

ON BEING TOLERATED

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*[M]onstre, tu n'as pas ma religion, tu n'as donc
point de religion....*

—Voltaire¹

I

HOW does it feel to be tolerated? It feels a lot better than it does to be persecuted. There is, after all, a difference between a ghetto and a pogrom. But being the object of someone's toleration does not always feel very *good*, and that may be why most philosophical defences of toleration, and many political attempts to make toleration effective, are at some point accused of being hollow or even pernicious. We hear that toleration is not enough, or that it is repressive, that what is needed instead is acceptance.

It is easy to dismiss such complaints, especially when formulated as crudely as I just did. Yet they respond to a genuine worry, the sources and significance of which I explore here. First, I try to explain what it is about toleration that often makes it uncomfortable. Second, I want to explore how far a liberal political morality can and should respond to that

¹ *Traité sur la Tolérance* (Paris: Editions Gallimard, 1975), 40.

discomfort. For these purposes I take for granted the validity of the principle of toleration. Much of my argument is meant to be faithful to the familiar ideal that we inherit from Locke, Voltaire, and Mill. However, I also want to propose something that has been less prominent, at least among contemporary liberal writers. I suggest that we need to supplement toleration with what I am going to call *understanding*. Here, as elsewhere, we still have things to learn from H.L.A. Hart's famous dispute with Patrick Devlin about the propriety of enforcing conventional moral standards.

II

The sort of toleration I have in mind is a principle of restraint. It directs people who make adverse judgments about others not to act in certain ways on those judgments, and to refrain from doing so for reasons of a certain type. I shall say more about these features in Section III, but I want to prepare the ground by correcting two common mistakes that make toleration seem more worrying than it has to be. One has to do with the scope of a sound principle of toleration, the other with its demands.

It is unfortunate that our leading contemporary theories of toleration, including Hart's, were worked out for the purpose of fixing the proper limits of the criminal sanction. When the Model Penal Code and the Wolfenden Report were being debated, the forces of intolerance rallied in favour of the *criminalization* of things like prostitution, homosexuality,

and recreational drug use. It therefore became natural to suppose that toleration is mostly a matter of *decriminalization*, and that narrow interpretation remains surprisingly resilient. Presumably it was under its spell that Thomas Nagel could write, back in 1995, that “There has recently developed in our culture a fairly widespread (though still far from dominant) attitude of toleration [of homosexuality] that is remarkable because it is not based on general sympathy or understanding.”² That was premature, coming eight years before a murky and split decision of the Supreme Court finally decriminalized homosexuality throughout the country.³ It was also rather flattering: *apart* from decriminalization it is not clear what evidence there is of a widespread toleration of homosexuality in the United States, a country in which elections can still be won or lost on the issue of what to do about the gays and which, in its hostile treatment of sexual minorities in areas from employment to family law, remains an outlier among the mature democracies.

Could we nonetheless plead that decriminalization is the most important index of tolerance—not everything, but the main thing? We could not. The criminal sanction is so blunt, and often so inconvenient, that there are lots of good reasons for not applying it, many of which have nothing whatever to do with any principle of toleration. Consider, for instance, Catharine MacKinnon’s unrelenting campaign against pornography. It is easy to forget that she launched it with the argument

² Thomas Nagel, “Personal Rights and Public Space,” in his *Concealment and Exposure, and other Essays* (New York: Oxford University Press, 2002), 47.

³ *Lawrence v. Texas*, 539 U.S. 558 (2003).

that criminal obscenity laws ought to be abolished in favour of rights of civil action for women who can prove they have been harmed by the circulation of pornography.⁴ The idea behind this, I need scarcely point out, was not to tolerate the production or use of pornography. It was to free restrictions on pornography from the difficulties of securing criminal convictions and to target more sharply the supposed evils of pornography. MacKinnon's hope was that civil anti-pornography legislation would prove a *better* preventive—more effective, more precise—than had the criminal law of obscenity. Making intolerance more efficient is not a way of becoming more tolerant. Or again: our societies permit possession and trafficking in tobacco. They also ban its use in restaurants and workplaces, restrict access to it by age, and limit advertising of tobacco products. All of this may be justified; but it would be too much to say that we are tolerant of smoking on the ground that it is not (yet?) a criminal offence. There are harder cases. Some test our view of what constitutes coercive power, and the collateral issue of whether the non-coercive prevention of some activity is, or is not, intolerant. One is intolerant of same-sex marriage if one takes steps to prevent same-sex couples from marrying, for example, by firing them if they purport to do so, or by depriving the ultimate legislative authorities of any power to recognize their marriages. But what if an otherwise competent legislator fails to provide any legal powers by which they may marry? Is this “prevention”

⁴ See Andrea Dworkin and Catharine A. MacKinnon, *Pornography and Civil Rights: A New Day for Women's Equality* (Minneapolis: Organizing Against Pornography, 1988), Appendix D: 'Model Antipornography Civil-Rights Ordinance.'

or, if it is not, is it morally objectionable for the same reasons? I do not want to make any of this seem simpler than it is, and it is not my ambition here to determine precisely what toleration requires in such cases. My only point is that decriminalization is obviously tolerance of a very narrow kind. When that is all we offer those whom we propose to tolerate, we do not offer them much, and they have every right to feel aggrieved.

So there is our first corrective: where toleration should be extended it should often be broad, and generally broader than decriminalization. The second corrective is more subtle. Even when given its proper scope, toleration should be extended in the right spirit. It is often assumed, perhaps because it is often true, that toleration is a grudging virtue. The explanation for this is not complicated. People can see the force of an argument without fully taking it to heart, and they can be compelled to conform to its results without even seeing its force. Thus while tolerating they can make it clear that they wish they didn't *have* to be tolerant. Individual cases quickly come to mind: racial minorities whose presence in an apartment building is tolerated but to whom few speak and whom the doorman treats with ill-concealed disdain. There are also public cases. After the Supreme Court of Canada ruled it unconstitutional to treat same-sex couples differently from unmarried different-sex couples, the then-Conservative government enacted a bill bringing the Province's family law statutes into grudging conformity with the Constitution. It proclaimed

equality for same-sex couples in a statute that it styled, *Amendments Because of the Supreme Court of Canada Decision in M. v. H.*

Nobody wants to be tolerated grudgingly, especially when that grudge is overt or ostentatious. There is nothing suspect about this. When we are entitled to a certain treatment, we want that treatment to express or to at least be consistent with the reasons that ground it. (People do not want to be admired grudgingly either.) But grudge is no part of toleration, and that is our second corrective. One may also tolerate joyously and generously, out of a sense of duty, respect, or even wonder at the rich diversity of human lives. Here, Locke is a reliable guide:

No private Person has any Right, in any manner, to prejudice another Person in his Civil Enjoyments, because he is of another Church or Religion. (...) No Violence or Injury is to be offered him, whether he be Christian or Pagan. Nay, we must not content our selves with the narrow Measures of bare Justice: Charity, Bounty, and Liberality must be added to it. This the Gospel enjoyns, this Reason directs, and this that natural Fellowship we are born into requires of us.”⁵

One of these lines of argument is directed at Christians who imagine their religious duties discharged when they accord others “the narrow Measures of bare Justice”, conforming to the morality of the Law but defying the

⁵ John Locke, *A Letter Concerning Toleration*, J.H. Tully, ed. (Indianapolis, IN: Hackett Publishing, 1983), 31.

gospel of Love. But Locke also mentions a non-theological argument that he intends to apply to all of us. We owe those whom we tolerate charity, bounty, and liberality as an expression of the “natural Fellowship” of all humankind. I do not think that it matters whether we take this to be an argument for the importance of virtues complementary, but superadded, to toleration, or whether we take it to show that there is a web of closely-linked attitudes without which toleration is, on its own terms, deficient. The important point is that a grudging toleration, even one satisfying the requirements of Hume called “the cautious, jealous virtue of justice,”⁶ is out of keeping with what we owe each other as members of one fellowship. Disagreements about what to do or how to live need to be understood as disputes amongst members of one species, who all share common ancestors, and whose most basic needs, pains, and pleasures have no culture and no language. The reasons we have for tolerating other fellows can reach beyond the requirements of tolerance alone, or can demand that we tolerate in ways consistent with their status. We don’t hear as much about these demands as we should, and were they restored to their proper place, toleration might seem less imperious than it sometimes does.

⁶ *Enquiry*, III.1

III

With those corrections in place, is there anything left to worry about? If tolerance is broad and offered in the right spirit, can the tolerated have any substantial reason to feel slighted by toleration? They can.

As I said above, the principle of toleration directs people who make adverse judgments about others not to act in certain ways on those judgments, and to refrain from doing so for reasons of a certain type. It follows, then, that the question of toleration arises only with respect to something—usually conduct—that we consider somehow wrong or deficient.⁷ Toleration is therefore not only consistent with, but actually depends on, the presence of an adverse judgement on the part of the tolerator. That is why I, for one, cannot be said to tolerate homosexual conduct. Although I would never think of trying to prevent it, I also see nothing wrong or deficient in it, so there is for me nothing to tolerate and restraint is not called for. Of course, I am not *intolerant* of homosexuality; the issue simply does not arise. On the other hand, I do tolerate the ritual circumcision of infant males because, although I would not try to prevent that either, I think that the unconsented amputation of parts of other people's bodies is wrong, at least when done only to satisfy someone

⁷ Among “deficiencies” I include things like being incomplete, one-sided, and so on. These are not always moral vices, and they can even be necessary conditions of having other virtues: See Joseph Raz, “Autonomy, Toleration, and the Harm Principle,” in Susan Mendus, ed. *Justifying Toleration: Conceptual and Historical Perspectives* (Cambridge: Cambridge University Press, 1988), 165-65.

else's religious convictions about what would be good for the amputee. Some who share my permissive attitudes may deliver the opposite verdicts in these cases: approving the cutting while deploring the loving. If so, they tolerate what I do not. Which acts we can be said to tolerate thus depends not only on what we are willing to do about them, but also on the background judgments in light of which we act or refrain from acting.⁸

That points to the first and easiest part of the explanation for why justified toleration stings: it depends on a judgment about people's lives that they are likely to find unwelcome. In the cases that are politically salient, this is often a judgment about fundamental, identity-constituting, attitudes towards love, faith, work, and so on. Do we feel tempted to say, "Get over it"? That is a hard saying. It would take a Socrates not to care about how others react to these things, and it would be all too human to feel hurt by their disapproval. In the serious cases that engage our attention, the adverse judgements are rarely isolated or idiosyncratic. The practices of religious, cultural or sexual minorities often face broad, systematic hostility; they are subject to a *general* disapproval that can even set the terms of political discourse within their societies. Their conduct is not only seen in an adverse light, that judgment is widely seen as natural, proper, and normal. In extreme cases, it may feel that there is

⁸ There are complications here worth flagging. First, there is a question of whether the judgment needs to be conscious. Should we say that someone tolerates an activity if she is "committed" to an adverse judgment about it though she is herself unaware of that commitment? Second, does any old "con-attitude," as they used to say, qualify as an adverse *judgment*, or does it need to be an attitude with a certain structure, or capable of taking a certain object? (Is blind hatred a judgment? Can racial difference be an object of toleration?) A full study of these issues would take us too far afield for present purposes, though I do briefly touch on the second.

not even an adequate shared vocabulary in which they can voice their disagreement.

The second feature of toleration is that while leaving in place the adverse judgment it directs us not to *act* on it in certain ways. Practical judgments establish reasons to act; in the case of adverse judgments, reasons to prevent, oppose, resist, etc. The principle of toleration offers a reason not to act on some of those reasons. That marks it as a principle of restraint. Of course, it is not a principle of *complete* restraint; it permits the tolerant to act in many ways. For example, toleration does not condemn *abstaining from* conduct of which one disapproves, or *arguing against* it. In *A Letter Concerning Toleration*, Locke suggests that we even have a duty to do these things, provided we discharge it in a certain way: “the care of each Man’s Salvation belongs only to himself. But I would not have this understood, as if I meant thereby to condemn all charitable Admonitions, and affectionate Endeavours to reduce Men from Errors; which are indeed the Duty of a Christian. (...) But all Force and Compulsion are to be forborn. Nothing is to be done imperiously.”⁹ Force and compulsion are the main modalities excluded by toleration; whether they are the only ones is a question that we need to set aside here.

Now, the fact that toleration is a principle of restraint makes it tempting to suppose that it is an unalloyed good as far as the tolerated are concerned. It protects them from the harshest consequences of the opinion

⁹ Locke, *A Letter Concerning Toleration*, J.H. Tully, ed. (Indianapolis, IN: Hackett Publishing, 1983), 47.

of others. Naturally, they do not see it as *ideal*—they would probably prefer that others would come to their senses and reverse the judgments on which their toleration depends. But if that is not likely or (for reasons I'll discuss below) not appropriate, how could the tolerated not welcome toleration?

One answer lies in another of the preconditions for toleration. D.D. Raphael observes, "One can meaningfully speak of tolerating, i.e. of allowing or permitting, only if one is in a position to disallow. You must have the power to forbid or prevent, if you are to be in a position to permit."¹⁰ There is thus a connection between being tolerated and being subject to someone's power. This connection is not strictly necessary. It is also possible to adopt a policy of restraint when one *believes*, falsely, that one has or may come to have the power of prevention.¹¹ But in the standard case, the reason people believe that they have the power to prevent is that they actually do. So while the connection between toleration and power is sometimes indirect, it is also important, and it is marked by our common distinction between toleration on the one hand and endurance or resignation on the other. For example, if I come to believe that *nothing can be done* about a bellicose government, then the fact that I put up with it shows, not that I tolerate it, but that I am resigned to it. Resignation, unlike toleration, is a virtue of the powerless.

¹⁰ D.D. Raphael, "The Intolerable," in Susan Mendus, ed. *Justifying Toleration*, 139.

¹¹ I am indebted here to the discussion in Andrew Jason Cohen's paper, "What Toleration Is," 115 *Ethics* (2004), 93-4.

I hasten to add that this connection between toleration and power does not show that toleration is a *form* of power, let alone a repressive or oppressive one. At any rate, it is not a form of power over others, for it does not give any capacity to affect their interests that the tolerator does not already have. But the connection points to the kernel of truth in those dramatic overstatements. Toleration is native to environments in which power is or may soon be in play, and those are not the environments in which the tolerated would necessarily want to live. People resent having their noses rubbed in the fact that others have (or suppose they have) the power to prevent them praying, loving, or working as they judge right, especially if they have no similar power over their tolerators. In this respect, toleration shares something with other desirable but asymmetric relations, like offering mercy or taking pity, which can also be uncomfortable for their recipients. And when we consider people as members of minority groups, then the fact of toleration may be an unhappy reminder of the distribution of social power. Some traditionalist Muslim immigrants to the West have to resign themselves to many features of the societies around them, for example, to the fact that their girls will grow up seeing women wearing short skirts, flirting with strangers, drinking in bars, and so on. In contrast, members of Western societies can (we hope) learn to tolerate the fact that some of the Muslim girls will veil. Things being what they are, the host society has options that the immigrant minority lacks. Toleration does not cause, ratify, or

legitimate that difference in power; but it does reflect it. Given the choice between a situation in which someone has the power to prevent you from praying as you want but will tolerate you doing it, and a situation in which he lacks that power, most would prefer the second.

IV

The preceding arguments relied on two necessary features of toleration to explain why it can be unwelcome. These can give rise to discomfort with toleration even when it is given its proper value and even when it is properly understood. I have not given any proof of the legitimacy of these feelings; I have tried to exhibit them as normal and natural responses to the circumstances in which they arise (and I doubt we can do more than that). They are significant because they point to vices of toleration that come part and parcel with its virtues. Sometimes, however, toleration is not a virtue at all. Before testing some proposed remedies for the vices of justified toleration we need to say something about the remedies for vicious toleration. These are quite different problems, and their solutions are not to be confused.

The ways that toleration can go wrong are myriad. I shall mention only three. First, there may be nothing at all wrong or deficient in the conduct that gives rise to the adverse judgment. Here, the tolerator is in error, whether owing to the burdens of judgment that make us all fallible, or to bias flowing from a particular prejudice, hatred or superstition. I

said above that it is natural to feel aggrieved in the face of adverse judgements, especially pervasive ones. When these judgments are also wrong, it is not only natural but rational.

Second, there is the case of tolerating the intolerable. When Herbert Marcuse criticized what he called “repressive tolerance,” his claim was not that toleration is of its nature a regressive force. It was that in modern capitalist societies, in particular in the United States, toleration is often misdirected. “Tolerance is extended to policies, conditions, and modes of behaviour which should not be tolerated because they are impeding, if not destroying, the chances of creating an existence without fear and misery.”¹² Americans, Marcuse complained, willingly tolerate things like their country’s possession and use of nuclear weapons, the domination of its politics by wealth, and “the systematic moronization of children and adults alike by publicity and propaganda.”¹³ When he accused them of repressive tolerance, he meant it in the exact sense. If asked (at any rate, in 1965, when Marcuse was writing) many Americans would have judged these states of affairs wrong or regrettable; yet few did anything to prevent them. Perhaps some felt powerless: their inaction was despairing resignation. But others surely stayed their hands in the interests of the values (real or imagined) of national security, collective wealth, or social stability. If people get into the habit of tolerating the wrong things, it can eventually undermine the social bases of tolerance. The importance

¹² Herbert Marcuse, “Repressive Tolerance,” in R.P. Wolff, B. Moore, Jr, and H. Marcuse, *A Critique of Pure Tolerance* (Boston: Beacon Press, 1965), 82.

¹³ *Ibid*, 83.

of a general *climate* of tolerance is often missed. A tolerated individual may even have a smaller stake in the toleration of his *own* conduct than he does in the continued existence of a broadly tolerant society. (And he may therefore be tempted to ride freely on the social production of this public good.) How far this holds in any particular case is an empirical question, the complexities of which bedevil any general attempt to decide when it is safe to tolerate the intolerable (including the intolerant). Given their own histories, political institutions and cultures, some societies can tolerate plutocrats, neo-Nazis, and religious fundamentalists. Others cannot afford to take such chances.

A third way toleration can go wrong is based not on its objects but its grounds. Toleration should be based on the right reasons. Here, I intend something more than Locke's point that tolerance should be extended in the right spirit, though it is connected with that. There are many good reasons for adopting a policy of toleration. Liberals generally favour toleration because of its connection with liberty. But there are other principled arguments, including the fact that toleration sustains shared goods, such as an environment in which people can interact anonymously in a variety of contexts without needing to see eye-to-eye on life, and without even needing to make their allegiances in this department very clear. Toleration can also be valuable for the Burkean reasons that Hart invoked, somewhat ironically, against Devlin's refusal to tolerate deviations from conventional sexual morality. Certain institutions have

the value they do because they are organically connected with the life of a society. But it is a condition for organic growth of institutions such as marriage or the family that they be allowed free development in a climate of tolerance: “To use coercion to maintain the moral *status quo* at any point in a society’s history would be artificially to arrest the process which gives social institutions their value.”¹⁴ Toleration can draw support from many considerations.

On the other hand, there are reasons for toleration that are morally suspect. J.S. Mill famously argued that we are entitled to “the liberty of tastes and pursuits; of framing the plan of our life to suit our own character, of doing as we like, *subject to such consequences as may follow*: without impediment from our fellow-creatures, so long as what we do does not harm them....”¹⁵ Notice that this statement of the harm principle also contains, in the passage I italicized, a warning to those who are granted the freedom to make their bed that they may need to lie in it. The harm principle secures their autonomy to choose the good *or* the bad; this is the nature of liberty. Consider, then, one who tolerates another *in order to* make bad outcomes more likely, by securing a liberty with the intention or hope that it be used wrongly.¹⁶ Suppose Ari tolerates Bill’s smoking in order to increase the odds that Bill will get cancer and

¹⁴ H.L.A. Hart, *Law, Liberty and Morality* (Stanford, CA: Stanford University Press, 1963), 75. See also R.M. Dworkin, *Is Democracy Possible Here?* (Princeton: Princeton University Press, 2006), 74-5, 88.

¹⁵ J.S. Mill, *On Liberty* (New York: Modern Library, 1981), 15.

¹⁶ For discussion of such examples, see Peter Gardner, “Tolerance and Education,” in John Horton, ed., *Liberalism, Multiculturalism and Toleration* (New York: St. Martins Press, 1993), 90, and A.J. Cohen, “What Toleration Is,” 81-83.

therefore come to regret he paid so little attention to Ari's wisdom. In addition to teaching others a lesson, toleration may be intended to increase social tension (e.g. in order to hasten the purifying conflict of Armageddon), or to increase aggregate wealth. A government might tolerate smoking because its actuaries discover that smokers die early enough to yield net savings in pensions and healthcare. And there are milder but still troubling cases. In *Lawrence v. Texas*, Justice Clarence Thomas dissented from the proposition that the US Constitution confers any liberty broad enough to protect private, consensual homosexual conduct between adults. But he also said that, were he a Texas legislator instead of a federal judge, he would tolerate it on the ground that "this does not appear to be a worthy way to expend valuable law enforcement resources."¹⁷ That idea was not elaborated, so it is hard to know exactly what thought Justice Thomas was trying to frame. Possibly he considered that homosexuality should be tolerated only because, and to the extent that, the police have more serious crimes to investigate and the courts more serious wrongs to repress. Had that been accepted as the basis for toleration, gay Americans would rightly feel uneasy.

V

In cases like those just discussed—tolerating the innocent, tolerating the intolerable, and tolerating for bad reasons—what is needed by way of remedy is obvious. We need to tolerate correctly. Here, the

¹⁷ 539 U.S. 558 (2003).

problem is that of working up a satisfactory theory of toleration and then, within the constraints of our empirical and institutional knowledge, applying it as best we can. (That that is what we *need* is obvious; how to get there is not.) Yet none of that will address the discomfort associated with toleration properly understood and applied. It is at this point in the discussion that we usually begin to hear demands for something else: people need not merely to be tolerated, it is said, but to be *accepted*. Although tempting, this idea proves incoherent. In the circumstances that give rise to a need for toleration in the first place, acceptance is an impossible ideal.

The political sense of “acceptance” varies with context. Sometimes, it simply *means* toleration, or at least a more complete toleration. For example, when gay people say that want to be accepted in the US armed forces, and not merely tolerated under the Clinton policy of “don’t ask, don’t tell,” they are not hoping that their superiors will think that it swell that they are gay, or will march with them in the Pride parade. They are objecting to the fact that being openly gay remains a ground for dismissal, and that they are therefore *not* now tolerated, or are tolerated under extortionate conditions that would never be imposed on any other group whose proximity makes some enlisted men feel uncomfortable.

A second notion of acceptance is closely related to respect. An employer must not only refrain from firing employees who have disabilities, it must also admit them into the workforce and then provide

accommodations that enable them to work. This sort of openness does express respect for people with disabilities, but it does little to alleviate our worries about tolerance. Providing accessible toilets or assistive technologies does not soften the judgment that it is a matter of *regret* that anyone needs them or that it would be much better for the productivity of the firm if they did not. It is no counterbalance to the power of the tolerator. Indeed, the possibility of accommodation rests on a similar power to intervene in the life of the accommodated and, although welcome overall, it may be resented in much the same way as toleration itself.

A third notion of acceptance involves something like the valuing of difference. Audre Lorde writes, "Difference must be not merely tolerated, but seen as a fund of necessary polarities between which our creativity can spark like a dialectic."¹⁸ These are hard days for dialectics, and for differences, the love of which some think has already gone too far. Even if it has not been given a full trial, however, Lorde's proposal will not help here. Social difference is one source of creativity; but valuing it does not require or support tolerance. It can spark intolerance. Suppose we need a fund of polarities sufficient to sustain moral creativity and experiments in living. It does not follow that we need all of the *actual* options that our culture makes available. We only need a broad enough range. History shows that we can get plenty of creative sparks flying between Anglicans and Presbyterians without the help of Catholics, to say nothing of Jews,

¹⁸ Audre Lorde, "'The Master's Tools Will Never Dismantle the Master's House,'" in her *Sister Outsider: Essays and Speeches by Audre Lorde* (Freedom, CA: Crossing, 1984), 111.

Muslims, or Wiccans, who may be dispensable as far as the currents of creativity are concerned. Indeed, there may be options—benign and boring religions, for example—that could profitably be repressed in order to provide support for more exciting and unusual ones that would bring still greater creative potential for experiments in living. To celebrate the differences among our *existing* options, one will need not only the abstract love of difference that Lorde urges, but a love of *our own* differences. That pulls us in a somewhat different direction, and suggests why acceptance is not our answer.

It is in intimate contexts that we are most justified in seeking, and most likely to find, that sort of love. Here is a familiar example. Parents should not merely tolerate the homosexuality of their child. They should accept it. But now consider what that requires. Parents who think their children's sexuality a moral disorder, or a sickness, or simply disgusting, first need to let go of the idea that they can do anything about it. For some this will be an enormous step, requiring them to abandon their fantasies of parental power. But it is not enough. No child wants his parents to be merely *resigned* to his sexuality. The judgment that confirms is likely to deform the love that parents owe their children, and to undermine the honesty with which children should engage their parents. Parents need to accept their child's sexuality as an innocent variation in the human capacity for love, as a benign part of the child's constitution. This may be much more difficult, for unlike resignation or toleration, acceptance may

require not only a transformation in the parents' values, but also in their way of life.

I choose this example for two reasons. First, it is a case where acceptance has, for most of us, powerful appeal. Parents who really *cannot* accept the sexual orientation of their children—and some are unable to do so—cannot enjoy full parental love for those children.¹⁹ It may be worse than that. If their hostility drives their children into hiding, they may lose any authentic relationship with them. Second, this example also shows why it is idle to hope that the difficulties of toleration can be met by acceptance. Even parents, who have one of the strongest motivations to try, may still be unable to accept. The odds that weaker motivations—including appeals the wonder of difference—may succeed where love fails are very slim indeed.

What's more, even where self-transformation is both desirable and possible it rarely comes without loss. Suppose that hostility to a child's sexuality is based on her parents' religious views. How *can* a member of a hostile faith accept his child's sexuality without becoming an internal dissident, a non-believer, or a believer in an affirming church? Any of

¹⁹ I emphasise "full". I do not deny that such parents may have a conditional love for their children, and I certainly do not assert that their incapacity for full love entails a hatred of their children. (Though such cases are not unknown.) The parents' failure, though regrettable, may even be blameless. Acceptance, like belief, is not directly subject to our will. We cannot simply *decide* to accept that *p*, when we feel deep in our gut that *not-p*; and no cool, rational, argument is likely to persuade us otherwise. We may therefore need to sneak up on *not-p*, exposing ourselves to influences that display the possibility that *p*, or that interpret things on the footing that *p*, and so forth. Over time, we may therefore come to see that *p* is possible, eligible for endorsement and then, if we are lucky, true. (Some horses do drink when led to water.)

these options will bring alienation from a way of life in which he is not only entrenched, but which normally has virtues. It is not as if all the value of living as an orthodox Jew or Roman Catholic is negated by the homophobia fossilized in their rules—there is also discipline, loyalty, humility, and all the rest that makes these religions (among others) valuable forms of life. At the same time, it would be dishonest to deny that they also have very robust traditions and authority structures which may leave no way for an accepting parent to separate the wheat from the chaff while remaining a full member of the community.²⁰

Secular parents face challenges no less deep. They may need to change their views about the boundaries of the family or about the meanings of sex. Even now, heterosexual culture tries to keep sexuality under control, and it is no bad thing for straight people to be free of its persistent distractions. However, owing to the salience of their difference, gay children often become proud of their sexuality in ways that embarrass the most liberal of parents. “Why does she have to be so in-your-face?” “Why does he have to be such a *homosexual*; why can’t he just be (quietly) sexual?” Secular parents who would find moral judgments about the orientation of a child’s sexuality unintelligible or perverse may nonetheless have a hard time accepting the prominence of sexuality in a gay child’s life. They may want their gay children to be straight gays—

²⁰ I discuss the authority of social groups over their members in my paper, “Internal Minorities and their Rights,” in W. Kymlicka, ed., *Rights of Cultural Minorities* (Oxford: Oxford University Press, 1995), 257-272.

just like themselves, except homosexual. And of course all parents, religious and secular, who accept their gay children will need to reject or tolerate their own homophobic friends, family, neighbours and colleagues. Anything worth the name “acceptance” is obviously not going to come easily or cheaply.

To the extent that the good is plural, costs are an inevitable part of acceptance. Robert Paul Wolff writes, “Political toleration is that state of mind and condition of society which enables a pluralist democracy to function well and to realize the ideal of pluralism.”²¹ Wolff offers this as an analysis, not a commendation, for he is sceptical of the pretensions of pluralist democracy (mainly on the ground that it is not as pluralist as it pretends). But his point is correct: toleration is indeed a virtue needed for pluralism. Acceptance, we might say, is a virtue needed for unity. The pluralism that tolerance enables competes with a full-blooded acceptance of others. And pluralism should sometimes win out, assuming as I do that there are many competing, decent ways to lead one’s life.²² That is why it is legitimate to expect acceptance in some familial contexts, and why we should be sceptical about trying to give it a broad role in the polity.

²¹ Robert Paul Wolff, “Beyond Toleration,” in R.P. Wolff, B. Moore, Jr., and H. Marcuse, *A Critique of Pure Toleration* (Boston: Beacon Press, 1965), 4.

²²The most influential modern defence of this view is Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986). I discuss some limitations of value pluralism as an approach to cultural difference in, “Pluralism, Social Conflict, and Tolerance,” in A. Soeteman, ed., *Pluralism and Law* (Dordrecht: Kluwer, 2001), 85-105.

VI

Our review of acceptance yields negative results. But it points towards the shape of the principle we are seeking: it has to be one that leaves disagreements about value intact, yet somehow re-frames them so as to moderate the sting of toleration. Acceptance cannot do that, for it succeeds only by effacing difference. Acceptance is called for when the adverse judgments are mistaken or undesirable in light of the relationship aspired to by the tolerator and the tolerated. Those are not, however, the circumstances in which we generally find ourselves. Someone who makes an erroneous judgement may first need to learn to tolerate the conduct in question before being in any position to appreciate that his judgement *is* wrong. The impulse to repress and discourage does not inspire one to find out much about disapproved conduct, and it usually makes it harder to do so. Unsurprisingly, intolerance is therefore often associated with ignorance and stereotyping. And it is wrong to suppose that all adverse judgements should be abandoned whenever they hurt. Some of them are perfectly sound and as such should be accepted by the tolerated as much as the tolerator. Others are integral parts of otherwise morally valuable ways of life, and cannot be abandoned without radical transformation of those ways of life.

I therefore want to propose a different approach by investigating a more complex way that toleration may misfire. Assume we should tolerate ostentation in religious clothing and symbols, including Catholic

nuns wearing habits, Muslim women wearing the hijab, and Sikh men wearing their ceremonial dagger, the kirpan. I assume that none of these activities should be criminalized, that they should not be rendered infeasible by any other sort of regulation, and that they should be ungrudgingly tolerated even by those who think them primitive, sexist, and so forth. There are, however, various routes by which we might arrive at that conclusion. These include the idea that people are entitled to wear just whatever they like, at least when there is no countervailing reason of public interest for them to refrain. On this interpretation, the habit, hijab and kirpan are all to be tolerated in the same way *and for the same reason* that we should tolerate loud dresses at funerals, students in “gangsta” gear, and Scots bearing the *sgian dubh*. They all come under the liberty to dress as one pleases, which is one aspect of Mill’s cherished liberty of tastes and pursuits. And this is not as a case of tolerating for bad reasons—the liberty of tastes and pursuits is an important liberty, and one that grounds many sound arguments for toleration.

Nonetheless, Catholics, Muslims and Sikhs do not *themselves* value the tolerated activities under the description I have just given. It is in fact extremely unlikely that they would even acknowledge them as expressions of a general liberty to dress as one pleases, for they are aspects of ways of life that *reject* that liberty. The habit, hijab and kirpan are commonly worn in conformity to a belief that we have a duty to dress in some ways, and to abstain from dressing in others. To represent them as

instances of the liberty of tastes and pursuits might be useful in establishing political alliances or pushing a permissive policy without attracting too much attention to its consequences, but it would also distort what the issue is really about.

One might ask, what does that matter, so long as we get to the right bottom line? It matters because it may misconceive the injury of *intolerance*, and that may affect what the bottom line requires. Consider another example. Until it was struck down in 1967, American states enjoyed the power to prohibit marriages between black people and white people, and a number of them still exercised it. It goes without saying that this offended freedom of association. But to think that was the only moral stake in *Loving v. Virginia*²³ is to miss the worst evil of the anti-miscegenation laws. Of course they *did* interfere with freedom of association but, along with separate schools and train compartments, they did so in order to secure the central planks of apartheid. The point is not that “restricting freedom of association” sounds too bland, too sanitary, to capture the profound assault on human dignity wrought by these laws. It is that it occludes the meaning of heteroracial marriage in the relevant social context. The significance of *Loving* was not that it attempted to bolster freedom of association, but that it attempted to dismantle racism. That was the intolerance it targeted; race-hatred was its root. Had *Loving* been decided *without* ever naming racial superiority, it might have been a rhetorical success, but it would have been a moral failure.

²³388 U.S. 1 (1967).

Perhaps this only pushes the question further back. Granted that *Loving* was about racism and that the liberty to wear the hijab implicates religious duties, why is it so important that our attitudes and policies notice it now? Heteroracial marriage was *not* tolerated in Virginia, and perhaps would not have been tolerated as early or as far had the court lacked the courage to name the vice. But wearing the hijab is *already* tolerated in England. What does it matter that we do so for reasons that Muslim women would themselves acknowledge?

One influential suggestion is that we must do so to satisfy the need for mutual *recognition*.²⁴ It can hurt to be tolerated when that tolerance is accompanied by a mistaken view of one's social identity and the way it is implicated in one's conduct. On this view, our identities are elaborated in dialogue with others. Hegel suggested that the mutuality involved can transcend profound inequalities: he claimed that even a master is dependent on his slave for recognition. So perhaps our different faiths, sexualities, and cultures are also elaborated in complex relations of interdependence. If self-knowledge requires the power to see ourselves as others see us, recognition requires the power to see others *as they see themselves*. People generally want such recognition and they take it as a kind of insult to be *misrecognized*.²⁵ Thus, if we tolerate the hijab or kirpan under the aspect of liberty of dress, we misrecognize their bearers

²⁴Charles Taylor, "The Politics of Recognition," in Amy Gutmann, ed., *Multiculturalism and 'The Politics of Recognition,'* (Princeton: Princeton University Press, 1992), 25-73; Axel Honneth, *The Struggle for Recognition: Moral Grammar of Social Conflicts*, trans J. Anderson, (London: Polity Press, 1996).

²⁵Charles Taylor, "The Politics of Recognition," 25.

even as we tolerate them. On the dialogic conception of identity, this is not only an injury to the tolerated, it is also an injury to the tolerator. One is no sort of Christian if you do not understand the ways in which Jews are not-Christian, and thus what it *is* to be a Jew.

This argument is immune to one of the main objections to acceptance: recognition does not efface the difference it celebrates. On the contrary, recognition aims to represent it: the idea is not that I need to share your values but that I need you to know your identity. I do not need to accept Christ as *my* saviour in order to interact with you on the basis that *you* do. But in order to properly represent this fact about you—a fact which may in some complex way also prove crucial to the shape of my own, different, identity—I must also get it *right*.

There are various doubts one might raise about this story: how coherent and stable are these identities? What does it take to get them right? And just how interdependent are they? Assume we can skirt these objections—how far would would a recognitional account answer our worries about toleration? I can recognize your faith while rejecting it, but perhaps the idea that your difference somehow feeds into my own identity suggests that we have a common stake here. Perhaps there are *forms* of disapproval that are at least pragmatically at odds with the idea that our identities are dialogically related, and that recognition may therefore soften the harsher edges of adverse judgment. Recognition is not going to remove any imbalance in power, but it is worth noticing that, unlike

toleration, neither does it presume any beliefs about one's own power over another. Finally, recognition is sensitive to the reasons for toleration; indeed, its main virtue here is as a conduit for these, at least as they are understood by the tolerated.

These are suggestive ideas, but there is reason to doubt that recognition can give them life. It sets the bar too high. In aiming to represent people just as they are, without *misrecognition*, it makes demands that are as unrealizable as those of acceptance. We may lack the concepts essential to reproducing the self-understanding of the other, since the ways she interprets her life may be so bound up with radically different practices that our nearest match may not be good enough. Perhaps the closest we can come to understanding an Afghan or African whose primary identity is tribal is to deploy some analogy to our concept of the family or the political party.²⁶ That is likely to be inadequate; yet it may be the best we can do.

Even when there is in principle no conceptual difficulty, our own beliefs and attitudes may nonetheless have such causal power that they interfere with getting a clear fix on other people and their practices. Nagel criticizes some arguments against tolerating pornography on the grounds that the meanings they impute to it (hatred, violence, etc.) are but

²⁶ I assume that our conception of a "tribe" will not even come close. It is too obviously shaped by our fictitious organizations imposed on the aboriginal populations of North America and Australasia, and too coloured by our fantasies (good and bad) about those peoples.

projections of the sexual fears and fantasies of the intolerant, not authentic understandings of what the material means to its typical user. He writes,

No one is polymorphously perverse enough to be able to enter with imaginative sympathy into the sexuality of all his fellow citizens. Any attempt to treat this psychic jungle of private worlds like a public space is much too likely to be an expression of one's own sexual fantasies, rather than being based on an accurate appreciation of the meaning of the sexuality of others.²⁷

The doubt we can confidently move forward on the basis of “an accurate appreciation of the meaning of the sexuality of others” is a good reason to suppose that authentic recognition is not generally possible. Even among people who share an adequate conceptual repertoire, there are features of sex that make it hard to correctly recognize the other. For one thing, it is difficult to consider sexual scenarios with detachment. The capacity of sexual imagery and stories to fix the human imagination means that one tends to react to them on the basis of how one would feel or respond if one were involved *oneself*. And sex is not unique in this. The same seems to be true of food, where people also engage in wild projections when they contemplate the diversity of culinary habits, for instance, when they learn that in a certain culture people enjoy eating dogs or horses. Along such dimensions, our imaginations seem endemically limited and our prospects for authentic recognition proportionately poor.

²⁷ Thomas Nagel, “Personal Rights and Public Space,” 50.

Now, Nagel wants to make use of this fact to help delimit the boundaries of the private sphere: it is *because* we lack agreed public meanings here that public interference is wrong. This proves too much. There is also a riot of conflicting meanings in areas that are assuredly within the public sphere—understandings about land, for example. We would not want to say that control over external resources should not be subject to compulsion on the ground that some people feel differently than we do about their relationship to the forests, deserts, and mountains. I cannot enter with full imaginative sympathy into the world of an aboriginal person whose moral relationship to land is spiritual and non-propietary. Our legal systems collide with customary practices of land use that do not envisage the sorts of exclusivity and alienability that characterize common-law property regimes. But we are not on those grounds tempted to think that control over real property falls into the “private sphere”. We think that we need to negotiate some sort of accommodation between people with such different understandings. This leaves undisturbed, however, what I take to be Nagel’s central point: there are many areas in which recognition of the other is not only fallible—as it always is—but in which the most reliable prediction is that we will in fact fail. That seems right, and it seriously limits the prospects for recognition—the aspiration to be recognized by others just as we are—as a solution to the problems of toleration.

VII

The proposal I offer tries to occupy a space that is, I think, left open by Nagel's objection. It is more closely related to the recognitional solution than to the acceptance solution, but it is less demanding than either and it is compatible with the persistence of differences that are to be tolerated. Even when we cannot accept or recognize those we think wrong or misguided, we can still try to *understand* them, and that is probably as far as we can go in pulling the sting of justified toleration. It carries us further than we might suppose, though not as far as the tolerated might want.

In a helpful discussion, Nagel denies that those with sadistic or masochistic sexual fantasies simply attach a different *valence* to acts the rest of us abhor: "it's not that they are delighted by *the same thing* that revolts me; it's something else that I don't understand, because it does not fit into the particular configuration of my sexual imagination...."²⁸ Understanding, however, is a matter of degree. Nagel's account actually lays claim to a fair degree of understanding, for in order to know that the sadist is *not* delighted by the same thing that revolts me, I need to know at least that fact—we are *not* just talking about someone who is wired backwards, who is aroused by what I hate. As we shall see, that is already a significant achievement in understanding, and one that cannot be taken for granted. Importantly, Nagel understands that sadistic or masochistic desires *are* forms of sexual desire. And there is more. He also sees that

²⁸*Ibid.*

their desires involve “something having to do with the sense of one’s body and the bodies of others, release of shame, disinhibition of physical control, transgression, and surrender—but I’m guessing.” That’s a pretty good guess. At any rate, it is not unlike what those who are both reflective and brave enough to write about their sado-masochistic desires actually say.²⁹ Now, none of this is to deny that the understanding expressed in Nagel’s sketch is incomplete or imperfect—but why worry about that? If our goal were to develop an adequate *phenomenology* of sadomasochism, to know “what it is like” to be a sadist or a masochist, then the limits of our sexual imaginations would present a serious obstacle. Fortunately, we have more modest ambitions. Consider a much wider gap. I think we have no idea “what it is like” to be a bat. But we do understand enough about bat-hood to know why torturing bats for one’s own amusement is wrong. We know, for instance, that bats are mammals with nervous systems in relevant ways like our own, that they are capable of feeling pain, that they are liable to die if they lose too much blood, and so on. These facts are morally relevant, and knowing them is important. It is, for example, a considerable advance over Descartes’ view that non-human animals are machines.

Now, I am also sure that I do not fully understand what it is like to feel the need to veil one’s face in public; but I do know that it is not normally just a fashion statement. What I know probably involves

²⁹ For example, Pat Califia, “Feminism and Sadomasochism” in her *Public Sex: The Culture of Radical Sex* (Pittsburgh, PA: Cleis, 1994), 164-74.

misrecognition; that is, there are aspects of its significance that elude me, perhaps necessarily. But I have some idea of the interaction among beliefs about personal modesty, the place of sexuality, and the value of tradition that inspire and structure such a view, and therefore some idea of what is at stake were we to become intolerant of it, or to tolerate it on the same basis as a teenager's fashion crimes. This may have two results. Where I am already disposed to toleration, coming to understand the activity better may place my adverse judgment—it stills seems limiting and sexist—in a broader framework. It may start to seem less like a gross error and more like a defective or deficient specimen of a kind of activity that is a genuine source of value. Having a better understanding of the stakes may also broaden my toleration, make me less grudging about it, or less likely to tolerate for the wrong reasons. And where I am *not* disposed to tolerate, understanding may encourage me to revisit that judgment, for it may give me a clearer sense of the harms of intolerance.

Just think how much light a glimmer of understanding could have cast in the case of *R. v. Brown*,³⁰ where the House of Lords had to consider whether consensual sadomasochism should be tolerated (to the extent that such consent should provide a defence to charge of assault). Lord Templeman, in the majority, was scarcely able to see the conduct as sexual, confidently if blindly announcing that, "Society is entitled and bound to protect itself against a cult of violence. Pleasure derived from the infliction of pain is an evil thing. Cruelty is uncivilised." To think that

³⁰ *R. v. Brown*, (1993) 2 All ER 75.

consensual sadomasochistic encounters are but a “cult of violence” can only be psychological projection in full flight. With such a poor grasp of the facts, it was hardly surprising that the only argument for toleration that Lord Templeman considered (and of course rejected) was the blunt assertion that “every person has a right to deal with his body as he pleases.” Yet no one in *Brown* was claiming a right use his body to smother someone, or even a right to commit suicide. And it was not simply an *irrelevant* fact that the activities in question were sexual, that they took place among a group of people sexually attracted to each other, that these people came together on an organized and continuing basis in order to have that sort of sex, and that they enjoyed it when they did. Like Nagel, I do not know what it is like to be a sadomasochist, but I know that it is not a cult of violence. Neither do I know what it is like believe in Holy Communion, but I know that it is not a cult of cannibalism.

Whenever “understanding” is mentioned in political contexts, it has to face, not only the contempt of those who think it unmanly and therefore unfit to consort with virtues like equality, respect or justice, but also the charge that it is morally lax. As then-Prime Minister John Major said in response to an imagined crime-wave, they think “Society needs to condemn a little more and understand a little less.” One might wonder whether it was actually possible, in 1993, to understand crime any less than Major’s “society” did. More charitably, however, we might suppose

that he was trying to say that we should not let our understanding of criminogenic policies and environments drag us into an unthinking willingness to justify or excuse the crimes they predictably incite. We hear the same thing from those who bridle when anyone suggests we might try to understand those Palestinians who resort to terror in resisting Israeli occupation of their territory. Apart from strategist's point that it is always helpful to "know thine enemy," there is an evident flaw in Major's sound-bite. Without understanding, how will we know *that* we need to condemn? And *who*?

H.L.A. Hart grasped the problem well. We sometimes forget that he deployed two independent lines of argument in favour of tolerating homosexual conduct. The first—dissected by a generation of scholars—was that homosexuality is utterly *harmless* and that Patrick Devlin's hysterical claims about the need for conventional sexual morality to prevent social disintegration were absurd. Hart's convincing attacks on such "utilitarianism without facts" are what most people remember of his argument. In fact, it was only half of his case. The second half, rarely even noticed, is that repression is itself extremely *harmful*. Deployment of official coercion to enforce conventional morality causes two sorts of injury: the intended and collateral harms caused by the application of penalties, and a second injury, wider in scope and significance, caused by the standing threat of their application. This not only interferes with choice and thus with experiments in living, in sexual conduct it creates a

special and chronic suffering because of the nature of the desires it frustrates and the role those play in human life. To see this, imagine someone replying, “We all have our dispositions to temptation, and we would not think that a thief’s temptation to steal is any reason for decriminalizing theft, as if criminal law must place the same burdens on the crooked as on the honest.” Hart saw why this would be such a poor answer. The impulse to steal or kill is rarely “a recurrent and insistent part of daily life” and thus, “Resistance to the temptation to commit these crimes is not often, as the suppression of sexual impulses generally is, something which affects the development or balance of the individual’s emotional life, happiness, and personality.”³¹

Those brief sentences go by too quickly, and they are not developed and hedged in the ways they should be if we are to have a fully-paid-up distinction between innocent sexual conduct and sexualized crimes. For those reasons, we are apt to forget what an achievement of understanding they nonetheless represented in 1962, and how important they were to the argument of *Law, Liberty, and Morality*. When Hart wrote, the idea that the repression of homosexual impulses might *adversely* affect the development or balance of one’s emotional life, happiness and personality, was not exactly a received idea. This was an era in which gay men were offered, and sometimes tragically sought, “cures” by hormone injection, surgery, aversion therapy, and prayer. It

³¹ Hart, *Law, Liberty and Morality*, 21-22; cf. H.L.A. *The Concept of Law*, 2nd ed., P Bulloch and J. Raz, eds. (Oxford: Clarendon Press, 1994), 175.

would be more than a decade before homosexuality was removed from the list of illnesses approved in the American Psychiatric Association's *Diagnostic and Statistical Manual*. Official harassment and entrapment of gay men and official toleration of private anti-gay violence were quite common. In that context, understanding that the legal repression of these desires involved stakes *utterly* unlike those in ordinary crimes, cut like a laser beam through a fog of prejudice and superstition.

Notice also the following. There is here no appeal to the *acceptance* of homosexuality, and no demand for the *recognition* of those homosexuals who adopt or are assigned a gay identity. What does the work is Hart's understanding that repression of homosexuality falls under the description "suppression of sexual impulses," together with a plausible grasp of what that means in a typical human life. It is not acceptance, because it does not preclude certain adverse judgments about these impulses; it is not recognition because it does not require the acknowledgement of anyone's identity. (It need not even concede that differences in sexual appetites are sensible things around which to construct identities.) And it does not tell us much about what it is like to be homosexual or bisexual—save that it is *not* like being a burglar or a tax-evader. A small point? Maybe, but one capable of having large implications for the development of toleration and for the way the tolerated receive it.

I've been stressing the role of understanding in Hart's argument. It is worth noting that it is not only the tolerated, but also the tolerators, who need to be understood. It is tempting to say—I have said it often enough myself—that moral disapproval of homosexuality is worse than mistaken; it is incoherent. (Unless homosexuality is disapproved because it is imagined to be prohibited: there aren't many logical constraints on what can be *forbidden*.) How could an otherwise licit sex act be permissible if performed by a female, yet impermissible if performed by a male?³² How could *that* fact possibly make a moral difference? It just sounds homophobic: not a moral judgment at all, simply an aversion. Hart would have refused my line of thought. In addition to defending a broad concept of law, he also defended a broad concept of morality, demarcated by its role in individual and social life. He was well aware no intelligible rationale could be given for many of the taboos of conventional sexual morality. "They are abhorred, not out of conviction of their social harmfulness, but simply as 'unnatural' or in themselves repugnant." But Hart also insisted that "it would be absurd to deny the title of morality to social vetoes of this sort; indeed, sexual morality is the most prominent aspect of what plain men think morality to be."³³ To treat the opponent as simply confused would itself be a failure of understanding; it could not

³² Some religions that proscribe homosexual conduct acknowledge this. It is in virtue of some *other* feature that they condemn it (such as being "unnatural", or non-procreative, or contrary to a general purity code). These features are present in many heterosexual or autosexual acts. The fact that some of these religions express so little concern for the other species of the prohibited genus counts against their sincerity, not against their principles.

³³ Hart, *The Concept of Law*, 174-75.

possibly “represent the point of view of those who live by such a morality.”³⁴ To students of jurisprudence, this idea should ring a bell. It lies at the core of Hart’s argument against reductivist theories of law. To fully understand law, we need to see it, not as it might appear to the detached anthropologist or economist, but from the “internal point of view,” to one who actually uses it to guide and appraise conduct. It has been long recognized that this is pivotal in Hart’s jurisprudence. It is curious that the legion of scholars who have speculated about the moral bearing of Hart’s method have neglected to consider its importance. Hart never accepted anything as implausible as the idea that we might “choose” a concept of law on moral grounds, or that the nature of law is whatever it would be good for it to be. But he did think that to understand things like law (or sexuality) one would first need to understand the role it plays in the lives of those who live with it. As we saw above, that method is not only essential to his jurisprudence, it figures prominently in his political argument for tolerance of sexual non-conformity. An inability to take “the internal point of view” is associated not only with descriptive or interpretive error, but with moral error. It is a symptom of a failure of the moral imagination.

³⁴ *Ibid.*, 174; cf. 182.

VIII

I arrive, finally, at my epigraph. As Voltaire saw, one of the roots of intolerance is the self-centred supposition that, for example, “religion” can be nothing other than *my* religion. We know how that line of thought continues: sexuality can be nothing other than *my* sort of sexuality; family can be nothing other than *my* sort of family, and so on. (The ancient Greeks reportedly did not even consider that foreigners spoke proper languages—it was all just so much “bar-bar” in the mouths of those barbarians.) We also know where it ends: in things like the claim that rough sex is an intolerable cult of violence, that same-sex unions aren’t marriages at all, and so on.

Voltaire is not here pleading for acceptance of competing religions, and he is not trying to capture what it is like to be a Huguenot. He is urging us to take fully on board a much more primitive point: that competing religions are *religions*, and thus that it is wrong to suppose someone a moral monster on the ground that he worships a different god, or worships in a different way. In the modern West, there thankfully aren’t too many religious monstrosities left. Here, toleration and understanding have come together with reasonable success. But for our failures we need look no further than sexuality, where the grotesque homosexual is just giving way to the monstrous paedophile—a creature about whom intelligent discussion, to say nothing of humane response, is for now just

about impossible.³⁵ It is even hard to see a point of entry here, unless it is the observation of the protagonist of Graham Greene's *The Power and the Glory*: "When you visualized a man or woman carefully, you could always begin to feel pity....When you saw the corners of the eyes, the shape of the mouth, how the hair grew, it was impossible to hate. Hate was just a failure of imagination."³⁶

How far can understanding smooth the rough edges of toleration? As I said above: only partially. Toleration remains, in the end, a principle of restraint, and for that reason it will never be really comfortable to be tolerated. But understanding sometimes opens up common ground that puts a frame or boundary around disapproval. Huguenots might still be heretical, wrong, or misguided, but at they are no longer monsters. Sado-masochists do actually have sex, in some ways bafflingly different, but in others pretty familiar. Understanding also makes it less likely that toleration will come to the right answer for the wrong reasons. When we understand how modesty and sexuality function in the lives of some Muslim women, we will have a firmer grasp of the stakes in tolerating the veil. It also makes it less likely that we will tolerate the intolerable, or fail to tolerate the tolerable. It does not, I think, do much for the unhappy

³⁵ Witness the furious reaction to Judith Levine's moderate and careful book, *Harmful to Minors: The Perils of Protecting Children from Sex* (Minneapolis: University of Minnesota Press, 2002). Levine received death-threats and public condemnation in the state legislature. To its discredit, a frightened University of Minnesota administration ordered an outside review of its Press's editorial policies, including the perfectly normal peer-review that endorsed publication of Levine's monograph. See Amy Benfer, "What is so Bad About Good Sex?"

http://archive.salon.com/mwt/feature/2002/04/19/levine_talks/index.html

³⁶ Graham Greene, *The Power and the Glory* (London: Penguin, 1940), 131.

awareness that the tolerators usually have the power, but perhaps its other features makes even this a bit less worrying. Understanding does not bring anything like acceptance, or even recognition. But without it toleration is much poorer—and much harder—than it needs to be.