

TOLERATION AND POLITICAL CONFLICT

A COMMENT ON RAINER FORST'S ANALYSIS OF TOLERATION

TIM HEYSSE

“The difficulty with toleration is that it seems to be at once necessary and impossible”.¹ In this characteristically laconic sentence, Bernard Williams summarizes the predicament in which political philosophy often finds itself by attempting to clarify both the concept of toleration and its place within contemporary society. The *necessity* of tolerance, history has shown, is a difficult lesson. It is a lesson Europeans have had thrust upon them since the sixteenth century when the unusually bloody religious wars confronted us with the dangers of a religiously divided society. The lesson continues to be unmistakable, judging by recent conflicts, debates or at least uncertainties over religious symbols in the public sphere, the reconciliation of religious or cultural sensibilities with freedom of expression, the suitability of informing school children about the current state of biology or history, or the institutional and legal recognition of new gender roles. Alluding to Rawls’ notion of the circumstances of justice, we might therefore postulate that the fact that “conflict between persons is a permanent feature of their interaction” represents “the circumstances of toleration”.² Social conflict defines the requirements of the notion of tolerance. It is “the social virtue and the political principle that allows for the peaceful coexistence of individuals and social groups who hold different views and practice different ways of life within the same society”.³ “Toleration and conflict are thus but two sides of the same coin”.⁴

¹ B. Williams, ‘Tolerating the Intolerable’, in *Philosophy as a Humanistic Discipline*, Selected, edited with an introduction by A.W. Moore, Princeton/Oxford, Princeton University Press, 2006, pp. 126-134, 126.

² C. McKinnon, *Toleration. A critical introduction*, London/New York, Routledge, 2006, pp. 6-7; cf. J. Rawls, *A Theory of Justice*, Oxford/New York, Oxford University Press, 1973, pp. 126-1130.

³ A.E. Galeotti, *Toleration as Recognition*, Cambridge, Cambridge University Press, 2002, p. 20; cf. R.H. Dees, *Trust and Toleration*, London/New York, Routledge, 2004, p. 4.

⁴ H. Paetzold, ‘Review essay. Respect and toleration considered’, in *Philosophy and Social Criticism* 34 (2008) 941-954, p. 951.

The impression that tolerance is an *impossible* virtue might be prompted not merely by the record of history but also by a few moments of reflection on the incompatible considerations or reasons we attribute to a person when we call his or her attitude an example of ‘tolerance’.⁵ As toleration is not to be confused with indifference or moral scepticism, the tolerator must have reasons for disapproving of another person’s actions or views. The tolerator has reasons for not wanting that other person to perform the actions he is in fact performing. However, toleration is itself not an unreasonable attitude or an effect of powerlessness; it is a morally admirable virtue worth pursuing. The tolerator must therefore also have reasons for not preventing the other from doing whatever it is the tolerator disapproves of, even though it is possible for the tolerator to prevent such actions. It can but be expected that these various reasons will be difficult to harmonize, as they seem to suggest that we have good reasons for tolerating something of which we strongly disapprove.⁶ What is more, things unfortunately happen in our societies (the criminal nature of which is not disputed by anyone and) which we all have good reasons to prevent from happening. In cases where toleration *is* warranted, the tolerator must therefore have additional “reasons which in other circumstances justify preventing actions of which he or she disapproves”, but which do not apply in this case. In short, to call someone tolerant is to attribute to him or her a very complicated, if not inconsistent, set of reasons. It is not surprising that in the course of the philosophical attempts to make sense of toleration, elements of that set have given rise to divergent emphasis and interpretation.

One of the great merits of the monumental study *Toleranz im Konflikt* published in 2003⁷ by the German philosopher, Rainer Forst is that, as well as offering a critical narration of the history of the concept in part one (Zwischen

⁵ See the analysis in Chapter 1 of G. Newey, *Virtue, Reason and Toleration. The Place of Toleration in Ethical and Political Philosophy*, Edingburgh, Edingburgh University Press, 1999.

⁶ Even taken individually, these conditions create puzzles, as it seems to follow from the first condition that a very disapproving person who frowns on everything without acting on that disapproval must be considered to be more tolerant than a more easy-going person.

⁷ R. Forst, *Toleranz im Konflikt. Geschichte, Gehalt und Gegenwart eines umstrittenen Begriffs*, Frankfurt am Main, Suhrkamp Verlag, 2003. An English translation by Ciaran Cronin has been announced, see http://www.gesellschaftswissenschaften.uni-frankfurt.de/index.pl/rforst_veroeffentlichungen (Accessed May 25th 2010). A convenient summary of Forst’s position is R. Forst, ‘Toleranz, Gerechtigkeit und Vernunft’, in Id., *Toleranz. Philosophische Grundlagen und gesellschaftliche Praxis einer umstrittenen Tugend*, Frankfurt/New York, Campus Verlag, 2000, pp. 119-143. Except for a review by H. Paetzold, ‘Review essay. Respect and toleration considered’, in *Philosophy and Social Criticism* 34 (2008) 941-954, Forst’s study has not yet received much attention in English publications.

Macht und Moral: Der historische Diskurs der Toleranz), it aims to present a coherent theory of the different considerations involved in being tolerant. This analysis of toleration allows Forst not only to reconstruct the vagaries of the century-long debate (by which it was inspired), but also to offer a normative justification of toleration based on a notion of *justice*. On Forst's conception, tolerance is made into a demanding "*moral-political virtue*".⁸ In this sense, Forst, who is commonly regarded as the youngest descendant of the Frankfurter Schule, is in continuation with the work of his mentors, Jürgen Habermas and Axel Honneth. In other words, his intention is to reconstruct the normative foundations of contemporary society. However, the specific aim of *Toleranz im Konflikt* is to "write a systematic treatise on tolerance [...] that will help to orientate us in our present-day conflicts."⁹

This essay takes as its starting point the hyphen between the words 'moral' and 'political' in Forst's expression, which suggests a linkage or overlap between the moral and the political contexts within which the concept of tolerance has its use. After presenting Forst's conception of toleration (sections 1 and 2), I will consider it from both a political and social point of view (as opposed to a specifically moral point of view). According to my understanding of the term, 'political' refers to an attribute of attitudes, virtues, conceptions or principles which are determined by the permanently pluralistic condition of our societies and the inevitable potential for conflict. Seen in that light, Forst's theory can be shown to focus too much on tolerance as a virtue of the legal structure and the exercise of political power without addressing the political issues of how conflicts are to be endured. In justifying this criticism, I will put into perspective the stark distinction Forst draws between a conception of tolerance that focuses on merely *permitting* deviant behaviour (what Forst calls the "Erlaubnis-Konzeption") and his own interpretation which emphasizes *respecting* individuals or groups as opposed to permitting behaviour as such ("die Respekt-Konzeption").¹⁰ This approach will, finally, suggest a different conception of the relationship between morality and politics as well as the division of intellectual labour between moral and political philosophy¹¹ (section 3 and 4).

⁸ Cf. R. Forst, 'Tolerance as a Virtue of Justice', in *Philosophical Explorations* IV, 2001, pp. 193-206.

⁹ Forst, *Toleranz im Konflikt*, p. 9.

¹⁰ We will follow Forst in not explicitly distinguishing "zwischen der Toleranz von Überzeugungen einerseits und der von Handlungen und Praktiken andererseits", Forst, *Toleranz*, pp. 120, 124.

¹¹ As such it continues in the line of earlier work such as Tim Heysse, 'Consensus and Power in Deliberative Democracy', in *Inquiry* 49 (2006) 265-289.

The components of toleration

Forst brings order to the jumble of conflicting reasons that appear to motivate toleration as a first step towards acquiring a clear conceptual grasp of the term. He distinguishes three “components” of toleration: *objection*, *acceptance* and *rejection*. 1) A tolerant person is not indifferent; he *objects* to what he tolerates (*die Ablehnungs-Komponente*): “tolerated beliefs or practices have to be considered to be substantially false or judged to be bad in order to be a candidate for toleration”.¹² 2) Although judging certain ideas or practices to be substantially false or bad, “we do not condemn them to such an extent as to exclude other positive considerations that argue for tolerating them”. However, these positive considerations “do not eliminate the negative ones; rather, they trump them and in this sense are reasons of a higher order”.¹³ This is the *acceptance*-component (*die Akzeptanz-Komponente*). 3) Finally, there are reasons for rejection which mark “the limits of toleration,” beyond which we are confronted with what is no longer tolerable. Beyond these limits, our reasons for acceptance run out, so to speak (*die Zurückweisungs-Komponente*).

From this brief characterization of the components of toleration, it is obvious that for Forst, toleration is “a *normatively dependent concept*, one that is in need of other, independent normative resources in order to gain a certain content and substance”.¹⁴ The normative resources giving substance to toleration may be of one and the same kind – religious, for example – however they may also be of different kinds (for instance when ethical reasons for objecting to a certain form of behaviour are trumped by pragmatic reasons for its acceptance).

As tolerance motivates us to accept or tolerate certain beliefs or practices, the component of acceptance is central. The divergence between different interpretations of toleration has to do with differing views of the reasons that justify acceptance and of the ways in which acceptance is to be reconciled with objection and, if the case should arise, with rejection.¹⁵

¹² Forst, *Toleranz im Konflikt*, p. 32. Cf. Forst, ‘Toleranz, Gerechtigkeit und Vernunft’, pp. 120-121; ‘Tolerance as a Virtue of Justice’, pp. 193-194; R. Forst, ‘Vier Konzeptionen der Toleranz’, in M. Kaufmann, *Integration oder Toleranz. Minderheiten als philosophisches Problem*, Freiburg/München, Verlag Karl Alber, pp. 106-117, 107-108.

¹³ Forst, *Toleranz im Konflikt*, p. 35. Cf. Forst, ‘Toleranz, Gerechtigkeit und Vernunft’, pp. 120-121; Forst, ‘Tolerance as a Virtue of Justice’, 193-194; Forst, ‘Vier Konzeptionen der Toleranz’, pp. 107-108.

¹⁴ R. Forst, “‘To Tolerate means to Insult’”. Toleration, Recognition, and Emancipation’, in B. van den Brink and D. Owen, *Recognition and Power. Axel Honneth and the Tradition of Critical Social Theory*, Cambridge, Cambridge University Press, 2007, pp. 215-237, 121-122.

¹⁵ Forst, ‘Toleranz, Gerechtigkeit und Vernunft’, pp. 121-122.

Moreover, Forst clearly discriminates his own conception from the ‘permission’-conception (*die Erlaubnis-Konzeption*) as exemplified by the Edict of Nantes, promulgated by the French King Henri IV in 1598. According to this conception, tolerance constitutes a relation between an authority (or a majority) and a minority in which “the authority (or majority) permits the minority to live according to its values, for as long as – and this is the decisive condition – the minority does not question the supremacy of the authority (or the majority)”.¹⁶ Characteristic of the permission-conception of toleration is that it is the authority who defines the content of the three components of toleration. The authority decides which of the groups that deviate from the majority values (as defined by the authority: objection) will be tolerated (for reasons defined by the authority: acceptance) and to what extent (rejection). Such practices of toleration have therefore liberating as well as disciplining effects. They ‘produce’ minorities that are tolerated as groups with a “non-normal” value-system; minorities who have nonetheless accepted their inferior position. Needless to say, this ‘permission’-conception has not waned with the demise of the absolute monarchy. On the contrary, it “is still present in our societies, though now in a different, *democratic* form: the tolerating authority is the authority of a democratic majority”.¹⁷ In what follows I will explore Forst’s view of the opposition between the permission-conception of tolerance and his own ‘respect-conception’ (*die Respekt-Konzeption*).¹⁸ In this context, it is worth pointing out that this opposition is not one between politics and morality. As I will explain, Forst does indeed claim a moral basis for his own respect-conception. However, moral considerations do not thereby have to be absent from the permission-conception. The latter’s basic conviction is simply that the price for oppressing the minority is too high, where the price may be counted not only in economic or political terms but in moral terms as well.

¹⁶ Forst, *Toleranz im Konflikt*, p. 42.

¹⁷ Forst, “‘To Tolerate means to Insult’”, p. 221.

¹⁸ In this we follow Forst’s lead in Forst, “‘To Tolerate means to Insult’”. In Forst, *Toleranz im Konflikt*, pp. 47–48, Forst distinguishes two more conceptions: *die Koexistenz-Konzeption* and *die Wert-schätzungs-Konzeption*, cf. Forst, ‘Vier Konzeptionen der Toleranz’. The coexistence-conception of tolerance can be viewed as a species of the permission-conception, since this conception of tolerance applies to the relations between “ungefähr gleich starke Gruppen, die einsehen, dass sie um des sozialen Friedens und ihrer eigenen Interessen willen Toleranz üben sollen”, Forst, *Toleranz im Konflikt*, p. 44, cf. Forst, ‘Vier Konzeptionen der Toleranz’, p. 111 and in this sense mutually *permit* the others to live according to their respective values. On the evaluation conception “bedeutet Toleranz nicht nur Mitglieder anderer kultureller oder religiöser Gemeinschaften als rechtlich-politisch Gleiche zu respektieren, sondern auch, ihre Überzeugungen und Praktiken als ethisch wertvoll zu schätzen”, Forst, *Toleranz im Konflikt*, p. 48, Forst, ‘Vier Konzeptionen der Toleranz’, p. 114; see also Forst, ‘Tolerance as a Virtue of Justice’.

Forst's normative justification of toleration

The main conceptual problem with tolerance is the difficulty of finding a way to reconcile our negative reasons (for objecting or ultimately suspending tolerance) with our positive reasons (for accepting). Forst is able to achieve this reconciliation by consigning the conflicting reasons to the different domains of ethics and morality. Like many other philosophers, Forst distinguishes between ethical and moral answers to practical questions of the form 'what should I do?' *Ethical* claims are concerned with 'the Good', with the kind of life that is a good, happy, fulfilling or true life for people such as myself or members of my group. Consequently, they claim to be valid only for an individual or a particular group. *Moral* principles, by contrast, relate to 'the Right' and claim universal validity. They provide answers to the question as to how to regulate our mutual interactions by "norms and principles one thinks every person, regardless of his or her view of the good, has to accept (or, better: cannot reciprocally and generally reject)".¹⁹ When arguing moral issues, we must abstain from citing "reasons that are based on contested 'higher' truths or on conceptions of the good which can reasonably be questioned and rejected". Applying this distinction to the components of tolerance, Forst concludes that our *objections* to certain practices or beliefs may be inspired by our particular "*ethical* (or religious) beliefs about the true and good life". Yet as tolerant persons, we are motivated to *accept* the practices or beliefs, since we realize:

"that our reasons for *rejection*, being based on our particular ethical view turn out to be sufficient for a negative *ethical* judgment, but not for a negative *moral* judgment. For the case for toleration to arise, we have to see that our ethical judgment does not justify a moral condemnation and a rejection".²⁰

Tolerance therefore stems from a reflection on our beliefs and on their chances of being generally accepted by the supporters of the different religious, philosophical or ethical views present in society. Or, in Forst's terminology, it is the result of a reflection on their prospects for success in the appropriate 'context of justification'²¹:

¹⁹ Forst, "'To Tolerate means to Insult'", p. 232.

²⁰ Forst, "'To Tolerate means to Insult'", p. 230.

²¹ On these, the distinction between ethics and morality and the various "contexts of justification", see R. Forst, *Kontexte der Gerechtigkeit. Politische Philosophie jenseits von Liberalismus und Kommunitarismus*, Frankfurt am Main, Suhrkamp Verlag, 1994; R. Forst, *Contexts of Justice. Political Philosophy beyond Liberalism and Communitarianism*, Berkeley/Los Angeles, University of California Press, 2002.

“There does not lie a chasm between moral norms and ethical values that is determined a priori [...]. Decisive is rather the fact that in a context of justification in which generally binding norms are at stake [...], tolerance requires of us that we do not want to impose these views without the appropriate justification. If [our] ethical views do not succeed in offering reasons that hurdle the thresholds of reciprocity and generality, it does not follow that they cannot any longer be considered to be true or correct and are ethically devaluated; but they do not constitute [...] a sufficient justification for normative rules. This is the decisive insight of toleration”.²²

Obviously, in order to understand this “decisive insight of toleration”, we must know what is meant by ‘a sufficient justification for normative rules’. Forst’s normative theory of toleration explains this expression by elaborating on two further insights, one of an epistemological and one of a moral nature. *First*, Forst points to what he calls the “finitude of reason” (die Endlichkeit der Vernunft). Under this label, he summarizes certain facts which are comparable to Rawls’s “burdens of judgment”²³ and which prevent the possibility of agreement on ethical issues regarding the good life, even amongst reasonable people (such as the fact that some empirical data is hard to evaluate or that ethical concepts are indeterminate in hard cases, etc.).

The finitude of reason and the inevitability of ethical disagreement need not lead to ethical skepticism or relativism. For according to a fundamental principle of justification (*das Prinzip der Rechtfertigung*), reasonable persons only expect the kind of arguments that are required by the specific kind of practical questions at hand: “normative answers to practical questions are to be justified in precisely that manner that is indicated by their claim to validity”.²⁴ Since ethical views about the true or good life do not claim to be acceptable to all, our failure to secure agreement cannot be used, according to Forst, as an argument to raise doubts about their truth.

Accordingly, the first, epistemological element of the insight from which toleration arises is that we should acknowledge the different contexts of justification. Ethical views and moral norms, in other words, fulfil different criteria of validity:

“The epistemological element consists in [...] an insight into the finitude of theoretical and practical reason with regard to the question of the good or the ‘true’ life. Of course,

²² Forst, *Toleranz im Konflikt*, pp. 595-596; cf. Forst, ‘Tolerance as a Virtue of Justice’, p. 197.

²³ J. Rawls, *Political Liberalism. With a New Introduction and the ‘Reply to Habermas’*, New York, Columbia University Press, 1996, pp. 54-58; cf. Forst, “‘Tolerance as a Virtue of Justice’”, pp. 199-200.

²⁴ R. Forst, *Das Recht auf Rechtfertigung. Elemente einer konstruktivistischen Theorie der Gerechtigkeit*, Frankfurt am Main, Suhrkamp Verlag, 2007, p. 32.

it also consists in an understanding of the potential of this finite reason, i.e. in the human capacity to discover through deliberation justified answers to the question of the validity of norms who claim to be equally valid for all".²⁵

More important than this epistemological insight, however, is the *moral* principle underlying toleration. This principle stipulates that moral norms which legitimize the use of force or, more broadly speaking, a morally relevant interference with the actions of other persons, must be based on reasons of a specific kind. Such norms must be reciprocally and generally valid and therefore need to be justifiable by reciprocally and generally non-rejectable reasons. *Reciprocity*, for Forst, means that no one may claim rights or resources that are denied to others (reciprocity of content) or project one's own arguments onto others while trying to justify basic norms (reciprocity of reasons). *Generality* implies that the reasons used in justifying such norms must be capable of being shared amongst all concerned.²⁶ This is Forst's principle of mutual-general justification (*das Prinzip reziprok-allgemeiner Rechtfertigung*):

"The central definition of the reasons that may justify moral claims, stipulates therefore that they must be reasons that cannot be rejected reasonably [...] They are norms against which no sound objections can be brought. This definition [...] conforms to the specification that these reasons must be "shared reasons" (*geteilte*), but adds the modal specification that they must be shareable (*teilbare*) in order to take into account the fundamental open character of the justificatory procedure and to emphasize beyond the factual acceptance or non-acceptance the (in that sense counterfactual) moment of justificatory mutual-general acceptability – or more accurately: non-rejectability".²⁷

Furthermore, this principle of justification is based on a moral demand to respect one another's autonomy as reason-giving and reason-receiving beings:

"According to the principle of mutual-general justification moral persons have a fundamental right to justification (*ein Recht auf Rechtfertigung*) – and a corresponding unconditional duty to justify morally relevant actions."²⁸

This account of Forst's principles hopefully clarifies the difference between the permission-conception and Forst's respect-conception of tolerance. In the permission-conception, all three components of tolerance are determined

²⁵ Forst, 'Toleranz, Gerechtigkeit und Vernunft', p. 140. Cf. Forst, *Toleranz im Konflikt*, pp. 630-649; Forst, 'Tolerance as a Virtue of Justice', p. 199.

²⁶ Forst, "'To Tolerate means to Insult'", p. 230

²⁷ Forst, *Das Recht auf Rechtfertigung*, p. 37.

²⁸ Forst, *Das Recht auf Rechtfertigung*, p. 36.

exclusively by the authority or, at best, by reasons that are shareable among the tolerators (possibly the *dominant* group in society). In Forst's respect-conception, however, the objections to certain beliefs and practices are indeed exclusively derived from the tolerator's own ethical views. However, their acceptance is motivated and justified by the recognition that their rejection is not based on reasons that are shareable amongst both tolerators and those who are tolerated. Since the finitude of reason prevents me from justifying my ethical views to you, I ought not impose them on you by force of law. Since, presumably, justified moral norms are equally shareable by all, there is no moral objection to suspending tolerance when such a suspension can be justified by means of those norms or the aim of exacting obedience to those norms.²⁹

"Toleration then is not just and not primarily a virtue of subjects of democratic law, it is primarily a virtue of democratic citizens as *law-makers*. [...]. The virtue consists in overcoming the desire to make your ethical-religious views dominant by using the law and to see this as an illegitimate exercise of power. Hence toleration is a virtue of justice".³⁰

In brief, toleration arises from our acknowledgment of other persons' equal moral *right* to justification. In this sense, Forst's conception of tolerance is based on what he calls democratic justice.

By the same token, this account reveals the slightly pleonastic nature of Forst's characterization of tolerance as "a moral-political virtue". Forst's conception of tolerance is 'political' in the sense that Johan Rawls uses this term in order to refer to an idea of tolerance that is "being expressed in terms of the rights and duties protecting religious liberty in accordance with a reasonable conception of justice".³¹ Although Rawls is talking of the more limited context of religious toleration, his basic idea is similar to Forst's: their interpretations of tolerance are labelled 'political' because they are derived from the *moral* rights of persons and therefore independent of any ethical conception of the good. The political dimension of their understanding of tolerance (as a moral-*political* virtue) does not introduce a perspective that is different from that of morality.

²⁹ In this sense the reasons for rejection may be "internally connected to the reasons of acceptance insofar as they specify certain conditions and limits for that acceptance", Forst, "'Tolerance as a Virtue of Justice'", p. 194.

³⁰ Cf. Forst, 'Tolerance as a Virtue of Justice', p. 198.

³¹ J. Rawls, *The Law of Peoples. With 'The Idea of Public Reason Revisited'*, Cambridge, Massachusetts/London, Harvard University Press, 1999, pp. 152, 176.

A political commentary

Forst's analysis of tolerance is certainly both lucid and illuminating. Moreover, it aims to show "to what extent the criteria of reciprocity and generality enable us to come to substantial judgments in cases of conflict, including and especially conflicts about tolerance, about which position in such a conflict is more justifiable."³² Undeniably, the analysis assumes that tolerance requires "a personal art of separation, the art of reflectively distinguishing one's ethical personality from one's moral personality as well as of combining them in the right way".³³ Even if publicly contested issues do not always fall neatly into either the ethical domain or the moral, it is possible in principle, so it would seem, for tolerant persons to separate their ethical views from their moral beliefs and to give priority to morality and the rights of persons over their ethical views. However, this (in a broad sense, neo-Kantian) assumption of the 'priority of morality over ethics', which Forst shares with such authors as Rawls, Habermas and Charles Larmore, is immensely controversial. And it is not immediately clear how Forst's version (with the introduction of contexts of justification) escapes the controversy.³⁴ Nevertheless, connecting the different components of tolerance with reasons entailing diverse claims to validity (however these are understood exactly) may indeed help to avoid the paradoxes of tolerance.

Rather than entering into such meta-ethical debates, however, I propose to explore the connections between the moral and political domains. Leaving aside the question as to the correctness of Forst's analysis, I argue that it leaves at least two issues unanswered which nonetheless confront us as *political* agents, even if we are morally motivated to be tolerant along the lines of Forst's analysis. Both issues indicate a potential for social and political conflict that is given insufficient attention by Forst. In this sense, I aim to introduce a political perspective that does not immediately refer back to moral rights and principles but relates to the question as to how society can endure in the face of inevitable conflict. In other words, Forst's account of tolerance as a moral-political virtue instantiating a moral conception of democratic justice requires a corresponding component that is 'political' in a different sense than the one envisaged by Forst.

³² Forst, *Toleranz im Konflikt*, p. 709.

³³ Forst, 'Tolerance as a Virtue of Justice', p. 202, cf. pp. 202-204.

³⁴ Paetzold, o.c. pp. 952-953.

The *first* problem relates to the notion of respect for the autonomy of other persons which is a crucial foundation of Forst's conception of tolerance. Consistent with the general structure of his analysis, Forst applies the distinction between ethics and morality to his use of the notion of autonomy. As a matter of fact, 'autonomy' may refer to an *ethical* value which, according to J.S. Mill, is necessary to a fulfilling human life or a good way to live. Support for autonomy in this case constitutes an ethical doctrine (or what Rawls has called a 'comprehensive' view), according to which "a life lived according to traditional values that are not chosen but simply taken over in a conventional, non-critical way would be worse [...] than one that is autonomously chosen".³⁵ Alternatively, 'autonomy' may merely designate "a moral notion of the person as a reasonable being with [...] a right to justification".³⁶ Otherwise formulated, we simply cannot refuse when a person asks for reciprocally and generally acceptable reasons to justify our interference with his life. In this sense, "the capacity and willingness to apply the criteria of reciprocity and generality, [...] not only characterize the way a morally autonomous person respects other morally autonomous persons, they are also *themselves autonomous* in not being based on a particular conception of the good".³⁷ Obviously, Forst's use of the notion conforms to the latter usage.

The problem is, however, that this distinction between autonomy as an ethical value and as a moral notion (even when conjoined to Forst's conception of tolerance) does not seem sufficient to indicate what it would mean to put this moral respect for autonomy into practice as citizens of contemporary society. To be sure, we do not disregard a person's autonomy by arguing with him, by offering arguments in favour of beliefs we favour or in criticism of views we oppose, as long as we allow that person the independence to make up his or her own mind. In other words, autonomy demands that we leave "the other free from external, causal, heteronomous influences which may cause a person to change his opinion for non moral reasons, such as a desire for social conformity".³⁸

Of course, there is a great deal of philosophical debate about the nature of autonomy. Setting these debates to one side, however, let us focus on the

³⁵ Forst, "To Tolerate means to Insult", p. 229.

³⁶ Forst, "To Tolerate means to Insult", p. 229.

³⁷ Forst, 'Tolerance as a Virtue of Justice', p. 202.

³⁸ B. Williams, 'Toleration, a Political or Moral Question?', in *In the Beginning Was the Deed. Realism and Moralism in Political Argument*, Princeton/Oxford, Princeton University Press, 2005, pp. 128-138.

practical question that confronts us in actual practice as citizens: the question as to what it means to leave a person free from external influences that cause a change of opinion for non-moral reasons. Imagine a supporter of Forst's conception of tolerance who has strong ethical objections to views or practices whose suppression is nevertheless unwarranted. Convinced of Forst's analysis of tolerance and out of respect for the autonomy of those involved, this person will decide to be tolerant and to refuse to suppress these views or practices by the coercive power of the law. However, does tolerance allow her to express her ethical objections? Can she publish them in the media or otherwise propagate them in the public sphere? Or does a strongly worded expression of disapproval, especially when broadcast by dominant media, threaten the autonomy of those whose beliefs and practices we do not want to repress by the force of law? After all, the ethical disapproval will be formulated in ethical terms not shared by the tolerated persons and therefore will not be viewed by them as being supported by good reasons, perhaps not even as being supported by considerations that qualify as reasons.

This presents us with a dilemma. On the one hand, the expression of disapproval, especially when inspired by the ethical culture of a big and powerful majority (supported by the power of the media), may exert an external, causal, heteronomous influence that may cause members of the minority to change their opinion for non-moral reasons. It is therefore incompatible with tolerance as explained by Forst. If, on the other hand, the expression of our ethical disapproval is condemned as being intolerant, one of the aspects of a tolerant attitude seem to evaporate: namely that the agent does in fact disapprove of the practices he tolerates. At the very least, the objection-component of toleration cannot be expressed.

It seems plausible that a supporter of Forst's conception of tolerance should opt for the first fork of the dilemma and permit the expression of ethical disapproval by tolerant persons.³⁹ (We are encouraged to choose this side of the dilemma on the strength of the reflection that for Forst, toleration is primarily a virtue of democratic citizens as *law-makers* and concerns the imposition of views and norms by law and by coercive force). In this sense, our discussion shows at the very least that a very particular political assumption underlies Forst's analysis: Forst appears to support the liberal principle that there is a

³⁹ During the discussion after the lecture Forst held on October 28, 2009 as part of a series of lectures organized by UCSIA in Antwerp, he argued that freedom of expression trumps the respect for ethical sensibilities. See also Paetzold, *o.c.*, pp. 952-953 who criticizes Forst's emphasis on the juridical.

moral distinction between what is imposed by law and what is expressed in the public sphere, between the use of political power and the use of social power such that beliefs and practices that cannot be enforced by political power may be imposed by social power.

What is more, the British philosopher Bernard Williams has pointed out that a distinction between social and political power may be less than satisfactory when considered from the point of view of those supporting a minority ethical view. Even if the democratic state rejects the use of force to suppress certain ethical views, there may be a substantive sense in which the supporters of the minority views could no longer be said to enjoy autonomy in building their lives when they are overwhelmingly affected by social influences which tend to erode their ethical views. Even if political authority does not outlaw or prosecute certain views and ways of life, modern society may in practice do just that.⁴⁰ The same point applies to a conception of tolerance based on this distinction between social and political power. A conception of tolerance that focuses on the actions of political authority risks being incomplete in that it is likely to ignore the problems of intolerance that follow from the exercise of social power.

Central to Forst's respect-conception of tolerance is a moral conception of justice, which is in turn explained by a principle of mutual-general justification. Suspending the acceptance of practices and views to which we have ethical objections and interfering with them must, according to this view, be justified by reciprocally and generally acceptable reasons. In this sense, Forst's conception of tolerance and its underlying principles are in line with the fundamental idea of the Frankfurt school that we should understand society as a community constituted by human interactions during which certain claims are rationally justified. My *second* remark focuses on the political aspects of this notion of justification.

The fact of the matter is that Forst, his explicit allegiance to the tradition of the Frankfurt school notwithstanding, dissociates his notion of moral justification from a consensus-theory as elaborated by Habermas. Although moral justification of basic norms requires reciprocally and generally valid reasons, reasons that are shareable among all persons affected, Forst does not expect us to reach consensus in all cases. He "emphasizes the word 'shareable' here; the criteria of reciprocity and generality do not rule out that we accept a claim

⁴⁰ B. Williams, 'Toleration, a Political or Moral Question?', pp. 128-138, B. Williams, 'Tolerating the Intolerable', p. 132.

as justified even though – as is to be expected – no consensus can be reached”⁴¹:

“Distinguishing our conception from a pure consensus theory enables us to pronounce on the justifiability of claims [...] even in the case of disagreements [...]. For to the extent that some claims can be supported by reciprocal-general reasons but are disputed by reasons that do not correspond to these criteria, we can (provisionally) conclude that these normative claims that ‘cannot reasonably be rejected’ are justified – even though no agreement can be reached”.⁴²

Public deliberation is an excellent means of discovering norms that are shareable and in that sense we may call tolerance a “discursive” virtue.⁴³ However, disagreement about the acceptance and rejection components, which rely on norms that claim to be shareable but need not be shared, is a real possibility. By its very clarity and straightforwardness, this analysis highlights the limitations of a moral-political value such as toleration for political actors in actual practice. As a moral value, tolerance demands that we recognize that our political actions cannot depend merely on our own interests, beliefs, values and norms. More specifically, it demands of us that we stop and think about whether the ethical reasons that justify our objection to certain beliefs and practices are indeed shareable and therefore form the appropriate grounds for rejecting these beliefs and practices. In other words, tolerance demands of us that we are critical of ourselves, that we do not simply assume that what we spontaneously believe to be a tolerant attitude, perhaps misled by undesirable prejudice or cultural chauvinism, is indeed an attitude of tolerance. Tolerance and the right of justification underlying it, according to Forst, order us to distinguish between a sincere attitude of tolerance and the mere appearance of tolerance. Needless to say, many political conflicts are indeed inspired by intolerant attitudes posturing as tolerance, by undesirable prejudices and cultural chauvinism. Moreover, many such conflicts would be defused by a proper critical reflection along the lines of Forst’s “critical theory of toleration”. In any case, the world would be a better place if people were more modest, more honest, less self-assured and therefore more tolerant.

However, all of this must not obscure the following equally important point: even among honourable men and women prepared to reflect sincerely on what tolerance requires, disagreement may always arise. Disagreement will arise not

⁴¹ Forst, “‘To Tolerate means to Insult’”, p. 230.

⁴² Forst, *Das Recht auf Rechtfertigung*, pp. 35-36.

⁴³ Forst, ‘Tolerance as a Virtue of Justice’, p. 200.

only between those who object to certain practices and those who support them (between tolerators and the tolerated) but also among those who object (among potential tolerators). This follows directly from Forst's analysis: since objection rests on ethical reasons different from the moral reasons grounding acceptance or rejection, people agreeing about the objection-component may disagree about the acceptance- or the rejection-component and therefore about whether or not to tolerate. Moreover, by explaining how tolerance involves our most fundamental moral rights and duties, the analysis may increase or exacerbate disagreements among potential tolerators. Where fundamental moral rights and norms are at stake, there seems to be little room for compromise or accommodation. And that is what we see happening of course: contemporary societies divided by intractable conflicts about whether to tolerate newly arriving or arising practices and views.

When agreement in actual situations proves to be impossible (or when the time necessary for reaching agreement is not available and decisions cannot be postponed) there is nothing else for it but to make up our own minds as carefully and self-critically as possible under the circumstances. Given that this decision is not based on agreement, the democratic majority will impose its understanding of toleration on the minority. In other words, in these cases, all three components of tolerance are determined by the dominant majority. It is the majority that decides what it is prepared to tolerate – and they decide according to their own ideas, if not their ethical at least their moral views. In these cases, Forst's respect-conception of tolerance appears to blur into the permission-conception.

The need for a properly political virtue

Contrary to the many popular complaints about an allegedly over-tolerant society, we are, measured against Forst's conception of tolerance, perhaps still not sufficiently tolerant. For Forst explains how demanding a moral-political virtue it is; how much it requires of us in terms of self-analysis, self-relativization and self-criticism.⁴⁴

What I would like to add to Forst's analysis is the remark that even a morally ideal situation in which a sincere attitude of tolerance as characterized by Forst is embraced by all members of society would still not safeguard us against conflict. What is more, our very desire to be tolerant may create contestation, disagreement and conflicts about what tolerance requires in general as well as

⁴⁴ Forst, 'Tolerance as a Virtue of Justice', p. 202.

in any particular case. Intolerant or cynical people face only purely pragmatic or technical problems regarding the most efficient and successful organization of repression. The issues that confront us in discussions with regard to tolerance, by contrast, are very complex moral or ethical issues touching on fundamental rights and norms. In that sense, they are also highly explosive. A sincerely tolerant attitude is not incompatible with conflict, even among sincere tolerators.

Readers may be surprised to hear that I intend this to be a heartening remark. It is intended to encourage all those in contemporary society who are sincerely striving for a tolerant society but are discouraged because they do not see the instances of social conflict diminish. In addition to all the historical, sociological or even psychological ripostes that we could formulate to this complaint, we can also point out that tolerance and conflict need not be opposed and that tolerance may therefore diminish the instances of conflict but will never eradicate it. A tolerant society will never be free of conflict.

Granted that a sincerely tolerant attitude will not safeguard us from conflict, it follows that more is needed than tolerance. We appear to need, in addition, a certain political virtue, a form of political wisdom or *savoir-faire* that will enable us to live with conflicts. The *political* nature of this virtue or wisdom will lie in the fact that it will not primarily seek to avoid conflict but rather keep conflicts at a level compatible with living together, with being citizens of the same society. Its political nature will involve reconciling the continuous existence of society with the inevitable conflicts that divide society, even societies of sincerely tolerant people.

Tim Heysse is Associate Professor at the Institute of Philosophy of the Katholieke Universiteit Leuven where he co-founded RIPPLE (Research in Political Philosophy Leuven). From 1995 till 2004 he worked part-time as a clerk making minutes of the sessions of the Flemish Regional Parliament. In Dutch, he has edited (with Wilfried Goossens), *Engelen van de wereld. Hedendaagse filosofen over democratie (Angels of the World. Contemporary Philosophers about Democracy)* and *Democratie als filosofisch vraagstuk. Lezingen over macht, vertegenwoordiging en politiek (Democracy as Philosophical Question. Lectures about Power, Representativeness and Politics)*, Pelckmans, Kapellen 2001 and 2003 and he published (with Stefan Rumens and Ronald Tinnevelt) *Habermas. Een inleiding tot zijn filosofie van recht en politiek (Habermas. An Introduction to His Philosophy of Law and Politics)*, Kapellen/Kampen, Pelckmans/Klement, 2006. His publications in English include articles on theory of argumentation, meta-ethics and deliberative democracy.

Address: K.U. Leuven, Hoger Instituut voor Wijsbegeerte, Kard. Mercierplein 2, B-3000 Leuven; E-mail: Tim.Heysse@hiw.kuleuven.be.