

## WHAT TOLERATION MEANS TO CONTEMPORARY LIBERALISM?

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### 1. Historical and conceptual bond between toleration and liberalism

Toleration is a key concept of liberalism, both from the historical and conceptual points of view. On the introduction to his *Political Liberalism*, John Rawls links the origin of liberalism with discussions about religious toleration in the 16<sup>th</sup> and 17<sup>th</sup> centuries. Indeed, the ideas about religious toleration are an important part of the thought developed by Thomas Hobbes, John Locke, Montesquieu or the encyclopedists, who, in turn, were influenced with regard to this by humanists such as Erasmo or Montaigne, theologians such as Pierre Bayle or Roger Williams, or philosophers such as Samuel Pufendorf. In the modern age context, toleration, as well as liberalism, can be understood as political and moral answers to the diversity of value schemes, and the individualism that goes together with the traditional social order disintegration. Both are answers that entail the redefinition of the government faculties and limits, and some others appeal to the rational consensus between people with different conceptions on life and the world (Gray, 1986: Conclusion).

From the conceptual point of view, if we follow Gauss (Gauss, 2011: section 1.1) taking as the fundamental liberal principle that freedom is normatively basic and so restrictions on liberty must be justified. And if we further consider as a second basic feature of liberalism that justified limitations on liberty are fairly modest, and thus only a limited government can be justified. Then we will not view as a coincidence that the ideas related to toleration have been the development of the liberal thinking backbone. To a greater or lesser extent, early modern defences of toleration deprived political power of legitimacy to impose religious believe. And so they shaped a new sphere of freedom with regard to believes and religious worship, which

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later expanded to further type of moral convictions and ways of life, as well as freedom of speech and press.

The constitutional regime on the protection of freedom of conscience in the United States is a very clear example of how basic for liberalism are the arguments in favor of toleration. In this country, although thanks to Madison's influence there is no reference to toleration in the Constitution First Amendment, the freedom of conscience proclaimed there is captured in two obligations for the political power: the first is not enacting laws which establish an official creed, and the second, not enacting laws which prohibit the free exercise of religion. This approach related to the limits of power, and not to the subjective rights of people, has to be explained by the great authority that *A Letter Concerning Toleration* exerted on the overall North-American religious and political thinking in the 18<sup>th</sup> century with regard to the freedom of religion; and authority which was reinforced by the conscious re-development of Locke's thought made by Jefferson and Madison. From these remarkable influences, Locke's theory on toleration has shaped key aspects of the American jurisprudence as far as freedom of conscience is concerned. The legal conceptions on the freedom of speech, the right to privacy, and even the racial discrimination are based on various ideas from Locke. Ideas such as: establishing the toleration legitimacy in the contractualism; the idea that there is not a single must only pursue its own goals. Therefore, it is hardly surprising that the American Constitutional Theory talks indiscriminately about *freedoms, rights or toleration* of thinking, speech and action.

Despite of the aforementioned, it is recurrent to hear that the concept of toleration does not properly grasp the relations between the citizens and the State in a liberal society. The reason for that is that neither the State nor any citizen would hold any discretionary authority at all to interfere on how people live according to their religious and moral ideas, considering that the citizens' right to live according to their moral and religious ideas is a basic value for liberal societies and their political constitutions. Therefore, there would be nothing to be tolerated. The only thing to be done is to respect citizens' rights to freedom of conscience, opinion, and speech. This stance was held by Kant, after being taken both by the 1789 Declaration of the Rights of Man and of the Citizen and the First Amendment of the US Constitution, as it was mentioned before. In fact, as a consequence of this criticism, it is common in continental Europe talking on toleration just to refer to those problems related to social diversity in the private sphere, not the public one. In the case of the United Kingdom, there is a reason which promotes the term *toleration* to be used for any regime which excludes

the sectarian imposition of beliefs. The 1689 *Toleration Act* established the non-exclusive nature of the Anglican Church, with which, in any case, the crown still has an official commitment. As far as I know, this law has not been abolished, but additional regulations were added to it regarding the rights of Catholics and Jewish from late 18<sup>th</sup> century to mid-19<sup>th</sup> century (Scarman, 1987: 50).

On my view, there is limited but relevant place for toleration understood in the classic way (“not to intervene against that which is being disapproved”) in a constitutional democracy. Part of the scope and meaning of the fundamental rights and freedoms is subject to what John Rawls (1993) calls *reasonable disagreements*, may it be in all liberal societies and their legal systems or just in any of them. In this way, even if a person’s right to religious freedom is certainly not something which has to be tolerated, but respected in general terms, *tolerant* citizens who disagree with some controversial practices will admit them at the expense of their *reasonable* objections, so as to preserve the democratic coexistence: for example, let’s think of legal regulation allowing parents to request their children not to be taught either the theory of evolution or other contents at the public school. In this and other controversial cases (i.e. the authorization to use drugs for ritual practices, or abortion or euthanasia), we can talk on toleration as a matter of *attitudes*, because citizens lack the effective power to stop observing the governing law, although they can legitimately not to respect the rights derived from it (Forst, 2012). There are even cases on which decisions are subject to discretion and consequently to their tolerant *action*: when the law allows parents and teachers to make a decision on the use of a *hijab* to cover the head, or when the people from a neighbourhood are allowed to give permission to build a mosque (Ferretti and Laegaard, 2011). However, wearing a *hijab* or having permission to build a mosque must not be clearly protected by religious freedom in a country, for decisions regarding those issues to be considered tolerant there. Nevertheless, the discussion about how reasonable is understanding religious freedom in such a restrictive way, and so if talking on toleration instead of plain respect is right in those issues, remains open from a normative point of view.

## **2. The renewed interest for toleration inspired by *identity politics***

Being toleration admitted or not as an appropriate concept to articulate the pluralism of conceptions of the good and ways of life in a constitutional democracy, the fact is that references to toleration have been usual in political philosophy from 1980 onwards. The origin of those references can be found in British and American political philosophy. The hegemony

exercised by that philosophy on the one developed in the rest of the world for the last twenty years of the 20th century can partly explain the interest for toleration shown by philosophers, together with the media, political actors and teachers, beyond the Anglo-Saxon sphere. In addition, it must be considered the great challenge that the diversity of cultures and religions have posed to our global era. This era is characterized by a more intense contact within cultures as a consequence of communication development and the migration flows, and also by the traditionalist and nationalist reactions towards the economic and cultural integration processes both at regional and global level. All of this is behind the rise of *identity politics* which has brought the idea of toleration back to the present time. However, in the United States identity politics has its own local roots in the demands of recognition of those differentiated identities which rise soon after the segregationist laws having been abolished. Afro-American movements first, followed by natives, Hispanic, Jewish, homosexual and feminist movements, claimed the particular values and the cultural manifestations that respectively belonged to them, and they boosted the appearance of communities formed only by members of those groups. From these movements point of view, it was not acceptable to identify the equality with the same statute of participation in the rights, goods and services distributed by the State. And they kept pledging for these on the 80's, on the one hand the intellectuals and activists in favor of the *multicultural* reconfiguration of the school curricula and the canons of excellence; and, on the other hand, the *communitarists* thinkers (Young, 2011; Goldberg, 1994).

*Identity politics* movements questioned whether social order on the basis of neutral criteria was either possible or desirable or both things at the same time. This refusal of the neutral point of view led to the integration of differences being approached from the perspective of collective agents with a particular conception of the good and the capacity (effective or deserved by normative considerations) to impose it or, at least, to require it being respected. Therefore, those who place community values as a presupposition for any social order had a good reason to get interested on toleration classically understood, that is: as the mechanism that made the coexistence of various conceptions of the good possible when political power was committed with a particular perspective of good life. However, except on the part of some conservative communitarism, this classical concept of toleration was presented as linked to a *coexistence conception* of tolerance, instead of a *permission conception*. That is, toleration was less conceived as a relation between an authority or majority with regards to a minority, but as one between groups that share legitimate power

and which saw that, for the sake of social peace and the pursuit of their own interests, mutual toleration was the best of all possible alternatives. This way, the relation of toleration was no longer vertical but horizontal: the subjects were at the same time the objects of toleration (Forst, 2012).

Liberal philosophers were among those demanding political priority for communitarian values and those who showed interest for toleration as a key concept to articulate social pluralism. They were also outstanding liberal philosophers according to their recurring appearance in the anthology of the contemporary liberal theory and studies about it. Among this group of notable liberal thinkers, in this paper we will briefly examine how toleration is understood by John Gray, Michael Walzer and Richard Rorty. Nonetheless, the greatest contribution to the relevance of the toleration concept came from he who the *communitarians* considered the defender par excellence of liberal neutrality: John Rawls.

### **3. The heirs of toleration according to Isaiah Berlin: John Gray, Michael Walzer, and Richard Rorty**

John Gray, Michael Walzer and Richard Rorty support a conception of toleration influenced by the pluralist reinterpretation of John Stuart Mill's conducted by Isaiah Berlin. According to this reinterpretation, Mill was incoherent when posed fostering rational autonomy as the end of toleration. Berlin thought that establishing autonomy as a goal higher than the rest was not compatible with his empiricism, as that implied to compare that goal with all other possibilities, what was not possible because there is no limit to people's ability to suggest new goals. Alternatively, Berlin suggested that Mill should have based toleration on the plurality of human goals. A plurality which Berlin considered that could not be harmoniously articulated by either a conception of justice or of the good. This implies thinking that human relationships are inevitably affected by antagonism. And precisely the control of that antagonism to avoid mutual destruction has to be the aim of toleration for Berlin. Understood as a willingness to circumstantially sacrifice the integrity of our own convictions, Berlin considers toleration as what could make possible peace and cooperation in a world where clashing interests is a common thing.

Even more radical than Berlin in his pluralism, John Gray (2000) also holds an ideal of toleration as a *modus vivendi* oriented to prevent the calamities coming from the confrontations between those who pursue different ways of life. The diversity of ways of life usual in contemporary societies is less reconcilable than the one of personal convictions, and

this is why Gray thinks that that *modus vivendi* should be adopted from now on as the *telos* of liberalism. Gray's ideal of toleration incorporates the classical concept of toleration as the sacrifice of convictions for the sake of a greater good, either on the coexistence or the permission versions, according to the circumstances. However, unlike Walzer or Rorty, this greater good is not brought about by any schema of common values. It is not about respecting any people's moral features according to a particular ethical code, but about mere survival.

Although he feels indebted to Berlin, John Gray distances himself from Berlin on the way of understanding the limits of toleration. For Berlin ([1959] 1990: 202-05), these limits are defined by some principles accepted "for a long time in such a generalized way", especially in the western countries, "that we tend to consider them as universal ethical rules." Among these principles, we would find the respect to people's freedom understood in a negative way: as a sphere free from interferences. And this would turn into a moral obligation the toleration required to make that freedom effective. However, Gray considers that this definition by Berlin of the universal moral minimum assumes in excess the liberal way of living. Being consistent with the fact that there is a diversity of collective schemes of value prevents us from admitting any *universal* privilege to the choice, the autonomy or its protection in the form of negative freedoms. Furthermore, Gray thinks that even in the liberal societies these values act less as a subject of consensus than they do as knots in the social conflicts network. Therefore, the only thing that should be demanded to a regime of toleration is that it permits satisfying the human interests to the extent required *for any type of live which is worthwhile living*.

Gray's theory of toleration is indeed useful to cope with those conflicts that we should not expect to be solved by the parts reaching an agreement on what is fair or good for everyone. However, in my opinion, Gray underestimates liberal values potential for social integration. It is true, as Gray says, that there are endemic debates about the precise meaning of certain basic concepts on democratic liberalism. But it is also true that those societies where the universe of values is hegemonically liberal see a limited scope of legitimate political proposals both from the material and formal point of views, so that the disagreements are even posed as discrepancies about the same constitutive values of the same community.

For Michael Walzer (1997), the goal of toleration is more ambitious than it is for Gray: it is about making the difference possible. The reason of this goal is a commitment to the toleration values and to the respect towards foreign cultures which impeccably liberal. The comunitarist component of Walzer's theory of toleration comes with the requirement that any

toleration regime should be coherent with the values of the political community to which we belong, with regard to which groups are valuable and what sort of people we are. Therefore, there would be a different toleration regime for each type of political organization and even for each historical case of it. Conceptually speaking, Walzer (1997) identifies toleration with any form of articulating diversity, whether it is based on an attitude of resignation, stoical acceptance, indifference, curiosity or enthusiasm. Nevertheless, every single context will require one of these forms of articulation of diversity, and even a different type of attitudes from people, so that toleration becomes a reality.

According to Walzer, the pre-eminence of liberal values and institutions will therefore depend on the circumstances. In line with this, Walzer demands a regime of toleration based on a separation between the church and the state, and the recognition of individual rights for modern complex societies. But that is not all: The toleration advocated by Walzer (1997: epilogue) for the North-American society (that is, a society on which he considers to have enough knowledge so as to voice his opinion) also implies fostering associative life and empower the weakest groups so that they can compete for the resources available. All this is because, according to Walzer, in an immigrant, pluralist, modern, or postmodern society no regime of toleration will work for a long time if it lacks from a combination of a defense of the group differences and an attack to the class differences.

Notwithstanding the general dependence that toleration has towards the communitarian values, Walzer rejects the relativism. As he sustains, any regime of toleration's legitimacy depends on the regime "being useful to maintain any kind of peaceful coexistence and the basic human rights" (Walzer, 1997: 19). Such a legitimacy criterion includes limits to toleration which, in turn, come from the overlapping of what is commonly considered as intolerable by all toleration regimes. And every single person has access to this idea of the intolerable through his or her own *thick* morality. However, from a conceptual point of view, these universally limited values of toleration represent a diversified reality. The selection of the universal moral minimum integral values gives us already an idea about these values. It would otherwise be not possible to establish them "in minimalist terms" so as to confront "the most brutal and offensive injustices," as Walzer (1996) believes.

Richard Rorty's concept about toleration is more specific than that of Walzer. According to Rorty (1992), toleration is the ability not to aggressively react against what is different, based on trust in persuasion more than force, and on the openness to change one's

own habits so as to achieve the most advantageous. Thus, Rorty basically assumes John Stuart Mill's perfectionist conception of toleration. However, he does not confer to such perfectionism any universal supremacy, as Mill did, but circumscribes it to liberal societies. Even though Rorty relies on the liberal values strength of conviction as Mill did, he is aware of the contingency to which the progress of such values is subject to. For this reason, Rorty subordinates the perfectionist mission of toleration to prevent cruelty and to favor persuasion, aligning himself to the pluralist conceptions of toleration.

In my opinion, one of the biggest problems which arise from the way Rorty conceives toleration is that it is not plausible that it may be shared among those who do not take part on the liberal way of justifying the social practices. And this is so because, according to Rorty, the notions of what is true and what is right are inextricably linked to the language games of each culture. So, Rorty's hope (1998:123) of the *advantages* of a liberal society being appreciated by those not belonging to it would be vain. And it would not be possible either to trust on his plan to favor the liberal culture progress by establishing the rejection of cruelty as his basic principle (Rorty, 1991: 19-201).

However, neither the reflective justification of the proposals nor the human rights language games are exclusive to those-of-us-members-of-the-rich-democracies-in-the-North-Atlantic, as intended by Rorty. These ways of communications have underpinned multiple political claims and applications from all over the world, and they keep doing that. In this sense, Rorty, like John Gray, underestimates the integration capacity of the liberal thinking (McCarthy, 1991).

#### **4. The notion of toleration in John Rawls' *Political Liberalism***

As explained above, the significance acquired by toleration in recent political philosophy is originally indebted to that achieved by the criticism to liberal neutrality. Nonetheless, the greatest contribution to the relevance of the notion of toleration came from he who the *communitarians* had considered the defender par excellence of that neutrality: John Rawls. The concept of toleration can be found in John Rawls' (1993) *political liberalism* is that of a political principle which excludes the imposition by the State of religious beliefs or particular ethics. This principle governs the constitutional protection of freedom of conscience in the United States, and it is linked to Locke's idea of public authority's intervention being only justified when it performs "civil interests", that is, those goods that any reasonable person will want.

Rawls uses the principle of toleration as a *principle* of legitimacy. However, the legitimacy to be evaluated is not that of a specific political decision, but that of the political order philosophy itself. In this way, the principle of toleration is applied to the reasons that may justify the ends and organization of a pluralist society *basic structure*; that is, the reasons to justify the principles of justice which govern its main social and political institutions.

According to Rawls, arguments arising from religious and particular ethics should not be grounds for basic political principles because the validation of them is affected by the *burdens of reasons*. These *burdens of reasons* are a number of factors that explain why those arguments can reasonably be rejected by those who share neither the same religion nor the same ethics: factors such as the existence of strong reasons on both sides of a dispute, or the conditioning of personal experiences (Rawls 1993, ch. 2). The acknowledgement of the burdens of judgement enables people sharing different comprehensive doctrines to *legitimately think that their own existential doctrine is as true or right as any other* (Mendus, 1998: 12 foll.). Therefore, who admits the burdens of judgement will also admit her comprehensive aims of truth or righteousness can be *reasonably objected*. Thus, as Forst (2012) has observed, “toleration consists of the insight that reasons of ethical *objection*, even if reasonably and deeply held, cannot be valid as general reasons of *rejection* so long as they are reciprocally rejectable as belonging to a conception of the good or true way of life that is not and need not be shareable”. The possibility that the principle of toleration governs the basic social order comes with citizens’ acknowledgment of these burdens of reasons. For Rawls, the *virtue* of toleration mainly consists on this acknowledgment

According to what has been stated, raising reasonable objections constitutes a decisive circumstance of moral value toleration. This kind of toleration is the only one considered by Rawls’ political liberalism, because, first, being willing to bear the consequences of the burdens of judgment is the second basic aspect of our being reasonable; and, second, being reasonable is part of a citizen’s identity. Without being reasonable, a person cannot expect to be welcome as an equal to the public world. This way, Rawls can consider only the pluralism that comes from *reasonable disagreements* for devising the basic principles and virtues of social order, including toleration (Rawls, 1993: II.§1.1, II.§2.1-2).

For political liberalism, the same circumstances that justify the reasonable character of disagreements between comprehensive doctrines justify what could be called *toleration duties*: the duties practising the virtue of toleration consist of. The prime duty is to tolerate

that our comprehensive views will not be used as guidance for deciding basic political issues, despite the fact neither their epistemological nor their moral value is publicly denied. Related to this duty are the *duties of civility*: to act from and follow the idea of *public reason* when fundamental issues of justice are at stake, listen to others, and show fairness in deciding when to comply with their positions and in trying to reach an agreement.

Rawls counts on citizens' willingness not to impose their own personal or religious ethical convictions as a premise of the liberal order. This is an assumption that arises from sharing a liberal political culture, and from the *comprehensive doctrines* that can develop on such a culture. In my opinion, all this is quite reasonable. However, it seems not so reasonable for me that the motivation to accept a social order governed by the toleration principle should be the recognition of the burdens of judgement. The burdens of judgement *catalog* offers for secularized consciences good reasons to assume that every single person's outlook of the world has the same priority. Nevertheless, for those who maintain an existential conception which depends on dogmas of faith, or metaphysical conceptions claiming a universal value, their *ethos* integrity relies on considering other ways of life not as something different, but *mistaken*. In the same way, I find questionable the duty Rawls from the burdens of judgment to appeal to *public reason* (that is, only to fundamental political values) when talking about constitutional essentials or basic justice issues.

Beginning with my second criticism, when Rawls requires appealing to essential political values of liberal tradition to deal with basic justice issues, this is not because of the existential meaning these values may have for those sharing the liberal politics culture. This means that, in general, public reason will be the most efficient way to reach an agreement among all citizens about fundamental political matters (v. McCarthy, 1997: 51-53; Habermas, 2000: 208). Regarding the burdens of judgement secular bias, Susan Mendus (1998: 12 foll.) pointed out that the sense of recognizing the burdens of judgment is above all moral, not epistemological. Such a recognition imply neither dismissing the epistemological and moral value of *comprehensive* doctrines nor any sceptical pose about them: comprehensive doctrines allow us to satisfy the need for a standard of what a successful and "authentic" life means, as opposed to self-deception and a forced or alienated way of life (Habermas, 1998:56). What accepting the burdens of judgement involves is the duty to respect all worldviews even if their value cannot find a demonstration shareable by everyone. To reach an agreement on a fair system of cooperation for a pluralist society, the generality of citizens must recognize the same ethical value that for each one has her own existential doctrine. Otherwise, such an agreement

may not be fair toward the value people confer on those social practices (languages, traditions, religions, ways of life...) which provide them from resources to form and maintain their personal identity.

However, neither recognizing the same ethical value to existential doctrines nor articulating those doctrines with a political conception of justice must come from accepting the burdens of reason, as understood by Rawls. National minorities, ethnic minorities or slave descent ways of life can have particular difficulties to relativize their own *ethos* value, compared with universalist religions cosmovisions (Habermas, 2003: 9). Even a comprehensive doctrine that assumes the mistake of other conceptions of the world can be coherent with three principles which can indeed be considered as compatibility conditions with a liberal community (v. Habermas, 2003: 9). These principles are:

1. *To respect the right of every single individual to voluntarily embrace and review his or her own existential conception.*
2. *To socially cooperate with those who do not share their own view of the world, despite of the mistake on which they may be.*
3. *So as to achieve that cooperation, to justify one's own so that they may be shared by all members of a same society.*

I think it is less troublesome reformulating according the above three principles the virtues of toleration required to be considered as a regular member of a democratic society, and which allow the stable validity of the principle of toleration.

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