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**Toleration, power and reason:
Continuing a dialogue with a
political realist friend¹**

Glen Newey is greatly missed in today's world of political theory, since his voice was one of the strongest, most original and brilliant (and wittiest) in the discipline. I miss him especially as a dear friend endowed with a great sense of humor and a taste for irony and occasional sarcasm, and as a partner in philosophical dialogue, especially when it comes to the topic of toleration which was an interest we shared and often brought us together (and divided us philosophically). Over the years, ever since his first book on toleration, *Virtue, Reason and Toleration*, appeared in 1999, we had endless debates about this topic, and the trajectory of his thought between that book and the more recent (2013) one, *Toleration in Political Conflict*, would be a topic for a whole article. Glen did not start out as the realist Hobbesian-Schmittian he became over the years. His first book is heavily Aristotelian, arguing for toleration as a virtue of character stressing supererogation, although one can already see the later Newey, with his skepticism concerning political justification, glimpsing through.

In my following (very) brief remarks, I would like to address what I consider the fundamental issue at stake between Newey's and my own approach – namely, assuming we agree (as we did) that toleration is a concept that cannot rise above political struggles and power plays, how should we react to this as theorists?

¹ I presented these thoughts at the Memorial Symposium for Glen Newey in Leiden in August of 2018. I have not changed their dialogical character, in honor of a friend who loved fast and sharp conversation.

Glen held a clear view on this question. Not unlike Thrasymachus, he doubted that there could be any normative factor – of morality, of reason, or what have you – that could elevate us above the power struggles and normative arbitrariness of political life. As he writes in *Toleration in Political Conflict*: “Perhaps political actors can be brought within some entirely general scheme of justification. But it will not be adequately supported by norms that abstract from the actors’ circumstances and then pronounce what they should accept, or would accept in some extravagantly contrary-to-fact situation”.²

In my own book with almost the same title, *Toleration in Conflict*, I agree with this to a certain extent.³ Considering the struggles over toleration that have taken place since antiquity, I agree that they are part and parcel of highly contextual power and language games. But I pursue Frankfurt-style critical theory, and thus for me the historicist emphasis on contingency and the relativist stress on the normative arbitrariness of politically defined terms are just variants of a view that I call positivist, namely, one which need not completely abstain from taking an evaluative stance toward its subject (as extreme positivism advocates), but cannot provide a sufficient normative rationale for that very stance (what I call “normative positivism”, sometimes referred to as “realism”). In short, it cannot explain how its own perspective can be justified. And this is where my theory comes in, because it both reconstructs the historical justifications that have been given for toleration (25 in many variations) and takes the principle and right of justification itself as the ground for a conception of toleration that I regard as superior to the others.

Let me begin by explaining the points on which Glen and I agreed. We agreed that the concept of toleration, which involves the promise of being able to live with deep ethical differences without being able to resolve them, is itself part of such conflicts and not their neutral counterpart – descriptively speaking, as I would have added, though Glen would not. While some consider a ban on right-wing political activities to be a legitimate reflection of the limits of democratic toleration, others regard this as intolerant. While some people tolerate burqas, others consider them to be intolerable for different reasons. Some are in favor of tolerance toward same-sex partnerships, but do not think that they should be accorded equal rights—others see this as intolerant and repressive.

² Newey 2013, 6.

³ Forst 2013.

Thus, it is not only a matter of controversy how far toleration should go. Some of the examples cited also raise the question of whether toleration is even a good thing, because, on the one hand, it can go too far and, on the other, it can legitimize the denial of equal rights. Is toleration even the mark of an asymmetrical policy or a refined form of domination involving the disciplining of minorities, following Kant's dictum that the name of tolerance is "arrogant," or Goethe's saying: "Tolerance should be a temporary attitude only; it must lead to recognition. To tolerate means to insult"?⁴ Such entanglements of toleration and power are some of the themes that interested both Glen and myself.

We also agreed that, conceptually speaking, toleration involves three components (following Preston King): objection, acceptance and rejection.⁵ We disagreed over whether the tolerating agent necessarily needs to be in a position of power, as Glen thought, or whether, as I believe, one can also be intolerant without being in a position of power (as, for example, Ayatollah Khomeini was before the revolution in Iran). The task of toleration, as a reflexive social practice, is to establish the correct normative order among these three components. The associated reasons can have different origins. All three can have religious sources, such as when one objects to a different religion as false, but tolerates it in the spirit of peace until it leads to blasphemy. The reasons in question can also be of different kinds, however, such as when a religious objection speaks against a certain practice while acceptance as well as rejection reasons appeal to human rights (of religious liberty for acceptance and bodily integrity for drawing the limits, for example). To be sure, these reasons do not reside in the concept of toleration itself; tolerance is a virtue that is dependent on other normative resources. This was also a point of agreement between Glen and me.

But then we parted company. For while I suggested that we should distinguish between various conceptions of toleration, Glen was skeptical, because he thought that I was trying to make room for a conception he took to be chimerical in the sense of the above quotation, namely, one which assumes a normative level of justification to some extent above the conflicts over justification. This is a charge to which I plead guilty because I see no alternative if

⁴ Kant 1996, 21; Goethe 1999, 116 (tr. altered).

⁵ Forst 2013, §1.

our aim is to argue for a conception of toleration that is normatively justifiable in an impartial or rational way. In my view, this is what the whole critical project of a philosophy of toleration is about.

The first conception of toleration I call the permission conception.⁶ It can be found in the classical toleration laws, such as in the Edict of Nantes (1598) or the English Toleration Act (1689). Toleration on this conception is a generous, but also an authoritarian, attitude and practice that permits minorities to live according to their faith – albeit within a framework prescribed unilaterally by the permission-granting side. The tolerated are marked and indulged as second-class citizens, and hence rely on the protection by the monarch (and the dominant church). This is the (vertical) notion of toleration that Goethe and Kant have in mind in their critiques.

But there is more to the story. In modern times, a contrasting horizontal conception of toleration develops in the course of the long history of democratic revolutions – the respect conception. The key idea underlying this conception is that toleration is an attitude of democratic citizens toward each other, which means that “the state” is no longer the agent of toleration, as Glen noted in his discussion of my view.⁷ Democratic citizens are aware that they disagree on central issues of the good and proper life, yet still accept that their shared institutions must be based on norms that all can share as free and equal persons and are not simply stipulated and legislated by the system of values of one group that the others can reasonably reject. The objection components remain part of the space of definitions of individuals or their communities, but the components of acceptance and rejection are defined in a reciprocal and general process of public justification. Tolerance is the virtue of tolerating beliefs and practices with which one does not agree, but which do not violate any principles that reflect the equality and freedom of all. The person of the other is respected; his or her convictions and actions are tolerated. The state aims to be neutral with respect to reasonably rejectable values (though not with respect to general moral norms) and it requires the citizens to be tolerant in that sense.

It was one of the greatest seventeenth-century thinkers, Pierre Bayle, who captured this normative logic of toleration best. According to Bayle, if both

⁶ See Forst 2013, §2.

⁷ Newey 2013, 99.

parties to the internecine religious conflicts in France of his time insisted that their ideas should apply to everyone and be dominant, then any crime could be portrayed in principle as a pious deed. Against this he argued that human reason must be able to find a language in which an injustice can actually be called an injustice – for example, the injustice of forced conversion or of expulsion or torture. If such impartiality, informed by the real horrors of social life, is not possible, toleration can never be more than permission or a *modus vivendi* – and thus is prey to the arbitrariness of contingent social forces and power relations.⁸ We would be mistaken if we optimistically believed that in our democratic age we had overcome the former conception in favor of the latter – the contrary is the case. Many contemporary disputes involve conflicts between proponents of both conceptions, and the permission conception reappears in a majoritarian guise. While some people, for example, think that minarets and mosques should be tolerated provided that they confine themselves to the framework laid down by Christian majorities, others insist that having suitable places of worship is a basic equal right.

Glen was not a majoritarian, but he believed that permission toleration is basically all that is possible and realistic. I am not sure this is true. But be that as it may; there are two questions here, one primarily a matter for sociology – What is realistic? – the other for philosophy: What is right? The latter question must be answered with normative reasons and, in my view, with considerations of justice. For what else is the question: “What status and rights ought minorities or certain groups to have in a society?” except a question of justice? The central connection between justice and toleration consists in the following question: Does my objection to a practice rest on reasons that are not merely a reflection of my ethical or religious position that others, after all, do not share and do not have to share, but on reasons that are sufficient to proceed to a rejection – hence reasons that, for example, are sufficiently strong to justify prohibiting this practice with legal means? Being tolerant means that you accept that justice is relevant when moving from objection to rejection.

What do I have to accept in order to answer this question within the framework of the respect conception? This touches on a difficult epistemological point, because toleration is often accused of demanding that one

⁸ Forst 2013, §18.

question one's position in a skeptical spirit – and Glen thought that, too. He maintained that if a fundamentalist Christian has to accept that his objection to homosexuality is publicly treated as a judgment that cannot be reciprocally and generally justified among equals, his right to justification may not have been met⁹ (which I doubt) – although Glen admitted that if the fundamentalist accepted the boundary of reciprocal and general justification, he would be tolerant in accordance with the respect conception. But Glen neither thought that there was a higher-order moral duty to respect that threshold nor did he think that the threshold would deliver results beyond reasonable disagreement – because there would always be “reasonable disagreements about what is reasonable.”¹⁰ And to insist on a standard of reasonableness beyond such disagreements would just mean dressing up substantive judgments as impartial ones, which in his view they are not.

This is the main challenge posed by Glen. But note that in this critique he still speaks of ‘reasonable disagreements’, seemingly being unwilling to allow for completely arbitrary definitions of what counts as reasonable and maintaining a distinction between reasonable and unreasonable disagreements. But then how do we define that mysterious faculty called ‘reason’?

According to my view, being reasonable in contexts of religious conflict does not require that one doubts the truth of one's own religion. But one acknowledges that religious (or other) beliefs about the good life are neither verifiable nor falsifiable by rational means. They are situated in the realm that Bayle called *dessus de la raison*, beyond the scope of reason as it were, but are not necessarily irrational (unless they involve superstition). This is the **realm** of faith. Reason allows many ethical positions of faith among which it cannot and must not decide itself. The epistemic component must be supplemented with a normative one. I must also accept that I owe others who live with me under a shared system of norms reasons for such norms that we can share morally and politically as equal normative authorities, and in particular do not stem from the fund of convictions that are matters of reasonable ethical dispute. It is unreasonable in a moral-political sense to legislate one's own values of faith as generally and reciprocally binding norms in a society divided by faith. The faculty of reason as the faculty of public justification then combines theoretical and

⁹Newey 2013, 97.

¹⁰Newey 2013, 96.

moral elements, and this entails discursive work, because what is reciprocally generalizable cannot be determined *a priori*, although we do have guidelines as to what is (reciprocally and generally) justifiable and which forms of disrespect cannot be tolerated. So Glen was right to insist that there will be debates about what can be reasonably justified, but he was wrong to infer that such debates are open-ended, for want of any impartial standards that at least noumenally and normatively supersede such debates.

This, to sum up, is where the spade turns, to use a Wittgensteinian phrase Glen would have liked. If we think that the Christian fundamentalist has no good reason to outlaw or discriminate against homosexual practices, then we should call him unreasonable if he does so. And in order to do this we need an account of reason that justifies us doing so – for reason is nothing but the faculty of justification. We cannot regard our notion of reason as merely ‘our’ reason alongside liberal conceptions of reason, Christian conceptions and so on. At some point, we have to leave the ‘extravagance’ of such positivist relativism and take a stance and explain what reason is and what it means in such conflicts. Not to do so would amount to a lack of both contextual participation and of philosophical distance and reflection. Unreason may prevail politically, but as critical theorists we must cultivate a language to call it thus and not just present a sophisticated protocol of social power.

So, as will be apparent, our conversation was not just one about toleration. It was also about what we do when we do political philosophy and when we think about social and political issues in an engaged way. It was about ourselves. And for this and many other reasons I wish Glen could be with us to continue this dialogue.

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