

Intolerance and discrimination

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This article traces the origins of tolerance as a pragmatic policy of absolute monarchy through its transformation into an indispensable tool for the establishment of religious pluralism in a democratic polity. The author distinguishes between mere toleration of outsiders, who are nevertheless considered inferior, and toleration based on mutual recognition and mutual acceptance of divergent worldviews. This latter kind of tolerance allows religions and democracy to coexist in a pluralistic environment and paves the way to reconciliation between multiculturalism and equality.

1.

It was not until the sixteenth century that the German language borrowed the word *Toleranz*—or tolerance—from the Latin and French, which is why in the context of the Reformation the concept immediately assumed the narrow meaning of toleration of other religious confessions.¹ In the course of the sixteenth and seventeenth centuries, religious toleration became a legal concept. Governments issued toleration edicts that compelled state officials and a population that believed in the rule of law, to be tolerant in their behavior toward religious minorities, such as Lutherans, Huguenots, and Papists.² This legal act of toleration by the state authorities led to people (as a rule the majority of the population)³ being expected to behave tolerantly toward members of religious communities that had previously been oppressed or persecuted. With greater precision than in German, in English the word “tolerance” as a form of behavior is distinguished from “toleration,” the legal act with which a government

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¹ See ALLGEMEINE HANDWÖRTERBUCH DER PHILOSOPHISCHEN WISSENSCHAFTEN NEBST IHRER LITERATUR UND GESCHICHTE [GENERAL DICTIONARY OF THE PHILOSOPHICAL SCIENCES INCLUDING LITERATURE AND HISTORY] (Wilhelm Traugott Krug ed., 2nd ed. 1832) (“Tolerance (derived from *tolarare*, forbear, endure) is forbearance. ... But the word is mostly used in a narrow sense of forbearance in relation to another religion, just as intolerance is used to describe lack of forbearance in religious matters.”)

² In 1598, Henri IV of France issued the Edict of Nantes; see also the Act Concerning Religion passed by the Government of Maryland in 1649; the Toleration Act issued by the King of England in 1689; and the Patent of Toleration proclaimed by Joseph II in 1781 (one of the last instances in this chain of sovereign “authorizations”).

³ The case was different in Maryland, where a Catholic minority ruled over a Protestant majority.

grants more or less unrestricted permission to persons to practice their particular religion. In German, the predicate “tolerant” refers to both, to a legal order that guarantees toleration and to the normative expectation of tolerant behavior.

Today, in the lax everyday use of the term we can still discern its political origins. We not only use the term *Toleranz* to designate the general disposition to treat another person or a stranger patiently and generously, more specifically we use it to refer to a *political virtue* in our dealings with citizens who are different or are of a different origin. Today, *Toleranz* is considered a core component of liberal political culture. That said, *Toleranz* is not the same as the virtue of “civil” behavior. It must not be confused with the mere willingness to cooperate and compromise, for each person’s respective truth claims cannot be a matter for *negotiation* when they conflict with the truth claims of someone else. Toleration first becomes necessary when one rejects the convictions of others: We do not need to be tolerant if we are indifferent toward other beliefs and attitudes or even if we appreciate otherness. Later, religious toleration toward those holding different beliefs is generalized to constitute what is in the broadest sense political tolerance of people who think differently; but in both cases, what Rainer Forst has termed the “component of rejection” is material.

In other words, we can talk of toleration only if the parties involved base their rejection on a *cognitive conflict between beliefs and attitudes that persists for good reasons*. It goes without saying that not every rejection can be construed as reasonable: “If someone rejects people with black skin, we should not call on him to show ‘toleration towards those of a different appearance’ because that would be to accept his prejudice as an ethical judgment that is similar to the rejection of a different religion. A racist should not be tolerant, he should overcome his racism.”⁴

In this and in similar cases, the appropriate answer is a critique of *prejudices* and the combating of *discrimination*, in other words the fight for equal rights, and not “more tolerance.” With people who think differently or have different beliefs from our own, and were discriminated against as a result of prejudices, the question of toleration first arises after these prejudices have been eliminated. Yet by what right do we classify as “prejudices” those descriptions that the religious fundamentalist, the racist, the sexual chauvinist, the radical nationalist, or the xenophobic ethnocentric give of “their other?” Today, we permit ourselves the stigmatizing description of fundamentalists, racists, etc. in light of the principle of equal treatment of all citizens, especially given the notion of “full membership” by everybody.

This norm of equal inclusion of every citizen must be universally recognized within a political community before we can mutually expect tolerance from one another. It is this shared standard of non-discrimination that first provides

⁴Rainer Forst, *Der schmale grat zwischen ablehnung und akzeptanz* [The Small Difference between Rejection and Acceptance], FRANKFURTER RUNDSCHAU, December 28, 2001.

the moral and constitutional reasons for toleration, exactly those reasons that trump the first-order epistemic reasons for a rejection of the other person's merely tolerated truth claims. On this basis of a normative consensus, the contradictions that persist at the cognitive level between competing worldviews can be neutralized in the social dimension of equal treatment.⁵

The conceptual history of religious toleration offers us a guideline when analyzing the pace-setting role that religious schism and pluralism in Western societies have had for the emergence and development of constitutional democracies. On the one hand, philosophical justifications for religious toleration in the seventeenth and eighteenth centuries paved the way for the secularization of the state and the switch to a secular legitimation of the state (discussed below in Part 2). On the other hand, the liberal state demands that religious consciousness adapt cognitively to an order of human rights (Part 3). In both regards, the struggle for religious toleration becomes the model for multiculturalism, correctly understood, and for the equal co-existence of different cultural forms of life within one and the same political community (Part 4). However, the cognitive tensions between the different value constellations of equally recognized sub-cultures calls for a different type of toleration than the contradictions between competing worldviews (Part 5).

2.

The philosophical justifications for religious toleration from Spinoza and Locke to Bayle and Montesquieu point the absolutist state away from *unilaterally* declared toleration and toward a conception that calls for the mutual recognition of rights of religious expression by the citizens themselves.

Initially, the toleration of religious minorities was justified only pragmatically, e.g., for mercantilist reasons; in order to maintain law and order; for legalistic reasons, since spontaneous convictions elude legal constraint; or for epistemological reasons, since the human mind is deemed to be fallible. We find Spinoza defending the freedom of religious expression with a view to the principle of freedom of conscience, thought and expression, and thus on moral grounds,⁶ while Locke opts for justifications stemming from human rights. Yet it was not until Pierre Bayle that we encounter stringently universalist reasons.

He repeatedly dreamed up new examples to force his intolerant opponents to adopt the perspective of the other person and apply their own principles to

⁵ On the intrinsic link between simultaneous rejection and acceptance, see Rainer Forst, *Toleranz, "Gerechtigkeit und Vernunft"* [Tolerance, "Justice and Reason"], in *TOLERANZ* 144 (Frankfurt/M., 2000); See also Rainer Forst, *Grenzen der Toleranz* [Limits of Tolerance], in *GRENZEN ALS THEMA DER RECHTS- UND SOZIALPHILOSOPHIE, ARCHIV F. RECHTS- UND SOZIALPHILOSOPHIE—SUPPLEMENT* [LIMITS AS A SUBJECT OF LEGAL AND SOCIAL PHILOSOPHY] 84 (W. Brugger & G. Haverkate eds. 2002).

⁶ BENEDICT DE SPINOZA, *The Tractatus Theologico-Politicus* in *THE POLITICAL WORKS* (A.G. Wernham ed., trans., Oxford Univ. Press 1958) (1670), Chapter 20.

their opponents: "If it should thus suddenly cross the Mufti's mind to send some missionaries to the Christians, just as the Pope sends such to India, and someone were to surprise these Turkish missionaries in the process of forcing their way into our houses to fulfill their duties converting us, then I do not believe we would have the authority to punish them. For if they were to give the same answers as the Christian missionaries in Japan, namely that they had arrived to zealously familiarize those with the true religion who were not yet acquainted with it, and to care for the salvation of their fellow men—now if we were to string up these Turks, would it not then actually be ridiculous to find it bad if the Japanese did the same thing?"⁷ Bayle, who in this respect was the forerunner of Kant, practices mutual perspective-taking and insists that we *universalize* those "ideas" in the light of which we judge "the nature of human action."⁸

On this basis of a reciprocal recognition of the rules of tolerant behavior we can find a solution to the original paradox that prompted Goethe to reject toleration as insulting and patronizing benevolence. Each act of toleration must circumscribe a characteristic of what we must accept and thus simultaneously draw a line for what cannot be tolerated. There can be no inclusion without exclusion. And as long as this line is drawn in an authoritarian manner, that is, unilaterally, the stigma of arbitrary exclusion remains inscribed in all toleration. Only with a *universally convincing* delineation of the borderline—which requires that all those involved *reciprocally* take the perspectives of the others—can toleration blunt the thorn of intolerance. Everyone who might be affected by the future practice must voluntarily agree on the conditions under which they wish to exercise mutual toleration.

For toleration to extricate itself from the suspicion that it is intolerant, the rules of tolerant behavior must be rationally acceptable for both, indeed, for all sides. Accordingly, the paradox is first resolved by the advent of modern democracy. There is a conceptual link between the freedom of religious expression and democracy, and it explains why that freedom also functioned historically as a pace-setter for democracy. On the one hand, religious schism and religious disputes have deprived the state of a legitimation rooted in an exclusive religion and thus forced it to switch over to a legitimation that is neutral towards different religions, and independent of them. On the other hand, the spread of religious toleration already contains the key to solving the problem. At any rate, the universalist meaning of reciprocal expectations of toleration hinted at the direction to be taken to find the new secular source of legitimation.

As I have shown, reciprocal religious toleration called for by everyone must rest on universally acceptable limits of tolerance. This consensual delimitation

⁷Pierre Bayle, *Commentaire philosophique sur ces paroles de Jésus-Christ: Contrains-les d'entrer* [Philosophical Commentary on these words of Jesus Christ: Compel them to come in] in Amie Goodman Tannenbaum, *Pierre Bayle's Philosophical Commentary: A Modern Translation and Critical Interpretation* (Peter Lang Publishing 1987) (1727).

⁸*Id.*

can arise only through the mode of deliberation in which those involved are obliged to engage in mutual perspective-taking. The legitimating power of such a deliberation is generalized and institutionalized only in the process of democratic will formation. In the end, religious toleration can be guaranteed in a tolerant manner only if religious freedom is enacted as the result of a deliberative process of legislation, the mode of which provides grounds for the reasonable expectation of rationally acceptable outcomes.⁹

3.

While religious toleration is basic to a democratic constitutional state, in this way religious consciousness itself undergoes a learning process. With the introduction of a right to freedom of religious expression, all religious communities must adopt the constitutional principle of the equal inclusion of everyone. They cannot merely benefit from the toleration of the others, but must themselves face up to the generalized expectation of tolerance, with all the consequences this entails. The liberal state expects that the religious consciousness of the faithful will become modernized by way of a cognitive adaptation to the individualistic and egalitarian nature of the laws of the secular community.

Each religion is originally a “worldview” or, as Rawls puts it, a “comprehensive doctrine,” in the sense that it lays claim to the authority to structure a form of life in its *entirety*. A religion that has become just one among several confessions must abandon this claim to comprehensively shape life. Under conditions of pluralism the life of the religious community must differentiate itself from the life of the larger political community. A prevailing religion loses its political impact on society at large if the political order no longer obeys the religious ethos. This results, among other things, in the renunciation of violence and the acceptance of the voluntary character of religious association. Violence may not be used to push forward religious beliefs inside or outside the community.¹⁰ Religious doctrines that once provided the state with a sacred source of legitimation cope with an imposed depoliticization by redefining, from their internal perspective, the relationships between religious community and (a) the liberal state, (b) other religious communities, and (c) the secularized society.

A.

John Rawls has used the image of a module to describe the way the morality of human rights is “embedded” in different religious worldviews: The module,

⁹ Article 6 of the Declaration of the Rights of Man 1789 expressly defined the democratic character of the law in terms indebted to Rousseau: “Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes.”

¹⁰ JOHN RAWLS, *POLITICAL LIBERALISM* 132–38 (Columbia Univ. Press 1993).

although constructed purely with the help of neutral reasons that do not draw on a particular worldview, fits the respective orthodox context of justification.¹¹ Compared with the enlightenment conception of a “religion of reason” that absorbs within itself the moral substance shared by all religious doctrines, this image of the module has the advantage that it does not deny that mutually exclusive belief-systems seriously raise absolute claims to truth; so it does not need to downplay the radical thrust of toleration.

B.

Missionary doctrines such as Christianity or Islam are *intrinsically* intolerant of other beliefs. Love of your neighbor includes the active care for his or her salvation. And because—as Thomas Aquinas, among others, argued—eternal salvation has absolute priority over all other goods, care for the salvation of others does not per se exclude the application of force to convert someone to the right faith or to protect them against heresy.¹² The dogmatic switch to toleration would either have to deny the premise of eternal damnation that hangs over the head of the unbeliever or argue that the right faith cannot be forced on someone, or concede fallibility to avoid falling into self-confident dogmatism.

C.

The key achievement of religious toleration is that it absorbs and trammels the social destructivity of irreconcilable dissent. Such dissent should not tear the social bond that links believers in one faith and believers in other faiths as members of one and the same secular society. Reciprocal tolerance of the uncompromisingly rejected belief of the other calls at the social level for a differentiation of one’s own community and society at large—a differentiation which, from the viewpoint of the religion, must itself be convincingly justified if entrenched conflicts of loyalty are not to simmer. Conflict-free differentiation of the two forms of membership is not exhausted in the superficial adaptation of the religious ethos to the laws of secular society. It calls instead for developing, from within the ethos of the religious community, cognitive links to the moral substance of the democratic constitution.

In the West, the cognitive reorganization of the doctrines and attitudes of the major religious communities is by no means complete. The alarmist responses to the so-called “Crucifix” decision by the German Constitutional Court are ample evidence of this.¹³ The court declared that the decree by Bavarian Primary School authorities, according to which government schools

¹¹ *Id.* at 76 et seq.

¹² Perry Schmidt-Leukel, *Ist das Christentum notwendig intolerant?* [Is Christian religion necessarily intolerant?] in *TOLERANZ*, *supra* note 5, at 177–213.

¹³ Decision of May 16, 1995, BVerfGE, 22 Europäische Grundrechte Zeitschrift 359 (1995).

were duty-bound to hang a crucifix in each classroom, was unconstitutional; the court found that the decree violated the principle of neutrality the state has to maintain in religious matters and contradicted the freedom of religious expression—both the positive freedom of “being able to live according to one’s own convictions” and, in particular, the negative freedom of “being able to abstain from the cultic actions of a belief one does not share.”¹⁴ While the majority cited the parity of churches and confessions as laid out in the German Basic Law as the basis for its judgment, the dissenting members and political opponents of the decree justified their criticism by stating that the crucifix served not as a specific symbol of the kernel of the Christian faith, but as an integral part of Western culture. Obviously, the school authorities were acting no less intolerantly than those Turkish authorities who, out of concern for the religious feelings of the Islamic population, banned the publication of an illustrated volume on Italian Renaissance paintings because it contained too many plates depicting nude women. Such actions fail to distinguish the ethical values held by a religious community from the domain in which one should apply the legal and moral principles that govern co-existence in society as a whole.

4.

In summary, it is safe to say that the linkage between religious toleration and democracy occurs from both sides: on the part of politics, which switches the basis for its legitimation over to a pluralist worldview, and on the part of religion, which locks the moral and legal principles of secular society onto its own ethos. With the depoliticization of the dominant religions and the inclusion of religious minorities in the political community as a whole, the spread of religious toleration—in which we recognized a pace-setter *for* democracy—also acts, *within* democracy, as a stimulus and model for the introduction of further cultural rights. Religious pluralism kindles and fosters sensitivity to the claims of discriminated groups in general.

Needless to say, the debate on multiculturalism hinges less on the downgrading of religious minorities and more on discrimination by other groups. Issues include the choice of national holidays; the definition of the official language(s); the promotion of school instruction in the mother tongue of ethnic or national minorities; and gender or race quotas for political office, universities, and the job market in general. From the viewpoint of the equal inclusion of all citizens, however, religious discrimination blends smoothly into the line of cultural or linguistic, ethnic or racist, sex or gender-based discrimination. Indeed, the borderlines often become blurred. The forbidden call of the muezzin in villages in which the church bells still call the faithful to

¹⁴ GUNTER FRANKENBERG, DIE VERFASSUNG DER REPUBLIK [THE CONSTITUTION OF THE REPUBLIC] 90 AND 222, (Nomos 1996).

prayer is an example of religious discrimination; yet, it is also an example of the rejection of cultural self-representation by a group of immigrants and the political exclusion from public life of those of their symbols that foster their identity.

When the relationship between a dominant religion and the state and its political culture is severed, space is created for the liberties of religious minorities. In a legal battle with the state of Baden-Württemberg, an Islamic teacher candidate insisted on wearing her head scarf in the public school system because she felt that this symbol corresponded to the cross her colleagues were allowed to wear around their necks.¹⁵ In Germany, the Jehovah's Witnesses have claimed the right to be recognized as a public entity and thus to be placed on a par with the major confessions.¹⁶ Departing from the national regulations laid down for the protection of animals, the German Constitutional Court has permitted devout Muslims, like Jews, to slaughter animals by ritual method.¹⁷ In Canada and Great Britain, Sikhs have been allowed to wear turbans and carry daggers (*kirpans*) in a variety of school- and work-related contexts.

These cases explain why the freedom of religious expression has become the model for introducing other cultural rights. Like the free expression of a religious belief, cultural rights serve the goal of guaranteeing equal access to one's own community's forms of communication, traditions, and practices that people require in order to maintain their personal identity. For members of racial, national, linguistic, and ethnic minorities, the means and opportunities for reproducing their own language or way of life are often just as important as the freedom of association, doctrinal teaching, rituals and ceremonies for religious minorities. For this reason, the struggle for equal rights for various religious communities provides both political theory and jurisprudence with ideas for realizing the concept of an expanded "multicultural citizenship."¹⁸

In all cultures, religious beliefs and practices have had a crucial influence on the way individuals have understood themselves in ethical terms. Yet linguistic and cultural traditions are no less relevant for the formation and maintenance of the personal identity of individuals—something always interwoven

¹⁵ The Federal Administrative Court, in its decision of July 4, 2002, BVerwG 2 C 21.01 ruled against the teacher candidate. The issue may be appealed to the Federal Constitutional Court.

¹⁶ In December 2000, the Federal Constitutional Court vacated and remanded a Federal Administrative Court decision denying the Jehovah's Witnesses' claim. See German Constitutional Court, Decision of December 19, 2000 BVerfGE 102, 370, available at <http://www.bverfg.de/cgi-bin/link.pl?entscheidungun>.

¹⁷ Judgment of January 15, 2002, 1 BvR 1783/99, 55 NEUE JURISTISCHE WOCHENSCHRIFT 663 (2002), available at <http://www.bverfg.de/cgi-bin/link.pl?aktuell>. [For a discussion of the case, see Christine Langenfeld, Development, *Decision of the German Constitutional Court, January 15, 2001* (page 141 of this issue). Eds.]

¹⁸ WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (Clarendon Press 1995).

with collective identities. This insight has us opting for an intersubjectivist expansion of the abstract concept of the “legal person.” Because the individuation of natural persons occurs through socialization, their identity—and as a consequence the integrity of legal persons—can only be protected together with free access to those contexts of communication and mutual recognition in which persons can acquire and consolidate their identity, articulate their understanding of themselves, and develop their own life plan.

Cultural rights demanded and introduced under the sign of a “politics of recognition” must not be understood to be collective rights. For, in keeping with the model of positive and negative freedom of religious expression, these are individual rights intended to guarantee equal inclusion of everyone, irrespective of how marginalized they have been.¹⁹ These rights ensure all citizens equal access to cultural environments, interpersonal relations, and traditions—to the extent that these are materials for the formation or maintenance of their respective personal identities.

That said, discriminated groups do not in general enjoy equal cultural rights “free of charge.” For they in turn have to make the civic principle of equal inclusion their own. There is now no obstacle to this happening in the case of statistically enumerated groups such as women, gays, or the handicapped. Here, the group-forming characteristic that is crucial for discrimination is not linked to some possibly bulky cultural background. Only “strong” communities (such as national or ethnic minorities, immigrant or native subcultures, the descendants of slave cultures, etc.) that are shaped by constitutive traditions of their own, form their own collective identities.²⁰ These groups may, in cases of a time lag—that is, in cases of “historical dissynchronicity”—find it harder to achieve the requisite cognitive link to the internal ethos of the morality of human rights as espoused by their social and political environment than do religious communities that can draw on the highly advanced conceptual resources of one or the other world religion.

Multiculturalism that does not misunderstand its role does not constitute a *one-way street* for the cultural self-assertion of groups with collective identities of their own. The co-existence of different life forms as equals also requires the integration of citizens—and the mutual recognition of their sub-cultural memberships—within the framework of a common political culture. A pluralistic society based on a democratic constitution guarantees cultural differentiation only under the condition of political integration. The citizens of such a society are empowered to form or maintain their cultural idiosyncrasy under

¹⁹ CHARLES TAYLOR ET AL., *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* (Princeton Univ. Press 1994). See my criticism there of the communitarian notion of cultural rights as collective rights. *Id.* at 107.

²⁰ On the concept of such “encompassing groups,” see Avishai Margalit & Joseph Raz, *National Self-Determination*, in *THE RIGHTS OF MINORITY CULTURES* 79–92, 81 et seq. (Will Kymlicka ed. Oxford Univ. Press 1995).

the supposition that along with all the others—that is, across the borderlines between the subcultures, as it were—they understand themselves as citizens of the same political community. Such cultural empowerment is constrained by the very constitution that provides the justifications for cultural rights. For a father who wishes to exempt his daughter from participating in sports lessons at a state school or wishes to prevent his son from receiving life-saving medical treatment, it does not suffice to appeal to his freedom of religious expression, as the latter practices would intervene in the basic rights of the dependent persons.

5.

Nevertheless, for all the pioneering role of religious pluralism, we cannot simply transpose the concept of toleration onto the tension-laden coexistence of different subcultures. We must introduce one more distinction in order to define the concept of toleration adequately. The civic virtue of toleration is challenged by the pluralism of *world views* in a different way than it is by the pluralism of *ways of life*, that mutually embody alien value orientations but not, in the first place, alien belief-systems.

The end of a form of discrimination does not always signify the beginning of toleration toward the person whom is no longer discriminated against. Tolerant behavior toward women, gays, or the handicapped would, following successful abolition of discrimination, only reveal the covert persistence of the old prejudices. In such a situation, “tolerance” would simply be the expression of patronizing benevolence and would not be on a par with the reciprocal toleration of different religious doctrines as is mandatory in a liberal state. Given that toleration is not even possible if there is no rejection, in such cases we cannot speak of *toleration beyond discrimination*.

Let us, on the other hand, imagine that one day we will see the abolition of discrimination against gypsies, immigrants, native peoples etc., indeed of all groups who have formed a strong collective identity. Let us imagine a more or less ideal situation in which a cultural majority not only has found a *modus vivendi* for existing side by side with its ethnic, linguistic, or national minorities, but that these minorities would authentically co-exist with equal rights. Must we not assume that even then the cognitive dissonances would by no means disappear without trace? The conflicts would simply have shifted from the level of contrary worldviews to that of practices expressing contrasting value orientations. And yet, one relevant difference would remain, because we do not expect the same general assent for our ethical judgments on other ways of living as we do for assertions of what is the case or for moral statements on what is just. Ethical judgments continue to hinge on the reference to a first person, to the biography of an individual, or to the cultural form of life of a collectivity. What is good for one person in his or her context can be bad for another person in another context.

For this reason, the normative expectation that we be able to live alongside those with different ethical life-styles and value-orientations is of a different nature than the assumption that we must accept the difference between religious truths or between contrary worldviews, in other words accept statements that contradict our own. In both cases, the competing beliefs have an existential thrust, that is, an impact on attitudes and practices. However, only in the case of competing worldviews does toleration mean accepting mutually exclusive validity claims. In this narrowly defined sense, toleration—as regards equal respect for everybody—means the willingness to neutralize the practical impact of a cognitive dissonance *that nevertheless in its own domain demands that we resolve it.*