The Limits of Tolerance: A Substantive-Liberal Perspective

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This is a draft.

Comments are most welcomed.

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Abstract

In this paper I explore the concept of tolerance and suggest a description of that concept that could be accepted regardless the political theory one supports. Since a neutral perception of the limits of tolerance is impossible, this paper offers a guideline for a substantive-liberal or a perfectionist-liberal approach to it.

The limits of tolerance are described through the principles of reciprocity and proportionality. The former explains why intolerance should not be tolerated whereas the latter prescribes how and to what extent it should not be tolerated. The cumulative effect of these principles is that apart from extremely rare occasions intolerance should not be tolerated at all times.

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1. Introduction

The main purpose of this paper is to explore the concept of tolerance and to offer a perfectionist liberal-based perception of its limits.

I suggest that there is one better way of understanding what tolerance actually is; that the concept of tolerance is often misunderstood or even misused, specifically in liberal writings; and that the limit of tolerance should be intolerance according to the principles of reciprocity and proportionality i.e. that intolerance should not be tolerated, at all times, and in a proportionate manner.

This paper derives from a substantive-liberal point of view (or 'value-based liberalism' as opposed to a procedural or neutral one) which is much closer to Raz's notion of liberalism than to Rawls' neutral liberalism or to Dworkinian liberalism, for example. Moreover, I suspect that my perception of substantive-liberalism is in some aspects more far-reaching than Raz's perfectionist-liberalism.[1] Be that as it may, I do share the view that substantive-liberalism or Razian-perfectionist-liberalism is the best workable theory compatible with human well-being. Moreover, it offers more space to its competitive legitimate doctrines than any other workable doctrine is capable of. Needless to say, I do not share Rawls' view that a value-based liberalism is just 'another sectarian doctrine' (Rawls, 1985: 246).[2]

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[1] By saying that I refer mainly to ways of protecting and promoting autonomy which I may support and Raz may reject. However, it can also be argued that Raz's perfectionism is actually more radical than the way in which Raz himself presents it (George, 1993: ch. 6).

[2] I will not elaborate on the criticism saying that neutrality itself is 'another sectarian doctrine'. A more specific and related argument is that not just Raz's notion of liberalism is a value-based one but also Nozick's and Kymlicka's, and therefore that all are culturally and religiously intolerant (Chaplin, 1993: 32).

Thus, what I shall refer to as 'liberal tolerance' should be read as a value-based liberal tolerance and ought not to be confused with neutral liberal tolerance, e.g. Thomas Nagel's vague notion of what he refers to as impartial liberal tolerance (Nagel, 1991: 154-155).

Neutral liberalism has come under a growing attack during the last decades. The first attack is 'external', from those who resent most or all of the substantive values shared – to various extents – by liberals, namely individualism, equality, freedom (as protected by the harm principle), respect and autonomy. The second attack is 'internal', from those who embrace substantive liberalism but reject its aspiration to neutrality or its anti-perfectionism. These attackers sometimes offer the principle of tolerance as a way to replace the undesirable or impractical aspiration to neutrality with a hierarchy of values.

However, neutral liberals do not always take this attack from home seriously. Some do not fully confront the nature of tolerance and do not fully explore it as an alternative to neutral liberalism or to pluralism. Others ignore it all together. Advocates of tolerance, on the other hand, fail in answering two of the main questions regarding tolerance, namely what are its limits and more specifically - what is the proper response to intolerance. I will offer initial answers to both questions.

2. The nature of tolerance[3]

a. Linguistic and historical origins

In order to fully understand the meaning of a concept one should first examine its history and its semantic aspects.

[3] Although some claim to differentiate between *tolerance* (the virtue) and *toleration* (the act of tolerating), I will use the terms indiscriminately.

The origins of the term 'tolerance' are rooted in the Latin word *tolerabilis*, which means carrying or lifting an object. Both tolerance and *tolerabilis* linguistically imply the existence of a burden, originally a physical one and later on a mental one.

It is common to see the Religions Wars in Europe in the sixteenth and seventeenth centuries as the historical origins of the relatively modern concept of tolerance. More than a thousand years went by from St Augustine's position of extreme religious intolerance (St Augustine, 408: 382-389) until Christian religious tolerance emerged and, perhaps ironically, set the basis for secular liberalism, freedom of conscience and freedom from religion. In an almost evolutionary development, tolerance was first applied in the inter-Christian sphere,[4] then in the inter-religious sphere[5] and finally in the public-secular sphere.[6] Throughout this journey the understanding of tolerance as a burden that lies on the tolerant person's shoulders has not changed.

b. The nature of tolerance and some common misunderstandings

Both the linguistic and the historical origins of tolerance capture the essence of the concept, that is, the existence of a burden. More specifically, tolerance is to be understood as not harming the other although the tolerant person thinks there are good reasons for harming the other because (a) the other's values as being expressed in his behaviour, way of life or speech seem to the tolerant as 'wrong', i.e. dangerous, evil, immoral, unjust, useless, irrational and so forth, *or* (b) because the other's personal characteristics (colour of skin,

[4] Just before the Religion Wars, an attempt to reconcile the Catholic and Protestant dispute was made by Erasmus in 1533, as one of the earliest calls for religious tolerance (Erasmus, in Dolan, 1964: 288-327).

[5] The most important and quite innovative promoter of religious tolerance at that time was Sebastian Castellio who, in 1554, more then a century before John Locke, acknowledged that coercion is not an effective means to determine people's beliefs and that humans are authorized to punish only diversions from the core of religion, that is a diversion from believing in (any) God (Castellio, in Bainton 1965: 104-106, 121-135, 141-154, 169-183).

[6] John Stuart Mill's *On Liberty* (1859) is unanimously considered as the milestone of modern liberal tolerance.

sex, manners, physical appearance, physical disability and so forth) seem to the tolerant to be repulsive or disgusting, or these characteristics imply the other's inferiority in the eyes of the tolerant.[7] This is a complicated description of a complicated concept and some clarifications must be made.

Firstly, by saying that being tolerant means not harming the other, I refer to a broad definition of harm (or offence). This harm can be emotional, mental, physical or economic, and can be caused by condemning the other, insulting him, making him feel uncomfortable, avoiding his presence, discriminating against him and so forth. Although Feinberg, for example, calls some of the above 'evils of another kind than harm' (Feinberg, 1984: 215-216), I believe using a broad definition of 'harm' may be more appropriate when describing the nature of tolerance.

Secondly, defining what 'harm' is, is crucial for understanding the nature of tolerance, for identifying the intolerant person and presumably also for deciding the limits of tolerance. However, disagreements as to what constitutes harm are quite common. I will come back to the implications of this problem in section 4 ('who is the true intolerant one?').

Thirdly, an intolerant behaviour is not to be regarded as such only when a specific quantitative line of negative attitude is crossed or when a specific kind of negative attitude is being held by the intolerant person. Rather, an intolerant behaviour can come in various forms and degrees and it is an intolerant one as long as it consists of any kind and degree of a negative approach towards the other.

[7] See also in Raz (1986: 401-402): 'Typically a person is tolerant if and only if he suppresses a desire to cause to another a harm or hurt which he thinks the other deserve' (for a more complex and detailed definition, see also page 402).

Fourthly, the first part of the definition, (a), is about disapproval. The second part, (b), is about dislikes. Hence the definition of tolerance can be a 'value-based' definition (the former) as well as a 'personally-based' one (the latter) (Mendus, 1999: 3). Both can be understood as political (in)tolerance when expressed in the public sphere or by a political organ.

Fifthly, Raphael argued that 'the concept of toleration… implies that one has the right to suppress' (Raphael, 1988: 141). I respectfully disagree. The question of a right to suppress is irrelevant to identifying tolerance. Naturally, we can ask ourselves whether A's intolerance is justifiable or whether A has a right not to tolerate, but these questions are external to the descriptive question of whether A is or is not tolerant.

Sixthly, it is quite clear that tolerance can be the state of mind or the behaviour only of those who hold a negative opinion about the other as such or about the other's values. Therefore indifference and pluralism that lack restraint from harming the other cannot be understood as tolerance, though the pluralist's behaviour can be identical to that of the tolerant. This is true whether one defines pluralism broadly (there is no one truth or certain goods; therefore every opinion and way of life should be treated with the same respect) or narrowly (there is – or can be – a truth, but in order to find it – if we are ever to find it, or in order to constantly examine our beliefs – every opinion and way of life should be treated with the same respect). This observation seems all too simple, yet the notion that tolerance can be understood as pluralism or indifference is too widely accepted among liberals and non-liberals alike.

From the non-liberal point of view, Reinhold Niebuhr, to take one example, argued that 'tolerance is the virtue of people who do not believe anything' (Niebuhr, 1972: 130). From

the liberal point of view, Thomas Scanlon (2003: 192) and Bruce Ackerman (1980; 162, 302) indirectly define tolerance as pluralism.

Michael Sandel suggests two meanings of tolerance. The first is 'liberal-non-judgmental-toleration', which involves no moral judgment of the tolerable, and the second is 'judgmental-toleration', which does involve such moral judgment (Sandel, 1996: 107). Sandel is right to support 'judgmental-toleration' but is wrong to disregard the fact that 'liberal-non-judgmental-toleration' is not toleration at all but some kind of pluralism, neutrality or indifference.

Michael Walzer, in his comprehensive discussion on tolerance, defines tolerance in four ways (Walzer, 1997: 10-11). The first and correct one ('simply a resigned acceptance of difference for the sake of peace') is actually a pragmatic tolerance. The second ('passive, relaxed, benignly indifferent to difference') is indeed indifference, not tolerance. The third ('a principled recognition that the 'others' have rights even if they exercise those rights in unattractive ways') can be a part of understanding tolerance as a right, although Walzer also calls it a 'moral stoicism' which again lacks the tolerant person's restraint. The fourth definition ('openness to the others; curiosity; perhaps even respect, a willingness to listen and learn' and even 'the enthusiastic endorsement of difference') is clearly, despite Walzer's explanation, some kind of pluralism.

One final and unexpected example of misusing tolerance can be found in article 1.1 of the Declaration of Principle on Tolerance from 1995. This article wrongly defines tolerance as follows:

> Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference.

Indeed, there is no reason why one should not entitle this document 'the Declaration of Principle on Pluralism'.

I know of no explicit or implicit explanation for identifying tolerance with indifference or with pluralism.[8] Since the linguistic and the historical origins of the concept reject this identification, it seems that whoever uses tolerance and pluralism or indifference indiscriminately carries the burden of justifying this diversion from the original meaning of tolerance. This is not to say that linguistic or historical origins of a concept always determine its current meaning. Yet, in our case, if tolerance is to be understood as pluralism and if tolerance does not entail moral judgment and restraint from harming, then what term or concept does entail these elements? It is quite clear that since my proposed definition of tolerance contradicts any meaningful definition of pluralism, since the proposed definition coincides with the linguistic and historical origins of tolerance, and since no other concept has been suggested to replace 'historical tolerance' if tolerance is actually pluralism or indifference, then any identification of tolerance as pluralism or indifference is fundamentally wrong.

c. Different motives for tolerance [9]

A tolerant behaviour can be the result of different motives. Different people can be tolerant in the same way i.e. apply the same degree and mode of tolerant behaviour but the reasons for their behaviour may vary. We can identify three reasons for tolerance or three kinds of tolerance.

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[8] The absence of such an explanation is troubling. One can only guess the reasons for confusing tolerance with pluralism. It might be mere carelessness or an attempt to 'liberalize' (i.e. to 'neutralize' or to 'pluralize') what seems to be a troubling value-based concept for some liberals. I will refrain from elaborating on this point.

[9] The following discussion differentiates between tolerance as a right and pragmatic tolerance. Whilst the former is a *reason* to tolerate the latter refers to *motives* to tolerate. For the sake of simplicity I will ignore this conceptual point and will refer to motives and reasons for tolerance indiscriminately.

First, there is tolerance as a right (or, more accurately, a right to tolerance), meaning that a person has a right to be tolerated. The tolerant person puts up with the wrong or the repulsive because the other has a right to do the wrong thing or because the other has a right not to be harmed in spite of his repulsive features or manners. The main justification for this kind of tolerance is autonomy (Raz, 1987: 313). Other related justifications may be human dignity; freedom of speech; freedom of religion and conscience; a right to culture (any culture or a specific one) and so on, all according to the circumstances. All of the above and tolerance itself might be regarded as natural or human rights, i.e. rights that exist simply because we are human.

The absence of equality from this list is not accidental. I have explored the relation between tolerance and equality elsewhere (Nehushtan, forthcoming 2007). Suffice it to say that although the result of one's tolerance may be identical to the result of an equal treatment approach, the tolerant person, while comparing himself to the other, either thinks of himself as superior or thinks that his values are superior or that his manners are more appropriate and so on.[10] He may treat the other equally because the other has a right to be tolerated or for pragmatic reasons or because of mercy. Whatever the case may be, the tolerant person, in short, treats equally things he regards as unequal.

The second kind of tolerance is pragmatic tolerance. Here, the tolerant person tolerates the other because he thinks that in given circumstances it is in his or society's best interest to do so.

Numerous reasons can lead to pragmatic tolerance. The tolerant person may think that persecution is too expensive; that he does not have enough power to succeed in his

[10] I wish to ignore the hard and unusual case of a self-hating person who tolerates (or does not tolerate) others not because he thinks they or their values or manners are inferior but because he sees in them what he hates about himself. This example also suggests that one can tolerate oneself (or not, i.e. harm oneself). I will not elaborate on these points except to say that they can be seen as rare exceptions to the general view I described.

persecution; that the harm to society as a whole, as a result of the persecution, will override the harm caused by the (intolerable) other; that recognizing state's power not to tolerate will lead to its misuse; that coercion is not effective in changing intolerable values or beliefs; that by tolerating today's minority one increases the possibility of being tolerated if he finds himself as tomorrow's minority, and so forth.

Pragmatic tolerance can be the result of informal as well as formal decisions of A in regard to B but can also be the result of a contract in which, for pragmatic reasons, A is obliged to tolerate B or both are obliged to mutual tolerance.[11]

According to most pragmatic reasons, tolerance has no intrinsic value. Nonetheless, in one case the pragmatic tolerant person can perceive tolerance as good for itself. The tolerant person may think that his intolerant reaction towards the intolerant might cause a counter-reaction that might reduce the total amount of tolerance in society. The pragmatic tolerant person may prefer to refrain from not tolerating the intolerant person, not because the intolerant person has a right to tolerance but because the tolerant aim to maximize tolerance in society.

The main feature of pragmatic tolerance is its temporary nature. It is all a question of risks and opportunities in a given time and place. Nevertheless, this kind of tolerance is not to be taken for granted. Although it may seem as a second best because it is temporary and because it disregards human rights discourse, its outcome is still peace.

The third kind of tolerance is *tolerance out of mercy*. One can tolerate other people's physical or mental limitations just out of mercy although one finds them repulsive and would like to avoid their presence. An authorized officer can grant a pardon to a convicted

[11] 'Contractual tolerance' is an interesting case since while the reasons for creating 'contractual tolerance' are pragmatic ones the existence of a contract creates a right to tolerance. It is yet different than the case of what I called 'tolerance as a right' since the nature, the justifications and the limits of the contractual right are different from whatever constitutes the 'tolerance as a right' approach.

felon because of the felon's health condition. The felon does not have a right to a pardon and not always can we find pragmatic reasons to justify it. Mercy is often an accurate explanation of this kind of tolerance.

d .Tolerance, intolerance and power

The three kinds of tolerance seem to have a common feature that to some emphasizes the very essence of tolerance. Tolerance, some claim, is always the virtue of the powerful or the superior (Rapahel, 1988: 139). This feature is extremely dominant in 'tolerance as mercy'. It also exists in 'tolerance as a right'. This right, however human or natural, has no practical meaning unless it is being recognized by the powerful. In regard to pragmatic tolerance things are more complicated since in some cases the tolerant person avoids intolerance precisely because of his lack of power.

Is tolerance always a virtue of the powerful or the superior? Can't a minority or the powerless be tolerant as well? In my opinion, not only can the powerless be tolerant but they can also be intolerant towards the powerful.

Tolerance is the attitude of the person who is superior in his own eyes, even if in spite of his superiority he is powerless. The powerless superior's attitude is that of tolerance whether he holds the notion of tolerance as a right, i.e. he would tolerate were he to have the power, or whether he wishes to harm the powerful but is not able to do so for pragmatic reasons (i.e. lack of power).

Secondly, two equally powerful sides can tolerate each other for pragmatic reasons, although each of them feels superior to the other. Their equal powers actually make them powerless towards each other and therefore tolerant.

Thirdly, the powerless can be intolerant towards the powerful by condemning or avoiding them. Minority groups can refrain from social contact with non-members, refuse

to marry non-members and even refuse to live alongside non-members.[12] All this can be seen as intolerance towards the powerful if the reason for the avoidance is the self-observation of the powerless as superior and if the avoidance intends to harm or offend individuals who are not part of the group.

One can also think of cases in which the powerless avoid the powerful yet the powerful do not mind being avoided. In these cases the powerless still have an intolerant state of mind but since the powerful are indifferent to that fact, no harm is caused and no important practical or political issues arise.

When the powerless enjoy the power not to tolerate the powerful simply because the powerful themselves allow them to do so, the powerless are still to be considered as powerless, yet capable of being intolerant. Even when the powerful do not tolerate the intolerance of the powerless towards them, this does not eliminate the ability of the powerless to be intolerant. It just makes it punishable.

3. The limits of tolerance: reciprocity and proportionality

a. Introduction

Finding and defining the limits of tolerance is one of the greatest challenges of liberal democracies. Some liberals are torn between their notion that in some cases the liberal state can or even must limit some expressions of some values and their commitment to neutrality or to pluralism.

[12] This overlooked possibility of being intolerant by avoidance is why some definitions of tolerance are not totally accurate, e.g.: 'toleration is the virtue of refraining from exercising one's power to interfere with other's opinion or action…' (Nicholson, 1985: 162).

This paper does not aspire to present a comprehensive guide to liberal tolerance but to offer some basic guidelines for a new liberal perception of the limits of tolerance. Three main arguments stand at the basis of my proposal.

First, since any discourse regarding the limits of tolerance must be a value-based one, my proposal can be adopted only by those who embrace substantive liberalism or some form of perfectionist liberalism. There is no point in trying to persuade non-liberals of a liberal-value-based approach to tolerance. As Bernard Williams correctly points out, if we defend tolerance as a value then its justifications will entail certain 'goods', particularly that of personal autonomy, which others do not accept as a good; therefore they do not accept tolerance or, more accurately, tolerance as a human right (Williams, 1999: 72-73; Scanlon, 2003: 201). This problem is solved by narrowing the question to 'what liberals should and should not tolerate'.

Secondly, I will argue that the main guide to defining the limits of tolerance is reciprocity. According to the principle of reciprocity the limit of tolerance is intolerance, or in other words the tolerant, as a starting point, should not tolerate anything that denies the justifications of tolerance and tolerance itself. The principle of reciprocity is valid, in my opinion, regarding all possible expressions of intolerance: acts (discriminating against whites, for example), direct hate-speech (about whites and to whites), indirect hate-speech (about whites to a third party) and advocating intolerant views of others. The important differences between the above can be taken into consideration while applying the principle of proportionality.

Thirdly, I will argue for the principle of proportionality as a complementary principle to reciprocity. It is not sufficient to claim that one should not tolerate intolerance. One should

also ask what nature and amount of intolerance justifies a specific nature and amount of intolerant response.

b. Reciprocity

The principle of reciprocity regarding the limits of tolerance is recognized as a valid principle by liberals and non-liberals alike, although sometimes in various versions or without naming it as such. Frequently, it is discussed inconsistently or not analysed thoroughly.

Rawls, for example, said, without elaborating on that specific point, that '... it seems that an intolerant sect has no title to complain when it is denied an equal liberty' (Rawls, 1999: 190).[13] Bollinger's view on freedom of speech and tolerance also adopts, although not explicitly, the principle of reciprocity (Bollinger, 1986: 244-245). A stronger, sometimes overlooked, view in support of reciprocity can be found in Kymlicka's discussion of multiculturalism when he argues for the right of national minorities to maintain themselves as culturally distinct societies only if they are themselves governed by liberal principles (Kymlicka, 1995: 153).[14] Finally, Mensching, in his comprehensive essay on religion and tolerance, justifies the principle of reciprocity regarding tolerance and specifically regarding freedom of religion (Mensching, 1971: 168).

Most, if not all, advocates of the principle of reciprocity do not explain exactly what justifies it. For some, this view seems so intuitively true that no elaboration is needed. Hammer, for example, briefly mentions '… the unavoidable quandary of a tolerant society

[13] See also Rawls (1971: 218), although in the large context it is unclear whether Rawls argues for reciprocity or for a pragmatic approach to the limits of tolerance. For a broader and slightly different sense of reciprocity see Rawls (1999: 179)

[14] However, on pages 167-169 Kymlicka supports granting a constitutional exemption to non-liberal national minorities even at the cost of violating human rights within the minority's community.

that demands, by a simple definition of the term, a certain level of intolerance at least towards intolerant views' (Hammer, 2001: 73).

Does tolerance demand, as a matter of simple logic and by definition, that one should not tolerate intolerance? I believe that the answer is yes, subject to the principle of proportionality. One can argue that by being tolerant one has a prima facie reason to tolerate intolerance and that other reasons, besides the other's intolerance, should be found to justify not tolerating him. This view is misguided. From the point of view of the state, if it takes tolerance seriously it is committed to protect A's right to be tolerated by not tolerating those who infringe that right. Allowing B not to tolerate A in the name of tolerance is self-contradictory. Not tolerating B's intolerance towards A is the only way to be committed to tolerance. From the point of view of the intolerant person, it seems highly unsound to argue for the defence of tolerance while denying it at the same time. As a matter of decency, one cannot act in opposition to what tolerance demands and at the same time ask for its defence.

The logic of reciprocity, or the notion that in regard to certain 'X' one has to act contrary to X towards those who infringe X, in order to protect X itself, can be found in numerous other cases. If the state takes freedom seriously it has to restrict A's freedom if A intends to limit B's freedom (or sometimes his own); if the state takes autonomy seriously it has to restrict A's autonomy if A intends to reduce B's autonomy, or even in order to promote A's own autonomy; if the state takes free competition seriously it has to interfere with the free market and regularize restrictions on monopolies and cartels in order to ensure free competition; and finally, if the state takes democracy seriously it has to limit some democratic rights of anti-democratic parties in order to protect democracy.[15] Since

[15] For promoting reciprocity as a justification for banning undemocratic (and intolerant) political parties from taking part in the political process, see Fox and Nolte (1995: 14-16).

international law does take reciprocity seriously it can be found in almost all the important international documents regarding human rights.[16]

The argument for reciprocity was brought forward in a very powerful and convincing way by Karl Popper. Unfortunately, too many modern liberal states and most contemporary liberal thinkers fail to accept this simple insight, to develop it and to apply it. Popper's general view was that 'if we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them' (Popper, 1945: 265). More specifically, he argued very clearly that 'we should therefore claim, in the name of tolerance, the right not to tolerate the intolerant' (Popper, 1945: 265) and demanded from the government to 'tolerate all who are prepared to reciprocate, i.e. who are tolerant' (Popper, 1945: 266).

Thus, being tolerant means to have a prima facie reason not to tolerate intolerance under the principle of reciprocity as was described above and under the principle of proportionality that will be described shortly.

Another way of applying the principle of reciprocity is to address it to the justifications of tolerance, i.e. to argue that whoever or whatever denies these justifications should not be tolerated. It is important to note that not every intolerant act necessarily infringes all the justifications of tolerance and accordingly not every infringement of one or more of the

[16] For few central examples see article 8.2 of the European Convention for Protection of Human Rights and Fundamental Freedoms (1950), which states that the right to respect for private and family life can be infringed in order to protect the rights and freedoms of others. Article 11.2 states the same regarding freedom of assembly and association. Article 5.1 of the International Covenant on Civil and Political Rights (1966) includes a general principle of reciprocity regarding the Covenant's protected rights; see also article 22.2. For a general principle of reciprocity see also articles 29.2 and 30 to the Universal Declaration on Human Rights (1948).

For an opinion that there is a right not to tolerate only those who infringe human rights see Mendus (1988: 5, 13) and Rapahel (1988: 147).

justifications of tolerance can be seen as an intolerant act. Hence infringement of tolerance and infringement of its justifications are two different cases that may or may not overlap.

The most basic, coherent and comprehensive justification of 'tolerance as a right' is personal autonomy. The main advocate of this justification is Joseph Raz (Raz, 1987). I will not present in full Raz's argument regarding the connection between toleration, autonomy and competitive moral pluralism. However, since this paper relies on a general point of view of substantive liberalism or perhaps extreme perfectionist liberalism, a short account of the role of autonomy in the discourse of liberal tolerance is called for.

In short, I share the criticism of Raz that while autonomy can justify tolerance, and while tolerance enables autonomy, a commitment to autonomy (or to tolerance) does not entail a commitment to competitive moral pluralism, i.e. a commitment to the claim that there are valuable forms of lives other than that of the tolerant. A commitment to autonomy and to tolerance can lead to avoidance from interfering in the other's invaluable, useless life (which is not necessarily evil, immoral or even repulsive). Thus, although a commitment to autonomy can entail a commitment to moral pluralism, it does not have to be the case. Furthermore, toleration itself (as described by Raz) is not likely to emerge from a position of competitive pluralism and certainly does not have to be driven by it. And from another point of view, Raz's argument that 'pluralism has an inherent tendency to generate intolerance' (Raz, 1986: 401) is questionable since pluralism, by its common definition (which is indeed different from Raz's), means acceptance of diversity and as such cannot lead to intolerance since in the pluralist's eyes there is nothing out there to tolerate. Thus, although tolerance as a right is justified by autonomy, it cannot be justified or explained by pluralism.[17]

[17] See also Ten's comment on Raz's views on the relation between tolerance, autonomy and pluralism (Ten, 1987: 334).

By respecting the other's autonomy the tolerant put up with the other's wrong choices. In other words, the tolerant recognize the other's freedom to be wrong.[18]

However, as Raz argues, the justification of autonomy has its limits and therefore tolerance itself has its limits. According to Raz, 'autonomy-based toleration … does not extend to the morally bad and repugnant … autonomy is valuable only if exercised in pursuit of the good' (Raz, 1987: 326-327).[19] Unfortunately, Raz does not elaborate on what exactly is 'bad and repugnant' or 'good'.[20] Nevertheless, he widely puts forward one unavoidable criterion: whoever or whatever denies autonomy or even fails to promote it should not be tolerated by the government (Raz, 1987: 329,331).[21] Although Raz does not use this term, he is actually arguing for the principle of reciprocity.

The connection between tolerance and autonomy can lead us to two similar conclusions. First, if tolerance enables autonomy and if government has a duty to ensure and promote autonomy, then government has a duty to ensure and promote tolerance. Secondly, since intolerance is by definition harming others, then the same harm principle that allows the infringement of autonomy in order to defend it and promote it, allows not tolerating the intolerant in order to defend tolerance and promote it. This is the essence of the autonomy-based tolerance and a central part of the more general view of substantive liberalism.

Since autonomy can be considered as the ultimate justification for other human rights that relate to tolerance (e.g. freedom of speech, freedom of conscience and religion, human dignity and so forth) or can be seen as a distinct human right that overlaps these other

[18] By saying that I do not necessarily mean that there is a moral right to do what is morally wrong, as opposed to Waldron (1981: 21) and Enoch (2002: 355).

[19] See also on pages 332-333: '… the boundaries of the autonomy-based toleration are those stated by the harm principle' (whether by the narrow view of the harm principle that permits coercion in order to protect personal autonomy or by the wide view that permits invasion of personal autonomy in order to prevent pain).

[20] For another discussion of good and unacceptable ways of life without pointing out any detailed definition see also Raz (1991: 319).

[21] See also Raz (2003: 266-267). For a similar view see also Raday (2003: 701).

human rights, and since all of the above can be used as a justification for tolerance, it is not far-fetched to apply the reciprocity principle broadly.

According to the broad principle of reciprocity, anyone or anything that denies the justifications for tolerance (or, in some cases, fails to promote these justifications) should not be tolerated.

c. Reciprocity and pragmatic justifications

One can hold a purely pragmatic notion of tolerance. One can also hold a more comprehensive notion of tolerance by not tolerating the other according to the principle of reciprocity only when there is no pragmatic reason that prevails and leads to tolerating the intolerable. This can be called a pragmatic-reciprocity approach.

For a better understanding of this approach I will discuss some pragmatic justifications in themselves and vis-à-vis the principle of reciprocity.

First, one can argue that there is no such thing as a false idea or, alternatively, that any idea can be right or wrong and there is no way of knowing which it is thus all ideas and values should be tolerated. This argument must be rejected since when discussing the concept of tolerance we are rejecting, by definition, the notion that we cannot know what is right and what is wrong as well as the odd idea that 'there are no false ideas'.

Secondly, one can argue that even if there are false ideas the government should not decide on their falsity since giving this power to government will eventually lead to its misuse. This argument is not defensible simply because even those who claim it are not denying the power of government to uphold certain limitations on some value-based practices and even speech.[22] Instead of arguing that government should not hold the power

[22] See for example Nicholson (1985). On pages 163-164 he argues against intolerance since by giving anyone the power to decide what to tolerate will result in mistakes and abuse of that power. Nevertheless, on page 170 he agrees that government can 'discriminate against one idea by giving extra aid to the opposite idea' and on page 172 he agrees that in some cases government should not tolerate the intolerant.

not to tolerate any opinion whatsoever, one should argue for pragmatic reasons to oppose government's intolerance towards specific opinions or ways of life.

This second argument is actually a slippery slope argument, i.e. that giving some power to the government to do something right (to restrict only ideas that need to be restricted) will result in its misuse to a degree that does not justify giving that power at all. However, by adopting the slippery slope logic we can equally argue that by refraining to give government the power that might be misused, we will end up denying government the power to do what it should do and what we want it to do.[23]

Thirdly, one can argue that there are false ideas but allowing them to be heard is the best way to discover the truth and leads to a lively and strong perception of it. This argument can also be read more generally as an argument that supports tolerating the intolerant if and only if tolerance as a whole will benefit from it. This powerful argument does not contradict the principle of reciprocity. Since according to the reciprocity principle tolerance is our main concern, it seems coherent to argue that as a starting point we should not tolerate the intolerant unless our intolerant reaction will reduce the total level of tolerance in society as a whole. Indeed, sometimes we should tolerate the intolerable as a lesser evil since for pragmatic reasons we are not able to eradicate the intolerable without causing more harm to tolerance itself, or to other valuable values or interests. Nevertheless, when the principle of proportionality is explained I will argue that some amount of intolerance toward the intolerant is possible and necessary in almost every case.

This argument of 'pragmatic reciprocity' can be found, although not in these words, in Rawls' writings. According to Rawls, any society that wishes to preserve its basic culture and social institutions must be intolerant towards certain ways of life (Rawls, 1985: 225-

[23] For a general anti-slippery slope argument see Enoch (2001: 629).

300). In order to protect some fundamental liberal norms, namely respect for the other and not harming the other, society must set a limit to the scope of values it can respect or tolerate (Rawls, 1999: 192, 325). This is the reciprocity part of Rawls' argument, although not argued in great detail. But then, Rawls also argues that when an intolerant sect appears in a democratic society, tolerating it may persuade its members to believe in freedom, and thus, provided the sect is not strong enough to eliminate the liberal democracy, 'it will tend to lose its intolerance and accept liberty of conscience' (Rawls, 1999:192-193). Therefore, according to Rawls, unless the group is strong enough to significantly harm the liberal state one should tolerate it and by persuasion 'liberalize' it. Only when the liberal society is in real danger, and only if tolerance as a whole will benefit from not tolerating the intolerant, is an intolerant reaction justifiable (Rawls, 1985: 220).[24] This is the pragmatic part of Rawls' argument and as such it raises one important concern.

In short, Rawls' conditions, that the liberal society should be in a real danger before not tolerating intolerance and that tolerance as a whole will benefit from not tolerating the intolerant, are very nearly contradictory.

In some detail: while the pragmatic-reciprocity approach that I have offered, supports, in principle, intolerance towards the powerless intolerant, Rawls' pragmatic-reciprocity approach supports tolerance towards the powerless intolerant, and intolerance towards those who are powerful.

The obvious concern regarding Rawls' approach is that when the intolerant gain sufficient power to threat the liberal constitution and liberal society, intolerance towards them is likely to be ineffective or too expensive and may result in harming the tolerance

[24] See also in Rawls (1999: 192, 193).

regime itself. Adopting Rawls' approach might result in a liberal majority (or an elite liberal minority) that is not powerful enough to face a too powerful intolerant group.

It seems that Walzer holds a similar approach to Rawls. According to Walzer, the state should tolerate anti-democratic (and therefore intolerant) groups or communities unless a political party is founded on the basis of the group's intolerant values, in which case the state could ban the party from participating in the political process. This ban, Walzer argues, is not intolerance but simply a matter of caution (Walzwe, 1997: 9). Although it is hard to understand why Walzer does not think that banning political parties from the political process is not intolerance but only 'caution', the more important quandary relates to his distinction between the pre-political or ex-political and the political, according to which we should not tolerate the intolerant (or just be cautious) only when they enter the political sphere.

First, and much like Rawls' approach, Walzer is waiting too long before being intolerant towards the intolerant. Groups and communities might accumulate significant power and enter the political sphere with a strong support that will make it harder, from a pragmatic point of view, not to tolerate them.

Secondly, intolerant groups can cause significant harm to their members and to non-members alike, regardless of their participation in the political process. A socially organized intolerance can be as powerful and as harmful to individuals and to society as a 'formal' political one, and presumably even more.

Thirdly, once Walzer agrees that some ideas should not be entitled to gain political power or that democracy should prevent some ideas from gaining the majority's support, it can hardly be consistent to allow these ideas to take full part in the marketplace of ideas in the public sphere. If a judgment is made that some ideas are not legitimate and steps should

be taken to prevent them from gaining political support, steps should also be taken to prevent them from gaining popular support from the public. The state has a duty, in order to prevent harm to its citizens, not to tolerate any public expression or implementation of those ideas. Again, Walzer fails to recognize the importance of the public yet informal and non-political sphere.

d. Tolerance – a moral virtue?

The notion that one should not tolerate some values, ways of life and so on is rejected by some who perceive tolerance as a moral virtue and therefore find it hard to comprehend that intolerance is sometimes allowed or even necessary.

Therefore, it might be useful to clarify this point before we go on. Is tolerance always a good thing in the sense that one should always be tolerant, or perhaps tolerance and intolerance are neither good nor bad in themselves since one can be wrongly tolerant or rightly intolerant?

Nicholson argues that toleration is indeed always good for the reason that the alternative – intolerance – is always worse (the negative case for toleration), and because tolerance has an independent value (the positive case for toleration) (Nicholson, 1985: 164).[25] Nicholson argues that part of being moral is to give serious consideration to other people's ideas and failing to do so means not just selfishness or making an illegitimate demand for a privileged position but also immorality. Therefore, 'since toleration is good, to be tolerant is a moral duty … and therefore the tolerator has no moral right not to be tolerant' (Nicholson, 1985: 166-167).

The first problem with this argument is that not all the ideas other people have deserve serious consideration (and it seems that Nicholson himself is aware of that. 1985: 165) and

[25] For a similar approach of a negative case for toleration see Scanlon (2003: 201).

that not all people deserve an equal amount of respect. Nicholson argues that '[the tolerator] must respect the personality of the holders of those opinions, and treat them as rational moral agents whose views can be discussed and disputed, and who are capable of changing their minds on rational grounds' (Nicholson, 1985: 165). Nevertheless, surely there are people out there that although in principle are 'capable of changing their minds on rational grounds', rarely turn to rational grounds for formulating and changing their opinions. On what basis then should we treat them as what they are not (i.e. rational agents)?

By arguing the above I share Bernard Williams' view (and criticism of Kant) that the concept of 'moral agent' does and must have an empirical basis and should not be understood as a 'transcendental characteristic' of human beings (Williams, 1973: 235).

Thomas Scanlon presents a similar argument to Nicholson's. Scanlon indeed does not tolerate the intolerant when he argues that we should not regard the views of the intolerant as entitled to be heard. But then he suggests that we must distinguish between intolerant opinions and their holders, and as a result 'it is not that their *point of view* is entitled to be represented but that *they* … are entitled to be heard' (Scanlon, 2003: 197).[26]

It is possible to understand and criticize Scanlon's view in two ways. First, we can accept his claim that one should separate intolerant opinions from their holders. If that is true, it can be argued that by banning an opinion we do not disrespect its holder but only his opinion. The person is still a fellow citizen who has an equal place in society, though some of his opinions do not.

Secondly, it can be argued that by saying that such opinions are not entitled to be heard but their holders are, Scanlon actually does not separate opinions from their holders. If

[26] For a similar argument see Williams (1999: 73).

one's entitlement to be represented means that all one's views should be heard, then from this aspect Scanlon does not offer any meaningful separation between opinions and their holders. I do not think Scanlon meant to say that 'you are what you think', but he does argue for a strong connection between people and their opinions. Now, if we follow this line of argument we can reach two opposite results: the first, allowing intolerant views to be heard as a result of respect for their holders; the second – and the more desirable one – disrespecting a person by disallowing him to promote his intolerant views (or act upon them) precisely because they are intolerant. The principle of reciprocity is valid here as well. If the illegitimate point of view disrespects others, it is fully justifiable to prevent this harm by disrespecting not just the bigot's point of view but the bigot himself.

The second problem of Nicholson's argument is more fundamental. The argument that tolerance is a moral virtue and that therefore one must always be tolerant cannot be justified. Nicholson does not argue that because tolerance is good there is a prima facie reason to tolerate. His argument is that one must always be tolerant. But, if tolerance is indeed always good and if to be tolerant is a moral duty, then intolerance is always bad. Even then, and since one must always be tolerant according to Nicholson, it is never justifiable to take measures to confront intolerance. But if the principle of reciprocity is justified, then this categorical conclusion is clearly mistaken. Note that Nicholson himself recognizes the need not to tolerate the intolerant (Nicholson, 1985: 169-172). But surely one cannot claim that because tolerance is always good and intolerance is always wrong, it is sometimes allowed not to tolerate the intolerant. This is simply self-contradictory.

Thus, the notion that tolerance is a moral virtue is either misguided or does not mean that one should always be tolerant. All it means is that one should be tolerant unless compelling reasons allow or demand an intolerant response to a wrong. It might be argued

that it would be better to give up entirely the attempt to describe or justify tolerance as a good and simply to argue that tolerance and intolerance are not ends of a spectrum of good and bad but can be either good or bad according to the circumstances.

This is a point worth stressing since in contemporary liberalism toleration is seen as a second-best and being intolerant is sometimes considered as inherently wrong. These misconceptions lead some liberal thinkers to indefensible observations regarding the concept of tolerance.

Scanlon, as one example of many, who indeed sees tolerance as a second-best, argues that since religious groups and political movements would lose their point if they had to include just anyone, it is not intolerance of them to deny goods to those who do not share their values (Scanlon, 2003: 194). The correct conclusion should be that this is intolerance, yet it might be justified. Scanlon also wrongly claims that it is not intolerance to oppose the creationists who wish to teach 'creation science' in public schools, and that it is not intolerance to enforce tolerance in behaviour and prevent the intolerant from acting on their beliefs (Scanlon, 2003: 196). In both cases the right observation is that, again, this is intolerance but a justified one.

e. Tolerating the intolerant: who carries the burden?

It seems that some of the general disapproval of tolerance or the inconvenience that tolerance causes to some liberals (as opposed to neutrality or pluralism) lies not just in tolerance being a value-based approach but also in the notion that the state is the one that is likely to act intolerantly towards individuals and minorities, and more accurately – to initiate such intolerance. Some liberals see the paradigmatic case of intolerance as of an over-powerful state or orthodoxy unjustly eliminating individuals' and minorities' freedoms.

However, this is not always the case and one might wonder whether it is even the usual case. All too often intolerance is the practice of minority groups towards their weakest members (this can be found mainly but not solely in religious groups and in patriarchal cultures) and of members of powerful groups towards members of powerless groups.

In these cases the liberal's unwillingness to allow state power to eliminate intolerance results in harm caused to the weakest in society.[27] The greater the state's unwillingness to impose tolerance, the greater the burden of tolerance towards the intolerant the powerless have to carry.

Thus, when intolerant minority groups aim their intolerance directly towards the state or towards the powerful, an intolerant response, even if often justified, should be taken only after special, serious considerations since here the risk of misusing the state's power is relatively high. Note that in this case avoidance of an intolerant response results in the powerful carrying the burden of tolerance. However, when intolerant groups or individuals aim their intolerance towards powerless groups or individuals, avoidance of an intolerant response by the state results in the powerless carrying the burden of tolerance. Therefore an intolerant state response in these cases is less suspect and no special considerations should be taken into account.

The last case might be misleading since the state's intolerant response to intolerance of third parties towards minorities will presumably be based on the values of the state or of the powerful. Moreover, in this case (as opposed to the first one) the burden of tolerance does not necessarily shift from the minority to the majority or to the state but from the minority to a third party, who may also be a minority or at least not part of the dominant powerful

[27] This harm is seen by some as a mental or a psychic tax imposed on the 'poorer', and therefore as a regressive, unjust tax (Matsuda, 1989: 2322, 2376).

group. Nevertheless, I do think that in the second case the state's power is less likely to be misused since no intolerance is aimed directly towards it.

f. Proportionality

Although it is a well-established principle in public law, most scholars ignore the principle of proportionality when discussing the limits of tolerance. Its absence leads to an unsatisfactory and incomplete approach to the limits of tolerance.

In short, disregarding the principle of proportionality leads to a misleading dichotomy: one is regarded either as tolerant or as intolerant. Since some are unwilling to be identified as intolerant or unwilling to promote intolerance (mainly because they wrongly assume that intolerance is intrinsically wrong) tolerance is attached to many things that are far from it (e.g. pluralism) and is promoted even when it should not be.

The principle of proportionality reminds us there are different kinds and degrees of tolerance and intolerance. It reminds us that the question is not just whether one is tolerant or not but also what kind and amount of intolerance justifies a specific kind and amount of intolerant response. As such, the principle of proportionality complements the principle of reciprocity.

As I already mentioned, intolerance can take the form of condemning the other, insulting him, undermining his values, making him feel uncomfortable or unwelcome, avoiding his presence, discriminating against him, refusing to assist him, restricting his speech or behaviour, and so on. Similarly, the intolerant response to intolerance can also take the form of all the above.

According to the principle of proportionality one should match the nature and amount of one's intolerant response to the nature and amount of the intolerance one is facing. This general rule can be divided into three sub-rules.

First, there should be a rational connection between the nature of the original intolerance and the nature of our intolerant response. For example, an intolerant response to a racist speech in parliament should be connected to the political process and not to the MP's 'private' identity. Moreover, the rational connection test implies that the intolerant response should be effective or at least has to have – as such and in principle – the potential of being effective.

Secondly, the intolerant response should eliminate or significantly reduce the effect of the original intolerance while causing the least amount of harm to human rights and interests. In other words, we should find the least harmful intolerant response that is still effective. For example, one's response to the emergence of a racist political party could be banning the party from the political process. This response has a rational connection to the intolerance we are facing and it can be assumed it is the least harmful means that can be taken in order to eliminate this political intolerance. On the other hand, putting the party's leaders and its members in prison may be effective but is surely not the least harmful intolerant response possible.

Thirdly, the least harmful response to intolerance and the consequences of such a response should be proportionate to the legitimate aim one is trying to achieve, that is proportionate to the exact value, right or interest that should be protected from the intolerance we are facing. At times the least harmful yet still effective response may be a harsh one. One should consider whether the results of such a response are proportionate to the kind and amount of the original intolerance one was facing, and whether it will not cause more harm to human rights and tolerance itself than allowing the original intolerance. Assume that an intolerant religious group disrupts by demonstrations the performance of a theatre play that offends their religious values. The police's decision to arrest some of the

disrupters and to forcibly keep the others at a reasonable distance from the theatre is both rationally connected to the nature and the amount of the protestors' intolerance and can be seen as the least harmful intolerant response that is still effective (the latter is, obviously, a factual evaluation that depends on the circumstances of every case). However, if there is a high probability that this intolerant response to the religious intolerance will cause riots that result in the deaths of one or few innocent people or of many of the violent religious protestors then the least harmful yet effective response to the religious intolerance or more specifically – its consequences – are not proportionate to the legitimate aim we try to achieve (i.e. guaranteeing freedom of artistic speech) and therefore should be avoided.

However, and this is a crucial yet sometimes neglected point, although in some cases the least harmful intolerant (yet efficient) response should be avoided for pragmatic reasons, that is not to say that the government and the public do not have a moral right to carry out a lesser degree of intolerant response, even though not fully effective. In the example above the government can – and in my opinion should – condemn the religious intolerance and allow the public to freely and harshly criticize it. This is an important message that must be clear: we think you are intolerant and the only reason we do not take the necessary steps to eliminate your intolerance is not because we respect your values or your autonomy but because we do not want to expose society to your even more intolerant response.

Raz, however, argues that government must not condemn 'bad' speech, including 'attacking speech' (which is part of a good way of life) (Raz, 1991: 318-320). Raz's argument is limited to freedom of speech and does not include acts. Nevertheless, it is well known that the boundaries between speech and acts are not always all too clear. Here, one can argue that hostile and intimidating speech towards theatre audience that prevents them from attending a play or making it extremely hard for them to fully enjoy the play is closer

to an act than to a speech. Moreover, even if we think that the religion that was offended by the play can form a basis for a generally good way of life, it is hard to agree that government must not condemn a specific intolerant expression of that way of life especially when this expression – even just by speech – denies the way of life of others and the legitimate implementation of their autonomy. In other words, one can say: we respect you, your religion and your way of life but we will not tolerate some aspects of your way of life if they reject the autonomy of others or unjustly harm them.

The possibility of expressing an intolerant response by condemnation is meaningful not only when the powerful state avoids, just for pragmatic reasons, what is in principle a justifiable response to intolerance, but also when a powerless group wishes not to tolerate the powerful. It seems that condemnation (and in appropriate cases also avoidance) is one of the few ways a powerless group has of expressing its intolerance towards the powerful without risking an intolerant response, or at least not a major one.

The possibility of condemning the intolerant as part of the principle of proportionality may also solve the difficulty of Bernard Williams and others in appreciating tolerance. According to Williams, tolerance is impossible since it is required only for the intolerable, and more specifically liberal tolerance is impossible since it is required only towards those who deny personal autonomy as a good and as a basis of tolerance itself (Williams, 1999: 65, 73). First, it could be argued that Williams' initial view is incorrect. Not all we should tolerate is intolerable, i.e. denies the justifications for tolerance itself. We can also tolerate the stupid, the irrational, the disgusting, the repulsive and so on; these have nothing to do with denial of tolerance itself. Secondly, even if we agree with Williams, the possibility of not tolerating the intolerable by condemnation, avoidance, refusal to assist and so on coincides with Williams' initial view (that we can only tolerate things that are intolerable)

yet avoids harsh intolerance toward the intolerable and leaves it with most of its relevant and meaningful freedoms.

To conclude, the principle of proportionality and especially its third element are the core of the proposed pragmatic-reciprocity approach. It provides that one should not tolerate intolerance unless pragmatic reasons prevail, i.e. unless the intolerant response to intolerance (and the response to that) will cause disproportionate harm to human rights or to tolerance itself in society as a whole.

Moreover, the principle of proportionality offers a new approach to categorizing our attitude regarding tolerance. Instead of the dichotomy between intolerance and tolerance, one can be seen as intolerant in some degree and therefore tolerant in another degree at the same time. When one chooses a proportionate response to intolerance, for example, one can be described as intolerant towards it – but only to some degree – and also as tolerant towards it – to some degree – because of one's avoidance of taking harsher and disproportionate measures as a response. Indeed, it appears that in most cases people are not merely tolerant or intolerant towards something or someone but actually tolerant and intolerant at the same time and to various degrees.

4. Who is the true intolerant one?

According to the principle of reciprocity one has to identify the 'original' intolerance and decide the proper response. However, it can be argued that there is no neutral way to decide who the original perpetrator of intolerance is. Therefore the original perpetrator can and indeed often does argue that the liberal intolerant response towards him is not a response at all but the original intolerance itself, and that by forcing him to be tolerant in the liberal meaning, the liberals themselves are being intolerant.

The first response to this argument is that it is true. The second response is that it is true, but...

First, as we repeatedly stressed, tolerance discourse is by definition a value-based one and it seems awkward to accuse value-based liberalism of acting according to its values.[28] Indeed, if the rivals above do not share a similar political or moral understanding of acceptable values, the discourse of tolerance will rarely be able to reconcile value-based arguments between them. Regarding that aspect alone, a theory of liberal tolerance is quite useless. Nevertheless, it has a great importance within the scope of liberalism.

Secondly and despite the above, there might be a partial solution to the incapability of tolerance to form a neutral understanding of its limits. When identifying the original intolerant person we can turn to two helpful tests. First, we should ask whether A had the intention to harm the other or was the harm incidental to A's action or speech, and secondly, who was the first who intended to harm the other – or, in a more childish manner, who started it?[29]

a. The intention to harm

It seems implausible to accuse someone of being intolerant unless that person has an intention of harming the other. This is not to say that one's freedom can be restricted only when one has the intention of harming another. There are other reasons for restricting freedom: public order, paternalism, moral conventions, different perceptions of justice and so on. All I am arguing for is that when the reason to restrict freedom is the intolerance of the other, an intention to cause harm must be proven.

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[28] For the same argument regarding (Razian) pluralism see Raz (1991: 322).

[29] For the discussion of the limits of tolerance to be complete we should also refer to other considerations such as the measure of the harm, its frequency, the ability to avoid the harm (the captive audience question), the cost of such avoidance and so forth. I will avoid from discussing these further considerations in this paper.

One can argue that when the harm is unavoidable or highly predictable the actor is to be considered as intolerant if he does not refrain from the action. But the intolerant person, by definition, causes harm because he has a negative opinion of the other or because he believes he has good reasons to harm him. I suggest this should be the primary reason or at least a reason that is necessary for committing the harmful act. When a negative opinion, for example, is part of the reasons for not avoiding an act that one would have done regardless of this opinion, the actor is not to be considered as intolerant but at the most as inconsiderate or disrespectful.

Therefore it is not intolerance when one walks naked in one's neighbourhood if this is truly one's idea of a good life, i.e. if one would have walked naked outdoors in any other place (whether in a distant farm or on the high street). One is still not to be considered intolerant if one walks naked also because one enjoys offending the feelings of the religious family down the street since one despises their basic values.

Nevertheless, the 'intention to harm test' is not completely detached from the value-based approach.

First, the term 'harm' itself can not be wholly neutral, for some can disagree on what constitutes harm or, more frequently, on what weight should be given to what is agreed to be harmful. Secondly, the disagreement on what constitutes harm can reflect the question of 'who started it'. Assume that, according to one religion, a woman's face must be covered in public. The male religious believers may argue that no harm is intended or indeed caused; on the contrary, it is in the woman's interest to cover her face in public. Therefore any regulation aiming to eradicate this practice can be seen as a response to religious intolerance towards women that by definition harms women, or as an original intolerance

towards religious practice that causes no harm and therefore is not intolerant. To refer to that problem more specifically we should turn to the question of 'who started it'.

b. Who was the first who intended to harm the other

The question is: who was the first to restrict (in the broader sense possible) the freedom of the other because he has a negative opinion of the other or of his values.

In the example of the religious face covering, we should find out exactly why women are required to cover their faces. Only if the motives for this demand relate to a negative opinion of women as such will it be justifiable to identify it as (the original) intolerance.

An interesting example of trying to avoid the question of 'who started it' and by that to eliminate the distinction between acceptable and unacceptable values can be found in Michael McConnell's opinion on homosexuality. According to McConnell, both those who reject homosexuality and those who accept it are intolerant. The homophobic are intolerant as long as they intend to use the law to preserve or to strengthen restrictions on homosexuality as a way of life. The others are intolerant as long as they intend to use the law to change social conventions and to fully 'legitimize' homosexuality (McConnell, 2000-2001: 43-44).[30] McConnell proposes that both views, seeing homosexuality as unnatural or even immoral behaviour and seeing homosexuality as 'healthy' and normal behaviour, should be respected by avoiding using the law to promote their perception of the good.

This attempt to equalize homosexuality and homophobia and to consider both as intolerant is false. There is nothing in homosexuality as such that intends to deny the legitimacy of others, to condemn their way of life or to exclude it legally, socially and

[30] Although the connection between tolerance and the status quo and between tolerance and using the law as a means to an end is not quite clear, I will not elaborate on this point in this paper.

culturally. However, the very essence of religious or conservative homophobia is condemning the other as immoral and excluding it legally, culturally or even physically.

According to the intention test and the 'who started it' test, any legislation that supports and promotes homosexuality cannot be regarded as intolerance whereas any homophobic response to such legislation or to homosexuality in general is indeed the original intolerance. The latter should not be tolerated (in proportionate ways) unless one thinks that this original intolerance is morally justified, i.e. that homosexuality is immoral or harmful. In that case one should not argue that promoting homosexuality is intolerance but simply immoral or harmful.

Similarly, an indirect yet still, in my view, incorrect dichotomy was suggested by Raz. (1991: 320). Raz argues that government should not criticize hostile portrayals of gays (published as a response to gays' demands to legitimize gay culture) or of Muslims (as a response to their demand to ban *The Satanic Verses*). In my opinion, it is extremely hard to find resemblances between the two cases. While the gays' demand does not intend to offend others or to limit their freedoms, the Muslims' demand does.

If we connect the intention and the 'who started it' tests to the idea of proportionality and specifically to the possibility of condemnation, we find that on the same issue (Muslims and homosexuals), Raz argues against the government's condemnation as opposed to public condemnation because the former is the authoritative voice of society and as such should not be referred towards vulnerable minorities.

First, if, according to Raz, public condemnation of the Muslims' intolerance is or can be justified, one may argue that Raz's rejection of the government's condemnation is not a matter of principle but merely a matter of proportionality. Raz himself argues that on the one hand governmental condemnations 'cannot be justified' and that 'they are wrong in

themselves' but that on the other hand extraordinary circumstances can justify them (Raz, 1991: 318). If this is true, and if the principle of autonomy dictates that government should not just avoid harming autonomy but should also promote it, then even Raz may agree that not only extremely intolerant attacking speech (which is still part of a good way of life) justifies governmental condemnation but also any other speech that diminishes personal autonomy.

Secondly, one can argue that by avoiding condemnation of attacking speech against gays, the government can be seen as sustaining such speech. It is not far-fetched to interpret non-condemnation as support, and while supporting (by not condemning) attacks on Muslims' intolerant response to offending literature coincides with the limits of liberal tolerance, supporting (by not condemning) attacks on gays fails to respond properly to intolerant views and results in harming the non-intolerant powerless.

One should also bear in mind the difference between attacking Muslims for their specific objection to a specific book and attacking gays because of who they are. While the former is not necessarily an attack on Islam as a whole or on the identity of religious believers as such, the latter is an attack on the self-identity of persons as such.

To conclude, the intention test and the 'who started it' test cannot be entirely value-free or uncontroversial but they do have some neutral aspects that can be accepted by non-liberals. Even if rejected by non-liberals they can surely serve the liberal when he has to decide the limits of liberal tolerance.

c. The limits of the 'who started it' test

Consider the example of nudism. Presumably most people support not allowing nudism in public places. However, nudism as such does not contain an intention to harm others. The only reason for banning it is the view that it is obscene (or because it is obscene, violation

of the public order might occur by others). But isn't banning nudism the original intolerance that, according to all we have said so far, should not be tolerated?

As we already said, not tolerating intolerance is not the only justifiable reason for limiting freedoms of others. All too often it is justifiable to be the original intolerant person. Thus, the 'who started it' test can be useful only as a mechanism of shifting the burden of proof. When we have found who started it, he is the one who has to justify his intolerance. It is true however that his success in convincing us depends on whether we share the same or at least a similar perception of morality.

It appears that this conclusion brings us back to the starting point, in which I knowingly gave up the attempt to address my arguments to non-liberals but only to those who by and large 'speak my language' (drawing freely from Wittgenstein's terminology).

5. Conclusion

In this paper I set forth a description of the concept of tolerance that could and should be accepted regardless of the political or moral principles one holds.

While it is plausible to argue for a neutral perception of the nature of tolerance, it is impossible to formulate a non-value-based perception of the limits of tolerance.

Relying on substantive liberal values, mainly on that of autonomy, I have argued that liberals should not tolerate, in a proportionate manner, anything that denies the justifications of tolerance or tolerance itself, unless this response would increase intolerance in society.

Lack of compliance with the principle of proportionality will constitute an abuse of power. Lack of compliance with the principle of reciprocity will justify the unkind criticism of liberalism, according to which liberalism is the opinion of those who have no opinion. The proposed limits of liberal tolerance remind us that liberalism contains meaningful and desirable values that should be protected, in proportionate and justifiable ways, from anti-liberal attacks.

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