

Toleration and Democracy

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1. In contemporary political discourse, the concept of toleration plays an important role, ranging from questions of the toleration of cultural and religious minorities within states to the alleged global "clash of civilisations." But while for some toleration appears to be the magic word invoking a peaceful and cooperative way of living together in mutual recognition and political equality, for others it is a word signifying power, domination and exclusion. And this ambivalence about the concept of toleration is not a recent phenomenon, for if we go back to the classic discussions of toleration in the age of Enlightenment, the latter critique is what Goethe meant when he said: "Tolerance should be a temporary attitude only: it must lead to recognition. To tolerate means to insult."¹ And the former praise of toleration is expressed by Voltaire who spoke of toleration as *l'apanage de l'humanité*, as a sign of true humanity (though also as the fate of humankind).²

To gain a deeper understanding of this ambivalence, I want to tell two stories about toleration, a dark and pessimistic one and a bright and optimistic one, and I want to argue that from a sufficiently complex historical perspective both of them are true. More than that, they are not just historically true, they still inform the contemporary meaning and practices of toleration. Toleration can be based on mutual respect, and it can also be an expression of disrespect and

¹ "Toleranz sollte nur eine vorübergehende Gesinnung sein: sie muss zur Anerkennung führen. Dulden heißt beleidigen." Johann Wolfgang Goethe, *Maximen und Reflexionen*, *Werke 6* (Frankfurt am Main: Insel, 1981), 507.

² Voltaire, *Phil. Dictionary*, "Tolerance".

domination. On the basis of an analysis of this ambivalence, I will try to develop a normative justification for toleration that is based on an adequate understanding of democratic justice.

2. But before I start with my two stories a word about the general concept of toleration. Its core can be explained by the three components of *objection*, *acceptance*, and *rejection*.³ First, a tolerated belief or practice has to be judged as false or bad in order to be a candidate for toleration; second, apart from these reasons for objection there have to be reasons why it would still be wrong not to tolerate these false or bad beliefs or practices, i.e., reasons of acceptance. Such reasons do not eliminate the reasons of objection; rather, they trump them in a given context. And third, there have to be reasons for rejection which mark the limits of toleration. These limits lie where reasons of acceptance run out, so to speak. All three of those reasons can be of one and the same kind - religious, for example -, yet they can also be of different kinds (moral, religious, pragmatic, to mention a few possibilities).

Obviously, this definition is very general, and the problems begin once these components are fleshed out: What can or should be tolerated, for what reasons, and where are the limits of toleration? Toleration as such, it seems to me, is a *normatively dependent concept*, one that is in need of other, independent normative resources in order to gain a certain content and substance - and in order to be something good at all. Hence an important aspect of every story about toleration is how the three components gain substantive content.

³ With respect to the first two components I follow Preston King, *Toleration* (New York: St. Martin's Press, 1976), ch 1. Glen Newey, *Virtue, Reason and Toleration* (Edinburgh: Edinburgh University Press, 1999), ch. 1, also distinguishes between three kinds of reasons in his structural analysis of toleration (which, however, differs from mine in the way these reasons are interpreted). For a more extensive discussion, see my "Toleration, Justice and Reason", in *The Culture of Toleration in Diverse Societies*, ed. by Catriona McKinnon and Dario Castiglione (Manchester: Manchester University Press, 2003), 71-85, and generally my *Toleranz im Konflikt. Geschichte, Gehalt und Gegenwart eines umstrittenen Begriffs* (Frankfurt/M.: Suhrkamp, 2003; Translation forthcoming with Cambridge University Press).

3. My first story about toleration and recognition starts in 16th century France. In the course of the second half of that century, the party of the *politiques* gained and propagated the conviction that the principle of *une foi, une loi, un roi* could no longer be sustained, for the price to be paid for oppressing the Calvinist minority of the Huguenotes was too high, economically, politically and morally. Political unity could only be saved if the aim of religious unity was to a certain extent given up; *constituenda religione* and *constituenda republica* had to be separated and the monarch had to play the role of sovereign umpire and ruler. It took, however, a long time up until 1598 before Henri IV issued the famous Edict of Nantes. This Edict clearly recognized the Huguenots as French citizens, though as citizens of a second class. They were granted the liberty to practice their religion only at specified places (not in Paris) and at certain times, and the Edict carefully explained which public offices they could hold, where and what kinds of schools and universities they could found and where they could build "security zones" with armed forces. Hence the Calvinist minority became recognized and was protected by law, but at the same time the law fixed their position in a situation of being "merely" tolerated, being dependent upon the good-will of the authority and always taking second place after Catholics in everyday life. This kind of recognition/toleration, to be sure, was a great advantage compared to the prior situation (and later periods of oppression), yet it also meant a certain form of cultural and social stigmatization, political powerlessness and dependency.

This is the kind of toleration that Goethe had in mind when he spoke of the insult of toleration, and also what Kant meant when he criticized the "presumptuous title of tolerant" (*hochmüthig*), and what led Mirabeau to say that toleration is a sign of tyranny.⁴ These quotations also show that the almost 200 years between the Edict of Nantes and the French Revolu-

⁴ Immanuel Kant, "An Answer to the Question: 'What is Enlightenment?'" in Kant, *Political Writings*, ed. by H. Reiss, tr. by H. B. Nisbet (Cambridge: CUP, 1991), 58; Comte de Mirabeau, Speech in the National Assembly on August 22, 1789, discussing the *Declaration des droits de l'homme et du citoyen*.

tion had not altered the structure of this kind of toleration. For example, we also find it in the Toleration Act of 1689, right after the "Glorious Revolution," which was declared to be "an Act for Exempting Their Majesties Protestant Subjects, Dissenting from the Church of England, from the Penalties of certain Laws,"⁵ which shows that this act clearly defines which dissenters (Presbyterians, Independents, Baptists and Quakers) fall under these exemptions from the - still valid - laws of uniformity and conformity with the Church of England and which do not (the unitarian Socinians, for example, and of course atheists). Also, Catholics were excluded from toleration by the oath of allegiance that subjects of the king had to take. The result is a complex picture of inclusion and exclusion, of a majority and of various minorities some of which were tolerated and some of which were not. Those who were tolerated were at the same time included and excluded; they enjoyed a certain recognition and security that the others did not have, but they were dependent upon the protection of the monarch and thus had to show extreme loyalty. A complex matrix of power had developed that worked with different forms of recognition.

The same holds true of another example, which I want to mention briefly, the so-called *Toleranzpatente* of the Habsburg Emperor Joseph II in 1781 who - in contrast to his mother Maria Theresia who wanted to enforce religious unity - understood that in a time of intense religious strife the most rational form of exercising political power was a kind of discipline and peace through granting freedom: This "enlightened monarch" was enlightened enough to know that toleration was the more effective policy towards powerful dissenters. Thus he granted the liberty of the *Privat-Exercitium* of religious duties (not the public exercise of religion) to three minority confessions, the Lutherans, the Reformed ones and the Greek Orthodox. It was exactly defined what they were allowed to do, for example, that their churches must not have bells and no entrances from the street. This form of liberty, Joseph was convinced, would produce good

⁵ See the text of the Act in *From Persecution to Toleration*, ed. by Ole P. Grell, Jonathan I. Israel and Nicholas

subjects out of religious dissenters who would automatically have become political opponents if no toleration was practised. Toleration was the price to be paid for loyalty, and on the side of the subjects loyalty was the price to be paid for certain liberties and security. Conformity in exchange for nonconformity.

4. Again, what we find here is the complex mixture of freedom and domination, of inclusion and exclusion, of recognition and disrespect that characterizes this conception of toleration, which I call the *permission conception*. According to it, toleration is a relation between an authority and a dissenting, "different" minority (or various minorities). Toleration means that the authority gives qualified permission to the members of the minority to live according to their beliefs on the condition that the minority accepts the dominant position of the authority. As long as their expression of their differences remains within limits and "private," and as long as these groups do not claim equal public and political status, they can be tolerated on both pragmatic and normative grounds - on pragmatic-strategic grounds because this form of toleration is regarded as the least costly of all possible alternatives and does not disturb civil peace and order as the dominant party defines it (but rather contributes to it), and on normative grounds because the authority may find it wrong (and in any case fruitless) to force people to give up their deep-seated beliefs or practices. In short, toleration means that the authority that has the power to interfere with the practices of the minority nevertheless tolerates it, while the minority accepts its dependent position. Thus, speaking in terms of the three components of toleration, all three of them are being defined by the authority alone.

As I said, it is this conception that Kant, Mirabeau and Goethe criticize; toleration appears to be a strategic or at least a hierarchical policy, and the form of recognition that is granted to

minorities both gives them certain liberties *and* turns them into dependent subjects and second-class citizens. Not rights but permissions are granted, and they can always be revoked (as the Edict of Nantes was in 1685). This form of toleration had *liberating* as well as *repressive* and *disciplining* effects (the latter in Foucault's sense): liberating because it clearly was an advantage as compared to the previous oppressive policies, repressive because to be tolerated meant to accept one's weak and underprivileged position, and disciplining because those policies of toleration "produced" stigmatized, non-normal identities that were at the same time socially included and excluded.⁶ The "toleration" of the Jews from the Middle Ages to modern times is an obvious example of such forms of excluding inclusion; toleration always had to be paid for by stigmatization and by subservience.

5. If we look at the present discourses and practices of toleration through the lens of what I would call a *critical theory of toleration*, based on an analysis of repressive and disciplining forms of toleration, we see that the "dark" story is not yet over.⁷ For contrary to what many believe, the end of absolutism was not the end of the permission conception; rather, it is still very active and valid in our societies, though now in a different, a *democratic* form: the tolerating authority now appears as the authority of a democratic majority. Of course, the authorities I mentioned in my three examples were also backed by overwhelming religious and political majorities, but within a democratic regime things look different, for now it is part of the very self-understanding of the

⁶ On this point, see also Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity Politics* (Princeton: Princeton UP, 2006).

⁷ See my *Toleranz im Konflikt*, ch. 12, and "A Critical Theory of Multicultural Toleration", in Anthony Simon Laden & David Owen (eds.), *Multiculturalism and Political Theory* (Cambridge: Cambridge UP, 2007), 292-311. I should note here that I use the term "repressive tolerance" in a way that differs from Herbert Marcuse's classic essay "Repressive Tolerance", in Robert P. Wolff, Barrington Moore and Herbert Marcuse, *A Critique of Pure Tolerance* (Boston: Beacon Press, 1965), 81-118. Whereas he calls a system of toleration "repressive" that veils unjust relations of power in an ideological way by neutralizing real opposition (in ideas and practice), I call forms of toleration "repressive" when they help to uphold unjustifiable relations of power by forcing those who are dominated to accept their inferior position. Critical political theory, as I envision it, would primarily be based on an analysis of existing "relations of justification" among members of a social and political basic structure.

regime that it grants basic equal liberties to all citizens - and that the citizens recognize each other as free and equal. Yet still in many contemporary practices of toleration, the permission conception has survived. I do not want to go into the many examples one could give for that, but only mention in passing that opponents of gay marriage laws often speak in favour of toleration but against equal rights in such cases (compare the slogan of the Christian Democratic Union in Germany in the context of the debate about a certain form of gay marriage: "Tolerance yes, marriage no!"). In the famous German crucifix case - about whether the state of Bavaria may order crosses or crucifixes to hang in classrooms of public schools - many citizens, politicians, courts and speakers for the churches found that to tolerate non-Christian minorities such that they are not forced to give up their beliefs is one thing, but to grant them equal public and symbolic status and remove the Christian symbols would be quite another: it would be anti-democratic, anti-religious and would jeopardize the very foundations of the Federal Republic.⁸ Hence the power structure of this form of toleration is still very much at work: inclusion and exclusion at the same time.

6. But as I remarked earlier, there also is a second, more optimistic story about toleration - which begins in the Netherlands of the 16th century. In the course of the fights of the primarily Protestant provinces in the north against Spanish rule and the enforcement of Catholicism we find two important developments in struggles for religious liberty, esp. in the writings of the Calvinist monarchomachs like Duplessis-Mornay. First, a natural right to religious liberty - as God-given - was proclaimed as a basic political right, and second, a king who did not respect this basic right had to be resisted, out of a sense of political *and* religious duty. Such a tyrant had broken both the *foedus* with God and the *pactum* with the people; religious liberty accordingly was not something

⁸ I have discussed this example in R. Forst, "A Tolerant Republic?," in *German Ideologies Since 1945*, ed. by Jan-

granted by the rulers, it was a natural *right* given by God and thus a basic demand of political justice: There could be no legitimate state that did not grant this right. The revolutionary result of that claim was the splitting off of the northern provinces in the "Union of Utrecht" in 1579, leading to the new republic that would become an example of toleration in the 17th century.

As the story goes on, the revolutionary claim of religious and political liberty as a "birthright" reappears in the context of the English Civil War. The opposition to the king was justified by a "fundamental law" of justice that called for political and religious liberty; government was no longer directly instituted by God but by men in order to safeguard the natural rights given by God to men as a special kind of "property." In the eyes of levellers like Lilburne,⁹ this kind of God-given liberty meant that any exercise of power, be it religious or political, had to be justified to the people who were "affected" (or better: "well-affected") by the laws. The right to freedom of conscience was justified with the Protestant argument that conscience was directly bound to obey and follow God and not men: a theory of the free and at the same time unfree conscience (as the "work of God", as Luther had said) that also figures prominently in Milton's thought and later in Locke's *Letter Concerning Toleration*. William Walwyn expressed this - in the debates between Independents and the Presbyterian majority in parliament - in a paradigmatic way:

"That which a man may not voluntarily binde himself to doe, or to forbear to doe, without sinne: That he cannot entrust or refer unto the ordering of any other: Whatsoever (be it Parliament, Generall Councils, or Nationall Assemblies:) But all things concerning the worship and service of God, and of that nature; that a man cannot without wilfull sin, either binde himselfe to doe any thing therein contrary to his understanding and conscience: not to forbear to doe that which his

Werner Müller (New York: Palgrave, 2003), 209-220.

⁹ See John Lilburne, *Englands Birth-Right Justified* (1645), in *Tracts on Liberty in the Puritan Revolution III*, ed. by W. Haller (New York: Octagon, 1965), 257-308.

understanding and conscience binds him to perform: therefore no man can refer matters of Religion to any others regulation. And what cannot be given, cannot be received: and then as a particular man cannot be robbed of that which he never had; so neither can a Parliament, or any other just Authority be violated in, or deprived of a power which cannot be entrusted unto them."¹⁰

An early liberal argument of this sort for toleration is, however, highly ambiguous. On the one hand, the claim that there is a natural right to religious and political liberty does connect the demand for toleration with a radical demand for political *justice*, i.e., the basic demand for the general justification of the exercise of political power. In this perspective, toleration is not merely an "exemption" being "granted" to some "non-normal" subjects but a general rule of the way citizens treat each other within the confines of natural right. We see here the glimpse of a new, different conception of toleration, the *respect conception*, according to which democratic citizens respect each other as legal and political equals even though they differ greatly in their ethical-religious views about the good and true way of life.

On the other hand, the argument for freedom of conscience based on the theory of the "unfree free conscience" mentioned above is not only compatible with the permission conception of toleration; it is also potentially exclusive of those persons who do not have the right form of conscience: atheists and Catholics, for example, as Locke famously argued (and with him Milton, differing from the more tolerant Levellers and baptists like Roger Williams). In Locke's first *Letter*, for example, it is clear that there can be no justified claim to the freedom *not* to believe in God; indeed, we could call the fear that without a particular religious basis there could be no

¹⁰ William Walwyn, *A Helpe to the Right Understanding of a Discourse Concerning Independency* (1644/45), in *The Writings of William Walwyn*, ed. by J.R. McMichel and B. Taft (Athens: The University of Georgia Press, 1989), 136f.

morality and no functioning state *Locke's fear*¹¹ (shared by many later Enlightenment thinkers such as Montesquieu, Rousseau, and Voltaire) - a fear, to be sure, still very much present in contemporary societies.

7. To continue our optimistic story about toleration, we thus need to turn to a different voice in the historical discourse of toleration, one that questioned Locke's fear (though not as a direct reaction to Locke): the Huguenot philosopher Pierre Bayle (writing in exile in Rotterdam).¹² In his *Pensées diverses sur la Comète* (1683) he introduced the so-called "Bayle's paradox" by saying that religion was not necessary to support morality which rested on other motives (the desire for social recognition) and insights (of natural reason) independent of religious belief, and that religious fanaticism rather than atheism was the main danger for morality and the state. He even ventured the courageous idea that a "society of atheists" would be possible - and possibly be more peaceful than religious societies.

What is more, one of Bayle's decisive insights was that *mutual toleration* among persons with different religious beliefs could only be possible if there was an independent, generally shared moral basis of respect among human beings that would rule out the exercise of religious force. In his *Commentaire philosophique sur ces paroles de Jésus-Christ 'Contrain-les d'entrer'* (1686), he provides such a justification of toleration which avoids the problems that Locke's defense of religious liberty faced. For from studying Augustine's famous arguments about the possibility and productivity of *terror* in freeing men from religious error and enabling them to see

¹¹ "The taking away of God, tho but even in thought, dissolves all." John Locke, *A Letter Concerning Toleration*, ed. by J. Tully (Indianapolis: Hackett, 1983), 51.

¹² I discuss Bayle's view more extensively in my "Pierre Bayle's Reflexive Theory of Toleration", in Jeremy Waldron & Melissa Williams (eds.), *Toleration and its Limits*. Nomos XLVIII, New York: New York University Press, forthcoming.

the truth "from the inside," so to speak, if properly informed,¹³ Bayle already knew what Locke had to acknowledge after being confronted with Jonas Proast's critique: that although authentic and sincere beliefs could not be directly produced by outward force, there were many other, indirect ways to block men on a road of error and to make them turn around.

"[...] I readily grant that Reason and Arguments are the only proper Means, whereby to induce the Mind to assent to any Truth, which is not evident by its own Light: and that Force is very improper to be used to that end *instead* of Reason and Arguments. [...] But notwithstanding this, if Force be used, not in stead of Reason and Arguments, i.e. not to convince by its own proper Efficacy (which it cannot do,) but onely to bring men to consider those Reasons and Arguments which are proper and sufficient to convince them, but which, without being forced, they would not consider: who can deny, but that *indirectly* and *at a distance*, it does some service toward the bringing men to embrace that Truth, which otherwise, either through Carelessness and Negligence they would never acquaint themselves with, or through Prejudice they would reject and condemn unheard, under the notion of Error?"¹⁴

To avoid such counterarguments to a classic defense of the freedom of conscience, Bayle argued on normative grounds that every person had a moral duty to mutually justify any exercise

¹³ For Augustine's justification of the duty of intolerance, see esp. his letter to Vincentius (letter # 93), written in 408; Augustine, *Letters*, Vol. II, tr. Sister W. Parsons (New York: Fathers of the Church Inc., 1953).

¹⁴ Cf. Jonas Proast, *The Argument of the Letter Concerning Toleration, Briefly Consider'd and Answer'd*, reprint of the edition of 1690 (New York and London: Garland, 1984), 4f. For a convincing critique of Locke on the basis of Proastian considerations, see esp. Jeremy Waldron, "Locke, Toleration, and the Rationality of Persecution", in *Liberal Rights. Collected Papers 1981-1991* (Cambridge University Press, 1993), ch. 4. Where I disagree with Waldron, however, is about his claim that Locke did not find a plausible counterargument to Proast. For that, however, he had to change his position and move towards the epistemological-normative argument that we find in Bayle (in superior form). In his later letters on toleration, Locke argues that the use of religious-political force is in need of mutual justification, and that Proast's main assumption of the undeniable truth of the Church of England is unfounded. See esp. Locke, *A Second Letter Concerning Toleration*, in *The Works of John Locke VI* (Aalen: Scientia, 1963), 111, where he asks Proast to put forth a mutually justifiable argument "without supposing all along your church in the right, and your religion the true; which can no more be allowed to you in this case, whatever your church or religion be, than it can to a papist or a Lutheran, a presbyterian or anabaptist; nay, no more to you, than it can be allowed to a Jew or a Mahometan."

of force - a duty that could be seen by the means of "natural reason"¹⁵ - and he argued on epistemological grounds that in a case in which there was a stand-off of one religious reason versus another, there was no sufficient justification for using force on either side. And this not because Bayle was a religious skeptic (as many have thought), but because Bayle insisted on faith being *faith* and not knowledge: as long as there was no reasonably non-rejectable proof as to the truth of one religion or confession, the duty of mutual justification called for tolerance (but not for skepticism, for knowing that one's faith ultimately is faith - based on "relative evidence"¹⁶ - one has good reasons to regard it as true as long as it does not run against natural reason).¹⁷ From that perspective, the claim of people like Bossuet¹⁸ who believed that they were in possession of the truth and therefore could legitimately exercise force - according to Augustine's interpretation of the saying *compelle intrare* (Luke 14, 15ff.) - would turn into nothing but a pure and illegitimate exercise of power. According to Bayle, in an argument about the norms and laws that are to regulate the common life to assume precisely what is contested, namely the truth of one church rather than another, is "childish" and "ridiculous";¹⁹ if such arguments were legitimate, "there would be no kind of crime which could not become an act of religion by this maxim."²⁰ As

¹⁵ See Pierre Bayle, *Philosophical Commentary*, tr. and ed. by Amie Godman Tannenbaum (New York: Peter Lang, 1987), 30: "[B]ut if it's possible to have certain limitations with respect to speculative truths, I don't believe there ought to be any with regard to those practical and general principles which concern morals. I mean that all moral laws without exception, must submit to that idea of natural equity, which, as well as metaphysical light, *enlightens every man coming into the world*. [...] I would like whoever aims at knowing distinctly this natural light with respect to morality to raise himself above his own private interest or the custom of his country, and to ask himself in general: *Is such a practice just in itself? If it were a question of introducing it in a country where it would not be in use and where he would be free to take it up or not, would one see, upon examining it impartially, that it is reasonable enough to merit being adopted?*" (Emphasis in original.)

¹⁶ *Ibid.*, 93.

¹⁷ Hence from a Baylean perspective, contrary to Brian Barry, *Justice as Impartiality* (Oxford: Oxford University Press, 1995), 179, in matters of religion it seems quite possible and reasonable that "certainty from the inside about some view can coherently be combined with the line that it is reasonable for others to reject that same view."

¹⁸ See Jacques-Benigne Bossuet, *Politics drawn from the Very Words of Holy Scripture*, tr. and ed. by Patrick Riley (Cambridge: Cambridge University Press, 1999).

¹⁹ Bayle, *Philosophical Commentary*, 13.

²⁰ *Ibid.*, 47.

Bayle points out, a society can only exist peacefully if there is a generally accepted definition of right and wrong independent of struggles about the true church.²¹

In his famous *Dictionnaire historique and critique* (1696), Bayle carefully explained the distinction between knowledge and faith and the possibility of a form of "natural" practical reason that would lead to an insight into the duty of mutual justification. Faith was not seen, in a fideist sense, as being *against* reason but, as Bayle said, as being *beyond reason* (*dessus de la Raison*): faith was not irrational, but at the same time reason could not prove the true faith.²²

Human reason had to accept its own boundaries and finitude and the unavoidability of (what Rawls later called) "reasonable disagreement"²³ in matters of faith. According to Bayle, those who would give up their faith because of that - because they cannot prove its truth in a demonstrative way - and would become skeptics or atheists are no good believers:

"Once again, a true Christian, well versed in the characteristics of supernatural truths and firm on the principles that are peculiar to the Gospel, will only laugh at the subtleties of the philosophers, and especially those of the Pyrrhonists. Faith will place him above the regions where the tempests of disputation reign. [...] Every Christian who allows himself to be disconcerted by the objections of the unbelievers, and to be scandalized by them, has one foot in the same grave as they do."²⁴

8. For our story, Bayle's insights are essential. A justification of toleration such as Bayle's does avoid the pitfalls of a traditional argument for the liberty of conscience, which are (a) that the claim *credere non potest homo nisi volens* (Augustine) does not provide an argument against the

²¹ Ibid., 85.

²² "[D]ifference in opinion seems to be man's inherent infelicity, as long as his understanding is so limited and his heart so inordinate." Ibid., 141.

²³ See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 54-66; Charles Larmore, "Pluralism and Reasonable Disagreement," in *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996), ch. 7.

²⁴ Pierre Bayle, *Historical and Critical Dictionary*, Selections, tr. by Richard H. Popkin (Indianapolis: Hackett, 1991), Third Clarification, 429.

suppression of religious errors or against religious "guidance" because it is possible that "mild" force can bring about sincere beliefs, and (b) that such toleration could only extend to *authentic* religious beliefs (whereas a criterion for such beliefs seems to be lacking), and of course only to *religious* beliefs (and not to atheists). Bayle's alternative justification also avoids, if we look at the recent history of liberal thought, the problems of the view that religious liberty as part of a wider notion of political liberty is justified because personal autonomy is a precondition for the good life, for only the life "lived from the inside," on the basis of autonomously chosen values, could be good.²⁵ This is a plausible, though non-generalizable conception of the good life, for it is not clear whether a life lived according to traditional values that are not chosen but simply taken over in a conventional, non-critical way would be worse (i.e., subjectively less fulfilling and objectively of a lesser ethical value) than one that is autonomously chosen. The politically *free*, the personally *autonomous* and the ethical *good* life may be three separate things.

Of course, my alternative view also calls for a certain kind of respect for the autonomy of persons. Yet this kind of respect is not based on a particular *ethical* conception of the good, but on a *moral* notion of the person as a reasonable being with (what I call) a *right to justification*.²⁶ This right to justification is based on the recursive general principle that every norm that is to legitimize the use of force (or, more broadly speaking, a morally relevant interference with other's actions) claims to be reciprocally and generally valid and therefore needs to be justifiable by reciprocally and generally non-rejectable reasons. *Reciprocity* here means that neither party makes any claim to certain rights or resources that are denied to others (reciprocity of content), and that neither party projects its own reasons (values, interests, needs) onto others in arguing for its claims (reciprocity of reasons). One must be willing to argue for basic norms that are to be

²⁵ See Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), 81. For a critique of Kymlicka's view, see R. Forst, "Foundations of a Theory of Multicultural Justice", *Constellations* 4 (1997), 63-71 (with a reply by Kymlicka in the same issue).

reciprocally and generally valid and binding with reasons that are not based on contested "higher" truths or on conceptions of the good which can reasonably be questioned and rejected.

Generality, then, means that the reasons for such norms need to be shareable among all persons affected, not just dominant parties.

I should emphasize the word "shareable" here, for the criteria of reciprocity and generality allow for judgments as to the justifiability of claims even if - as is to be expected - no consensus is to be found.²⁷ A few brief examples: Those who argue for the equal legal respect of intimate relationships between homosexuals may have, given the criterion of reciprocity, superior arguments as compared to those who argue on the basis of a mutually contestable, religious understanding of "nature." Those who want to forbid persons from wearing headscarfs in school (be they teachers or students) must be able to show in how far the practice of wearing such symbols really violates basic rights and democratic principles. And those who want crucifixes to be put up in public classrooms by law need to show in how far this is compatible with the equal rights of citizenship in a religiously pluralist political community. And it is questionable whether such arguments have been presented in the latter two cases.

The normative ground for this conception of toleration is the moral demand to respect each other's autonomy as a reason-giving and reason-receiving being. Whether those who are

²⁶ On this point, see R. Forst, "The Basic Right to Justification," *Constellations* 6 (1999), 35-60.

²⁷ I agree with Jeremy Waldron, "Toleration and Reasonableness," in *The Culture of Toleration in Diverse Societies*, 13-37, that in a pluralist society there will always be contestation about the "compossibility" of different ideals and practices of the good. And I do not want to suggest that I have developed what he radically doubts, a "Kantian algebraic liberalism" that would provide a general formula for solving such conflicts in a clearly non-rejectable way. Yet I want to claim that with the help of the criteria of reciprocity and generality we can plausibly identify better and worse arguments for generally valid norms in many cases, looking at the claims and the reasons given. An argumentative "asymmetry" (ibid., 30) of claims and reasons then is important for such judgments. Is the claim, to use Waldron's Rushdie-example, to be protected from blasphemous insult as strong as the claim to be protected from being threatened in life and liberty because of what you think and say? Can the first claim be generalized and supported with reciprocally valid reasons in the same way as the second? I doubt that it can. - What seems to me undisputed, however, is that toleration is the attitude of those who are willing to engage in such arguments, who accept the criteria of reciprocity and generality and who accept in a given case that their arguments do not suffice to be the basis of general law. Still, given Waldron's justified doubts, it is important to add another reason for toleration connected to this: the toleration of those who see that a debate remains in a standstill and that therefore no side can

respected in that way will eventually lead an ethically better life can therefore be the object of disagreement; there must be no disagreement, however, about the duty of justification and the criteria of reciprocity and generality. This is the *normative* component of that justification of toleration, while the *epistemological* component consists of an insight into the finitude of reason: that reason is not sufficient to provide us with the one and only, ultimate answer about the truth of the good life which would show that all other ethical beliefs are false.

Most important in this context, however, is the insight that according to this conception of toleration to be tolerant implies the willingness and the capacity to distinguish between one's *ethical* beliefs about the true and good life and the general *moral* norms and principles one thinks every person, regardless of his or her view of the good, has to accept (or, better: cannot reciprocally and generally reject).²⁸ Bayle's theory clearly implies such a distinction, and looking at the history of toleration one may say that such a differentiation, in theory as well as in practice, may be the greatest achievement within the discourse of toleration. It comes, however, at a certain cost, which makes tolerance (according to the respect conception as I sketched it) into a demanding *moral-political virtue*²⁹: the cost is that in the case in which you cannot present reciprocally and generally non-rejectable arguments for your ethical judgments, you have to accept that you are not justified to make these judgments the basis for generally binding legal norms.³⁰

9. Referring back to the three components of toleration, the main difference between the permission conception and the respect conception is that according to the former all three

show its claims and reasons to be superior. In such a case, toleration means to accept that other grounds for the regulation of a conflict have to be found, by way of compromise.

²⁸ On this distinction and the difference of various "contexts of justification" as well as of "contexts of recognition," see R. Forst, *Contexts of Justice*, tr. by J. Farrell (Berkeley and Los Angeles: University of California Press, 2002).

²⁹ On this point, see my "Tolerance as a Virtue of Justice," *Philosophical Explorations* IV (2001): 193-206.

components are determined by the ethical views of the dominant majority or authority, while in the respect conception things look different. The *objection* may be based on one's particular ethical (or religious) views; the *acceptance*, however, will be based on a general consideration of whether the reasons for objection are good enough to be reasons for *rejection*, i.e., whether they are reciprocally and generally justifiable. If they turn out to be sufficient for a negative *ethical* judgment, but not for a negative *moral* judgment, the case for toleration arises: for then one has to see that one's ethical judgment does not justify a moral condemnation and a rejection. This is the insight of toleration. And this is why in a political context, toleration and democracy must be seen as components of political justice: of the imperative not to force others to live under norms and laws that cannot be adequately justified towards them. Toleration then is not just and not primarily a virtue of subjects of democratic law, it is primarily a virtue of democratic citizens as *law-makers*. Toleration means, for example, that you may firmly believe that the cross is the symbol of the true faith and yet also equally firmly believe that it would be wrong to have it put up in classrooms of public schools by law. The virtue consists in overcoming the desire to make your ethical-religious views dominant by using the law and to see this as an illegitimate exercise of power. Hence toleration is a virtue of justice.

10. As I already indicated, our story would be far too optimistic if we thought that historically this became the dominant conception of toleration, which is neither true given the practice of toleration nor given the most important writings on toleration. Enlightenment thought before Kant hardly reached the height of Bayle's conception. Therefore the general idea that the Enlightenment marked the highpoint of thinking about toleration and then also made the step *beyond toleration* by positively institutionalizing the right to religious liberty in the American and

³⁰ Bayle himself, one needs to add, only saw this as a moral and civic virtue; politically, he stood in the tradition of

French Revolutions is mistaken. No doubt the idea of a basic right to religious liberty does take a decisive step beyond the permission conception of toleration, but it is wrong to assume that this takes one "beyond toleration," for (a) toleration is still called for, as I said, but now on the horizontal level of citizens as authors and addressees of the law and (b), from a critical perspective, the permission conception is still very much alive in the interpretations of what a right to religious liberty means: Does it simply mean not being forced to give up one's minority religious views, or does it entail equal public and political status for minorities? In democratic states, the old absolutist permission conception is gone, but there is still a constant struggle going on between the democratic form of the permission conception and the democratic form of the respect conception. Hence, if we want to develop a genealogy of our sense and practice of toleration, both of my stories have to form a *single* one.