of new distinctive faith-based curricula aimed at educating pupils to become tolerant citizens in twenty-first century pluralist England. It also offers a useful educational resource for both teachers and curriculum developers in understanding

- The political liberal democratic context of twenty-first century pluralist England [Chapter 1].
- General conceptions and contexts of toleration in contemporary liberal democratic society [Chapter 2].
- Conceptions of religious toleration [Chapter 3].
- Central ideas concerning Jewish religious toleration and its historical background [Chapter 4].
- Diverse Judaic ideological considerations which have impacted on the historical formation of the MOJ faith school in England, and ways in which they currently continue to do so [Chapter 5].
- Aspects of toleration and citizenship in the MOJ faith school Jewish Studies curriculum in regard to innovative theological, philosophical, political and educative conceptions undergirding the notion of autonomy, critical reflection, and responsibility [Chapter 6].
- The central Judaic educative idea of a covenantal society at a religious, political and civic level, and its distinctive contribution to liberal society as a community of tolerant practice [Chapter 7].

The critical foundation of the thesis rests on the belief that all schools must acknowledge, and their curricula reflect, that an education which is deep, broad and meaningful has not only to do with academic achievement, but also, and essentially, with the nature and interpersonal

behaviour of the achiever herself as a tolerant human being. In the case of the MOJ faith school, this concerns teachers enabling pupils to recognize and reflect upon the meaning of *Torah* Judaism as a basis and rule of life given to them by God, and fostering their greater understanding of what this might involve, across the multiple contexts with which pupils engage and in which they participate. In this regard, arguments central to the thesis have underscored the crucial importance of encouraging and developing within MOJ faith school pupils a substantive understanding of toleration both within the Jewish community and within wider pluralist liberal democratic society.<sup>159</sup>

I contend that the examples of communication across difference offered in this thesis constitute an important academic and educational contribution to contemporary theological, philosophical, political and educational thinking about toleration in its more general sense, religious toleration in particular, and citizenship in liberal democratic society. These are critical starting points for further research into new conceptions and contexts of toleration, and point the way to crucial future pathways in education for toleration which have been flagged at various stages in the thesis.

**In the polity** this should include the continued expansion of new meanings and contexts of toleration within both national and transnational settings, examining the constraints and possibilities of accommodation in the practice of law as a basis for toleration in regard to religious identity and cultural rights, enhancing the importance of, and creating diverse opportunities for, public education and debate.

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<sup>159</sup> It is encouraging to note whilst writing this thesis, that the many positive responses I have received in various contexts, reflect the need for and value of this work. These comments have been made following presentations I have given at both Jewish and general academic conferences in London and Europe; and interest in the work has been expressed by Jewish schools, and in synagogue and wider community settings.

**In educational settings** this should continue to develop and implement robust curriculum innovation in relation to education for toleration in schools, youth organisations, adult education institutions and community care groups based on the Judaic principle of social covenant as a mutually enriching reciprocal associative relationship at a religious, political, social and cultural level within the liberal democratic society as has been discussed in this thesis.

As part of on-going school policy development, this thesis underscores the importance of developing creative opportunities for faith-based schools and schools of no faith to share and debate ideas with one another concerning what it means to be a tolerant citizen. It also indicates the importance of innovative curriculum development and implementation alongside teacher training and mentoring, in order to support teaching for toleration at a level of excellence in **all** schools.

Amy Sale's (2012) words are an apposite close to this thesis:

To date, research has helped ferret out the factors that increase the likelihood of radical change in educational settings. It has identified the gaps between vision and practice and the dynamics within communities that call for unique responses. And research has ignited interest in a field and provoked action. Research can and should play an important role in understanding the current situation in Jewish education, analysing the needs and possibilities for change nationally and locally, defining success, and measuring progress. Vision is greatly needed. But vision needs the weight of research behind it ...and sometimes in front of it. (Amy L. Sales, 2012, p. 319)

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## APPENDIX 1

### *Cantle Report (2001)*

This report was commissioned by the home secretary, David Blunkett, in December 2001 after the Northern England race riots in the summer of that same year, in Bradford, Oldham and Burnley. The report was written by the then chief executive of Nottingham City Council, Ted Cantle, hence its name.<sup>160</sup> Points relevant to arguments in this thesis are

- The towns showed a ‘depth of polarisation’ around segregated communities living ‘a series of parallel lives’.
- Further violence is likely if government, police and community leaders fail to break this polarisation.
- An oath of national allegiance from immigrants might help future race relations.
- Politicians, community leaders and the media should promote ‘a meaningful concept of citizenship’.
- At least 25% of places in single-faith schools, state or private, should be given to children of alternative backgrounds.
- Where extremists are determined to stir up trouble, mutual ignorance of inward-looking communities can easily turn to fear.

(Cantle Report, 2001 [Online]. Available at:

<http://www.guardian.co.uk/uk/2001/dec/11/race.world5> [Accessed 24/10/2012].

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<sup>160</sup> In July 2004, Professor Cantle wrote what is known as the **Second Cantle Report** [see Appendix 2], entitled *The End of Parallel Lives?* In 2005, he established the Institute of Community Cohesion (iCoCo) of which he is currently the Executive Chair.



## APPENDIX 2

### *Second Cantle Report (2004)*

In section 2.3 the report *The End of Parallel Lives?* [Online]. Available at:

<http://resources.cohesioninstitute.org.uk/Publications/Documents/Document/DownloadDocumentsFile.aspx?recordId=88andfile=PDFversion> [Accessed 18/4/2010], states that

- The debate about values and identity is clearly linked to the concept of citizenship.
- The introduction in September 2002 of citizenship education as a statutory part of the national curriculum is an important step forward in encouraging young people to think about and discuss mutual respect and tolerance of people from different religious and cultural backgrounds and should possibly be a condition of funding.
- A [new] faith-based school must demonstrate either a partially inclusive admissions policy or, if it does not feel that that is appropriate, a commitment to and strategy for working with other schools in the area of another faith or no faith.

The Association of Teachers and Lecturers [ATL]. (2007). *Educational Union TL Position Statement in Regard to Faith Schools*. [Online]. Available at: <http://www.accordcoalition.org.uk/wp-content/uploads/2008/08/microsoft-word-positionstatement-wordversion.pdf> [Accessed 25/4/2010] states as follows

#### *Admissions, segregation and community*

- ATL is concerned regarding research findings that indicate higher levels of segregation in those local authorities [LA's] with the highest numbers of faith schools, particularly those with restrictive admissions or curriculum.
- The ATL wants the duty to ensure that pupils have contact with other cultures to be placed on all schools. This is particularly important in faith schools where the risks of segregation may be higher.
- The ATL is concerned regarding faith schools which see their mission as the transmission of religious belief and culture from one generation to another, and have closed admission procedures with the majority of places allocated to those from their own faith community.
- Thus the ATL calls for the development of a framework of civic engagement in which faith and non-faith schools can work together for the common good and contribute to a community culture that transcends particular religious and cultural identities.
- The ATL proposes that criteria related to the promotion of community cohesion should be linked to the level of autonomy granted to schools, including faith schools, such as freedoms over the setting of admissions procedures and the curriculum taught within the school. Schools would meet these criteria through evidence of a range of activities; from specific projects to promote community dialogue and increased understanding, to activity across the taught curriculum promoting values of community engagement and tolerance. All schools must

show evidence of what has become the now OFSTED-inspected duty to promote community cohesion.

### *Equalities*

- The ATL cautions against the homogenisation of groups through a faith identity that fails to recognise the diversity within.
- The ATL believes that, in order to aid community cohesion rather than promote the rights of one section of the community, parental choice for a place in a faith school must be treated as an equality issue.

### *Curriculum, worship and inclusive practice within faith schools*

- The ATL believes that all curriculum subjects, particularly RE, personal, personal social and health education and citizenship, should be subject to the same criteria, monitoring and inspection within faith schools as experienced in non-faith schools.
- The ATL advocates a curriculum and practice in both faith and non-faith schools that recognises the diversity of the school population in terms of background, values and beliefs, and encourages those pupils and their experiences to enrich all aspects of the curriculum within the school.
- The ATL believes that all schools, including faith schools, need to have a responsibility towards the common good, the greater community, and to be expected to show evidence of actively supporting this goal.

### APPENDIX 3

The Jewish Leadership Council Commission on Jewish Schools (2008). *The future of Jewish schools*. [Online]. Available at: <http://www.bod.org.uk/content/CoJSReport.pdf> [Accessed 12/12/2012] states the following in the section entitled: *Political and Educational Environment* (pp. 52-57), in regard to admissions quotas, admissions code [policy], and community cohesion

#### ADMISSIONS QUOTAS

**5.2** The core purpose of a Jewish school is to provide a safe environment to teach pupils about their faith and to strengthen their Jewish identity. It is natural therefore that priority in admissions should be given to Jewish pupils. This was challenged in autumn 2006 by a government proposal<sup>161</sup> to introduce immediate legislation for the imposition of 'quotas' on new maintained faith schools, requiring them to accept 25 per cent of their pupils from outside their faith group.

**5.3** The proposal was successfully challenged by the minority faith communities and a coalition was formed between the Catholic Education Service, the Board of Deputies of British Jews, the Association of Muslim Schools, the Hindu Forum and the Sikh community. The communities and the Government worked together to formulate a statement about the role of faith schools, which eventually became the publication *Faith in the System*, (2007)<sup>162</sup> .... this includes a statement of principled support for faith schools and seeks to encourage those that remain independent to enter the maintained sector.

**5.4** ..... Our understanding is that while *Faith in the System* should be viewed positively, the issue of quotas has not been removed entirely from the political agenda. Those opposed to faith schools have an organised campaign and willing spokespeople within Parliament. For example, the British Humanist Association has appointed an anti-faith schools officer. The faith coalition needs to continue its work, not just in a reactive mode, but on an on-going basis. It should more positively advocate the need for and benefit of faith schools and defend parental choice. The Jewish community's efforts in this respect need to be enhanced.

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<sup>161</sup> Following David Cameron's conference speech to the Conservative party in Bournemouth on 4 October 2006, [see Chapter 3], in which he expressed concern about single faith schools, education secretary Alan Johnson stated in the same month, that the government would require all new maintained faith schools to admit up to a quarter of their pupils from other faiths or no faith.

<sup>162</sup> Due to growing public unease at the increasing number of faith schools, Ed Balls, then Secretary of State for Children, Schools and Families, [currently Shadow Chancellor of the Exchequer], together with leaders of the major faiths published *Faith in the System* [Online]. Available at: <http://www.educationengland.org.uk/history/chapter11.html> [Accessed 12/12/2012]. This stated that in return for state funding of ninety per cent of building costs and all running costs, faith groups would agree to 'promote social cohesion'. However, the ATL objected to the fact that faith schools which were receiving the majority of their funding from the state should in fact nurture children in a particular faith.

In regard to admissions quotas, the Board of Deputies recommended that it, in consultation with all interested parties, strengthens its advocacy and lobbying on behalf of Jewish schools and allocates more resources for this purpose.

## **ADMISSIONS CODE**

**5.5** Maintained faith schools must conform to a statutory School Admissions Code, which is adjusted by the Government regularly. The purpose of the Code is to ensure fair and transparent admissions processes. The two sections of the Code that have caused most concern within schools are the oversupply criteria and issues arising from the information requested on the admissions forms. The oversupply criteria have resulted in Jewish schools having to take in non-Jewish children if they do not fill all their places, as has occurred for some years in a number of schools in the regions. This problem is faced particularly by new schools, which may take a few years to reach their full capacity. We support the campaign by the Board of Deputies for new schools and those transferring from the independent sector to be given five years' exemption from the application of the oversupply criteria. This might encourage some strictly orthodox schools to view transfer to the maintained faith sector more favourably.

In regard to the oversupply criteria, the Board of Deputies recommended that the Department for Children, Schools and Families agrees a five-year exemption to the oversupply criteria for admissions to schools newly entering the maintained faith sector.

**5.6** The wide publicity given to ministerial statements about inappropriate information being sought on admissions forms in a sample of faith schools has caused further anxiety about the Government's underlying attitude to Jewish schools. This is despite ministerial assurances on this point, and a resolution of the immediate issues by agreement between the DCSF and the Board of Deputies. There is now, we believe, greater understanding in the DCSF of the need for Jewish schools to obtain certain information, for example, to ascertain the Jewish status of applicants, and to find ways of making this compatible with the School Admissions Code. We are pleased that the DCSF has offered the Jewish community an on-going bilateral process of discussion to resolve these issues, if necessary by making amendments to the Code.

**5.7** At the same time, some Jewish schools need help in understanding what the Code requires of them in clearer language than is currently provided in the technical and legal documents. In May 2008, the Board of Deputies launched *Schools Brief*, a Westminster briefing for school governors and headteachers. We hope this will become a regular publication, providing better information for those leading our schools about political developments that may affect them and,

at the same time, explaining Jewish schools and their needs to Whitehall and Westminster.

## COMMUNITY COHESION

**5.8** In *Faith in the System*, faith schools committed themselves to supporting the Government's policies on community cohesion. In fact, the Jewish community had already done so nearly a year earlier. In December 2006, the Board of Deputies, in consultation with the Agency for Jewish Education, Leo Baeck College, the Jewish Secondary Schools Movement, Menorah Foundation, Manchester Mesivta School<sup>163</sup> and other communal bodies, issued a position statement, *Jewish Schools and Cohesion*, which emphasised that '*the community contends that Jewish Schools are already agents of cohesion and promoters of active citizenship as these are classic Jewish values.*'<sup>164</sup>

**5.9** The statement is significant, both because it was made on behalf of schools across the religious spectrum and because it emphasised the success of Jewish schools in terms of promoting citizenship and inculcating strong values. The new duty on all maintained schools to promote community cohesion introduced by the Education and Inspections Act 2006 came into force in September 2007 and will be inspected by Ofsted from September 2008. What is becoming clear is that there are many different interpretations of community cohesion. Indeed, we agree with those with expertise in this area who have suggested that the term 'community engagement' is a more appropriate description of what is needed. Given the record of our schools, they should approach the new agenda with confidence and see it as an opportunity to demonstrate their achievements.

**5.10** Pikuach<sup>165</sup> is currently working in consultation with schools on a community cohesion framework. The draft guidelines from Ofsted emphasise that one of the issues inspectors will be looking at is evidence of school-linking between single faith schools. To prepare schools for this, the Shared Futures project has been established by the Board of Deputies in partnership with the Pears Foundation and with the endorsement of the Jewish Leadership Council. This will actively link schools of different faiths. It has a multi-faith staff and advisory board and provides an interesting model for the Jewish community developing best practice to support government policy.

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<sup>163</sup> All these are ideologically diverse institutions from right wing Orthodox Jewish to Reform.

<sup>164</sup> See Chapter 5.

<sup>165</sup> Jewish Schools' Inspectorate