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Glen Newey's critique of political toleration

PRELIMINARY

A relevant part of Glen Newey's work has been devoted to toleration, which is not surprising, given that he studied for his Master degree and PhD at York University where the Morell Project on Toleration was going full speed and where many researches and books were produced, and seminars on the topic organized. *Virtue, Reason, Toleration* (Edinburgh University Press 1999) was his first book, while *Toleration in Political Conflict* (Cambridge University Press 2013) was one of his last. Even in his first book, Newey took a stance on toleration, mainly in the context of moral theory, that was not simply original, but decidedly against the mainstream view. It is however in his second work that Newey confirmed himself as *l'enfant terrible* of political philosophy, starting with his style of reasoning, arguing that when circumstances of political toleration arise, and political decisions are called for, then toleration is already done away and the decisions are all but tolerant. In the last decades, many political philosophers have been engaged in showing how the moral virtue of toleration could be translated into the political virtue (Heyd 1996; Horton, Mendus 1985; Mendus, Edwards 1987; Mendus 1988); others have produced arguments justifying political toleration within liberal theory (Mendus 1989). In such a context, Newey's position stands apart. He contends that a) the move from the interpersonal level to the political is awkward under any political conceptions in the liberal range, b) no general justification for political toleration is tenable and c) political actions concerning matters of toleration result in the substitution of toleration with coercion.

In this paper, I would like to rescue political toleration from the corrosive force of Newey's reasoning, while honoring his memory by engaging in a thorough discussion on his challenging views. Though our respective positions differ widely, we share some insights relative to the conditions for toleration, on the one side, and on the understanding of the circumstances of political toleration, on the other, which are crucial for our respective views, though leading to divergent conclusions. In the first section of this paper, I shall briefly rehearse Newey's view on toleration both as a moral virtue and as a political issue, focusing especially on the problems that toleration encounters in the political realm of liberal democracy. I shall then highlight what I take to be the critical aspects of his view, and in the third part of the article, I shall argue for my response to Newey's challenge.

I.

In *Virtue, Reason and Toleration*, Newey intends to understand how toleration is possible, and how it can be made sense of within moral philosophy, on the one hand, and within political theory, on the other, given the different circumstances giving rise to questions of toleration in the moral life and in the political domain. In a highly analytical style, his inquiry starts with singling out three sets of necessary reasons for toleration to be the case, namely:

“(T¹) T has a reason M¹ for disapproving of R's doing of P” (Newey 1999, 21)

Where T is the tolerator, R the prospective tolerated and P the practice to be tolerated.

“(T²) T has a reason M² for not taking action to prevent R from doing P” (27)

“(T³) T has a reason M³ which in other circumstances justifies preventing actions of which T disapproves” (32).

Such conditions are in line with most analyses of the concept of toleration, and not by chance, Newey says that this structure of toleration is articulated from the *endoxa*, that is from the most common opinions shared by scholars on the theme. (T¹) expresses the primary condition of disapproval for engendering the case for toleration. Here Newey leaves it open what the reasons for disapproval might be, whether moral or not. Also, the formulation of (T¹), does not take a definite side about whether the object of disapproval is

just the practice or also the agent of the practice, an issue which will become relevant in reconciling toleration with equal respect in *Toleration in Political Conflict*. (T²) expresses the reasons for tolerating P despite the disapproval, while (T³) expresses the limits that toleration has, that is the reason why under certain circumstances not tolerating P is required in order to avoid turning toleration from a good thing into a culpable indulgence. Although on (T³) there is disagreement among students of toleration, Newey thinks that it is important to add the constraint to the conditions of toleration for making sense of the fact that no one could reasonably be thought to tolerate the St. Bartholomew's Day massacre (34). After singling out the possibility conditions of toleration, he proceeds to ask in which sense toleration can be morally valuable, and comes up with a view of toleration as a form of supererogation meant to reconcile the two contrasting sets of reason in (T¹) and in (T²) and its non-obligatory, and yet morally admirable, character. In turn, the special value of toleration must render the distinction between an act of toleration whose good is instrumental to other values such as peace, liberty, autonomy, equal respect, and the intrinsic good of tolerance as displayed by someone having the virtue in character of tolerance. In a complex argument criticizing reductionist views on motivations, Newey affirms tolerance as an aretaic virtue, which he argues would dispel the issue of the censorious tolerator that is of the person who disapproves greatly and vehemently, and failing to prevent the disapproved things, results to be more tolerant than less disapproving people are. Conceiving of toleration as an aretaic virtue, Newey can say that the censorious tolerator's motivational states are not in line with the motivations of the virtue in character of tolerance, which implies to be well disposed toward others.

I think that Newey's distinction of tolerance as a virtue in character, as a virtue in action, and of acts of toleration, which may not correspond to the character dispositions of the agent, is a subtle moral distinction, capable of addressing the issue of the tolerant racist or the censorious tolerator, as Newey has it. I find instead less persuasive his idea of tolerance as supererogation. For if acts of toleration were morally admirable and yet not obligatory, it would imply that failing to be tolerant, that is to be intolerant, would be morally neutral, like failing to contribute to a charity or to one's local theater. Yet, intolerance does not seem to be morally neutral but decidedly bad, unless the practice in question trespass on the intolerable, hence M³ reasons kick in as in (T³). True, if the reasons for disapproval are only conceived of as moral

reasons, then the agent has moral reasons to prevent P, which would appear *pro tanto* to be good. The idea is that if the agent acts according to M¹, her not being tolerant is however acting according to one's moral *pro tanto* reasons, and not arbitrarily or wantonly. Yet, I would stress that she has even stronger or exclusionary reasons to suspend interference, so that tolerance is the right thing to do. I hold that Newey's supererogatory thesis, meant to capture the specific moral value intrinsic to tolerance, puts forward a highly moralized view of tolerance, which does not correspond with the garden variety of toleration and intolerance, and does not correspond to Newey's own stress to focus on the social and political pragmatic problems of toleration. If, as I contend, the reasons of disapproval (M¹) can be non-moral as well, and if the reasons for suspending the interference (M²) are thought as either stronger than or, as I would prefer, exclusionary of M¹, then, unless there are M³ reasons in the circumstances defining P as intolerable, toleration is the moral thing to do, and intolerance is morally bad.¹ It may be that toleration is only an instrumental good, if the agent does not display the virtue in character of tolerance, while if she does, then toleration is also an intrinsic moral value. But if we want to characterize tolerance as a social virtue, the latter cannot be understood as a supererogatory act.

Moving now to Newey's analysis of political toleration, a first striking feature is the difference of his reasoning style. Considering toleration in the context of moral philosophy, Newey resorts to a highly analytical style in order to capture the specific value of toleration in contrast with the prevalent moral views (which according to his analysis are reductionist of motivations), and to single out tolerance as a specific moral virtue in character and action. When he moves to politics, he seems to prefer more pragmatic arguments aimed at a) analyzing the specific circumstances for toleration in politics and b) viewing toleration as subject to the many political pressures that, eventually, tend to eradicate toleration either in favor of some other values or in favor of coercion directly. The first important point made by Newey in this respect is that the circumstances of toleration in the political realm of contemporary democracy cannot be equated to those of interpersonal life. For in political

¹ I have argued that reasons overcoming disapproval and yielding to toleration are "exclusionary reasons", as in the definition provided by Joseph Raz (Galeotti 2015, 94; Raz 1990, 35-48).

life the agents, individual or corporate, are not two, the tolerator and the tolerated, but three, for the closing political decision is up to the State. Hence, circumstances of toleration in politics arise when: 1) a party A disapproves of P of a party B. 2) A would like to censor or eradicate P. 3) B opposes A's attempt to suppress P. 4) According to A, P is intolerable, while according to B, A is intolerant. In other words, Newey here remarks that toleration is exposed to the principle of replication, and that the accusations of intolerance are actually circular. 5) If the conflict is not solved deliberatively by the two parties, ending with one of the two tolerating the other, then the state steps in to solve the standoff.

In such circumstances, whatever action the state chooses to take, it is not an action of toleration, for one of the two parties is coerced to give in and either tolerate the disapproved P, or tolerate the suppression of P (Newey 2013, 44). In the end, the coercive power of the state supplants toleration, and the switch from toleration to coercion is inherent to the political circumstances of toleration where the State plays the third party. Toleration cannot go both ways, and, given the replication principle according to which each party sees itself as the victim of the other's intolerance, one of the party will be coerced to tolerate the other. Even if the political action is in favor of self-restraint concerning the contested practice P, it will not be grounded on reasons of toleration but on different values such as social peace, security, public good, etc. Finally, the state, as a third party, cannot be tolerant, for it is not the disapproving party, and disapproval is a necessary condition to endorse toleration.² In order to be tolerant, at all, the State should act as the disapproving party, as it happened at the origin of the history of toleration when absolute sovereigns, disapproving of religious dissenters, had the power to suppress or to tolerate religious dissent. As long as the liberal democratic state acts as a referee, toleration is past its own possible courses of action. A further consideration showing political

²As a matter of fact, Newey speaks both of intransitive and transitive toleration. While transitive toleration implies disapproval, intransitive toleration dispenses with disapproval. Intransitive toleration has been recently argued for by Peter Balint (2016). Newey states instead that his analysis is basically confined to transitive toleration. However, the fact that the possibility of intransitive toleration is also acknowledged could be used to characterize political toleration vs. interpersonal toleration.

toleration as “awkward”³ lies in its potential clashes with other liberal values such as equal respect, autonomy, justice and so on. Equal respect does not sit well with disapproval, which according to Newey is a sign of disrespect. This remark is however problematic for at least two reasons. First, as he acknowledged in the 1999 book, equal respect is often cited as the reason to suspend the disapproval in favor of toleration. The equal respect for the agent leads to toleration of the disapproved practice; in order to work, this argument must rely on the distinction between agents and acts, distinction which is not uncontroversial. Second, even if the distinction between acts and agents is rejected, toleration and respect can easily be reconciled taking into account the two concepts of respect as drawn by Stephen Darwall (1977, 2006) which, instead, Newey does not consider. According to Darwall's distinction, recognition respect is attributed unconditionally to persons as persons independently of consideration of their actual moral contributions and worth, of their moral failure or moral excellence (which are instead objects of appraisal respect). Hence disapproving of someone is compatible with attributing equal respect to her. A further point worth noting of Newey's criticism of political toleration concerns the attempt of many political philosophers to bring toleration into the justificatory structure of liberalism. Such attempt is doomed to failure as well, as Newey argues at length both in his first and in his second book. His main critical target is John Rawls' *Political Liberalism* (1993) whose conception of the political as neutral among the pluralism of the comprehensive conceptions held by citizens is, on the one hand, not neutral about what political matters are, and inimical to toleration for it does away with disapproval.

Summarizing the criticisms that Newey raises against political theorizing on toleration, he picks out: a) a methodological error in downplaying the situatedness of political toleration, in favor of fixing general norms and general justification for toleration in the abstract. b) A general misrepresentation of

³ Newey uses ‘awkward’ instead of ‘impossible’ for two reasons: 1) because ‘impossible’ had been used by other philosophers, most notably by Bernard Williams (1996), and he wants to stress the difference between his and Williams' argument; 2) because ‘impossible’ seems to hint at a theoretical problem, while he wants to stress the pragmatic problems of political toleration. In that sense, there might be instances of political toleration, such as with a permissive policy about drugs, but in that case, toleration is at odds with other liberal values, and with conceptions of the political according to liberal theory.

politics as something defined and circumscribed in advanced, while political becomes any matter which cannot be decided among social parties. c) A too little consideration to the issue of power which is crucial for understanding why a certain issue becomes a political issue of toleration and for understanding the solution to conflicts over toleration. d) Given that political toleration is altogether awkward, and not well reconciled with other liberal values, political philosophers often attempt “to domesticate or tame a value [toleration] that is awkward in the same way that political life is awkward” (Newey 2013, 32) by transforming it in something different such as equal respect, neutrality, justice, democracy.⁴

Even if Newey's analysis seems to suggest that there is no political toleration in proper terms, given that the condition of disapproval does not often apply at the political level, and when it does, political action is rarely guided by proper reasons of toleration, nevertheless he concludes that toleration is politically unavoidable. Yet the toleration surfacing in political realm is not the founding or one of the founding values of liberalism, and does not rely on a stable justification. Rather, it is a value appearing at the interstices of political life, when the state dispenses with using its sovereign power to prevent practices like prostitution or drug use of which it disapproves. And often, in such cases, the reasons prompting political toleration are not reasons of toleration, but pragmatic considerations. Here it is not clear to me why a pragmatic and realistic approach such as Newey's on toleration should draw a distinction between “proper reasons of toleration” and spurious reasons of toleration. First of all, though he often refers to the proper reasons of toleration, he never specifies what they should be, if not the reasons that motivates the person displaying the virtue of toleration in character. Yet, as Newey himself has repeatedly argued, the circumstances of political toleration cannot be equated with that of interpersonal toleration, and, specifically, it is not clear how a corporate agent such as the state can display any virtuous dispositions at all. One thing are the possibility conditions of toleration, which are independent from the circumstances, and which do not establish what M^2 should consist in; quite another is the specific moral value instantiated by toleration, when it is considered as a moral virtue. If the point of Newey's criticism of

⁴ One of the political philosophers attempting to bypass the intrinsic awkwardness of toleration by transforming it in something else is actually me, as noted by Newey (2013, 32).

political toleration is to state that the specific virtue of tolerance does not play any role in the political conflicts over toleration, he is right, but that does not exclude the possibility of toleration under a different, political understanding. At the political level, for example, it is the political value of toleration to be singled out, which I take to be the peaceful and respectful coexistence of different and potentially conflicting practices. Thus, I do not see why a political tolerant stance should be dismissed as tolerant if grounded on pragmatic reasons, or even on *modus vivendi*. When setting down the possibility conditions of toleration, in the first chapter of *Virtue, Reason and Toleration*, Newey acknowledges that both reasons for disapproval and reasons for toleration need not be moral. Then, certainly, when toleration is to be characterized as a moral virtue, such reasons ought to be such that the disposition and the act of toleration can be defined as morally good. Yet, once we move from morality to politics, toleration can be socially and politically good even if grounded on pragmatic reasons and not morally virtuous. In case, it may be less stable. And, once the possibility conditions are fulfilled, we are confronting a case of toleration, no matter how the reasons M^1 and M^2 are filled, as long as they are reasons and not whims or idiosyncrasies.

2.

Newey's reasoning on toleration has a refreshing style and tone, and certainly stands out among the many articles and essays published on the theme in the same span of time. I think that he is right in criticizing the attempt to provide a general justification of toleration from a normative framework of liberal politics, for such attempts usually do not consider the different circumstances of political toleration, and do not attend the tension of toleration with other liberal values. Nevertheless, Newey's approach is much less realistic and pragmatic than he would like to be, for his criticisms stem from a moralized view of toleration, the one he provided in his first book, describing toleration as a moral supererogatory virtue of character. Then he has an easy game to show that such view is at odds in political circumstances, and that the virtue of tolerance cannot be found in state's decisions.

That his underlying view of toleration is, despite himself, a moralized one is proved a) by repeating that only certain kind of reasons count as tolerant reasons, as we have seen just above, and b) his definition of the conditions for

toleration. They include not just the reasons for disapproval and the reasons for not acting on one's disapproval, but also the constraints or the limits that toleration must have to avoid overstepping into culpable indulgence. I could not agree more with him, but adding the constraints to the possibility of toleration implies prospecting a view of toleration as a good thing, for constraints on toleration exclude that preventing criminal acts be considered an instance of toleration. Hence, his third condition implies a normative view of toleration. There is nothing wrong with a normative view of toleration, which I in fact endorse, but Newey seems to reject it along with some other thinkers (Balint 2017). They have recently criticized the moralized view of toleration as a useless theoretical exercise and proposed a purely descriptive concept as an alternative. A moralized view of toleration holds that either or both the *objects* of toleration and the *reasons* for objecting to them and then tolerating them are of moral nature so as to grant the moral quality of toleration as a virtue. I think that, in the moralized view, toleration turns out too restricted, for it does not include objects of mere dislike such as cultural differences, and carries an unpleasant tone of moral condescension toward the tolerated (Galeotti 2001). However, the alternative to a moralized concept of toleration is not necessarily a purely descriptive account. I hold that a normative account is in order to make sense of toleration as a valuable thing, setting it apart from forbearance of what cannot be tolerated, without relying on an unduly restricted moral view. This view seems to be shared by Newey who states: "Toleration is a *prima facie* good, and the lack of toleration is the lack of this *prima facie* good" (2013, 22). Hence I think that the definition should include the (normative) conditions under which toleration *as valuable* is the case, keeping agnostical concerning the reasons why it is a value. Putting up with murder, for example, is not an instance of toleration. Yet, under a purely descriptive definition, there is no way to set apart toleration of the hijab, for example, and connivance with crime. Therefore, the definition of toleration should not only specify what toleration consists in, in terms of attitudes and actions, but also circumscribe the area within which toleration is a value. For outside that area, the same kind of attitude and action is no more 'tolerant' in the proper sense I want to defend, but just 'permissive' and more precisely culpably indulgent. If we do not want to equate toleration with permissiveness or forbearance in general, then the limits for toleration to be a value are constitutive of the concept, which has a descriptive content but which is also inherently normative, though not moralized for neither the objects nor the

reasons of toleration need to be of moral nature. Newey's possibility conditions come close to my view, given that he adds (T^3) that is the reasons M^3 , to suspend toleration under certain circumstances. However, he also thinks that only certain reasons can count as tolerant reasons, excluding pragmatic and prudential reasons. Hence, he seems implicitly to rely on a moralized concept of toleration, despite his intention to the opposite, and I think that it is precisely the reference to a moralized view of toleration that makes him conclude that proper toleration has no definite room in politics.

A crucial aspect of Newey's discussion of toleration in politics is the distinctiveness of the political circumstances of toleration compared to the social intercourse between two social parties. The structure of the problem change moving from the horizontal, two-party dimension, to the vertical dimension: the dislike between two social parties ends up to the state-referee which has to make the final decision settling the conflict. Newey is right in stressing the specificity of the political circumstances of toleration, which prevents from applying the virtue of toleration to political issues. Moreover, he is also right in saying that circumstances of toleration become political if the horizontal toleration between two social agents has failed, and the disapproving party would like to have the practice of the other suppressed, while the other does not intend to practice self-restraint. However, it does not follow from such different circumstances that when the issue become political, and the state is acting 'as a referee' between two social parties, (political) toleration cannot be delivered because the state's decision will be the opposite of toleration, namely coercion. Here Newey is making two different contentions: the first is that the state 'as referee' cannot be tolerant, for its decision will not proceed from disapproval, which is the primary condition for toleration. The second is that whether the state decision is to prohibit the disapproved practice or not, its decision is coercive and will be forced either on the party that claimed intolerance of the practice, or on the other claiming tolerance instead. Thus, political toleration is doubly impossible in the case the state is acting as a referee. In case, political toleration can surface if a) the state is acting as one of the two agents, the disapproving one; b) if neither a prohibition nor a permission of the contested practice is issued, but rather the outcome is an omission to decide, or to put it more clearly, is turning a blind eye (for example on prostitution or drug use). I disagree on both contentions relative to the impossibility of political toleration.

First, I do not see why, if the structure of the question changes from two-party to three-party, toleration should be automatically excluded. Cer-

tainly, the disapproving party could tolerate the contested practice, and that would pre-empt the issue of political toleration. But in case he does not, he must refer to the state to prohibit the practice, for, given the state's monopoly of coercion, no social agent has the power to prohibit or suppress any practice. The state has then to consider whether the disapproval is well grounded, whether the practice is in fact intolerable and, on that basis, whether it deserves toleration or prohibition. The original disapproval of a social party must thus be scrutinized by the state and see whether it is sufficient to define the practice as intolerable or not. Thus, the disapproval is still at the origin of the circumstances of toleration; only in this case, the disapproving agent and the agent who has the power to settle the issue are distinct, and the latter, the state, has to reason from the disapproval and see whether its backing reasons are sufficient for prohibition or not. In the absence of the first party's original disapproval of the practice, the issue would not arise. Certainly, the structure of the problem has changed with the different political circumstances, yet the conditions for toleration – reasons for disapproval, power of interference, reasons for suspension of interference, and limits of toleration – are in place though adjusted to the new three-party structure. This also explains why we all recognize these issues as of questions of political toleration.

Second, obviously the state decisions are coercive, for coercion is entailed by the very definition of political authoritative decisions, backed by the monopoly of force. However, if this very fact would be sufficient to supplant political toleration, then how would we call all the Acts of Toleration issued by the absolute sovereigns in the seventeenth and eighteenth century? They certainly possessed legal force, nevertheless, they granted toleration, that is non-interference with certain religions and their rituals, letting the believers free to practice their faith. In fact, Newey maintains that if the state decides in favor of permission of a certain practice, this practice is no more tolerated, for it has been recognized as having value or embodying universal civic entitlement (2013, 81). Yet, this does not follow: the fact that a practice becomes legally permitted does not imply that any value has been recognized to the practice itself; it is sufficient that it does not infringe on the harm principle.

In sum, I hold not only that political toleration, and conversely political intolerance, are possible, but also that the fights over the public toleration of certain practices have made toleration a newly hot political issue in the public forum and in political theory. If toleration were just a moral virtue, it

would not be discussed outside the community of moral philosophers. Yet, the same conception of toleration cannot work for morality and for politics, and political theorists must provide specific political conceptions, given that toleration is such a relevant political issue.

Newey adds two more claims to his interpretation of political toleration as awkward: a) even if the state's decision is against the suppression or the interference with the contested power, the reasons backing such decision are not tolerant reasons, but reasons of different kind, for public security or public good, for example. b) The intolerance displayed by the disapproving social party is replicated by the intolerance of the targets of the disapproval who do not tolerate the suppression of their practice. In Newey's view, issues of political toleration imply circular accusations of intolerance, given that toleration is subject to the replication problem. In this sense, he states that cases of political toleration are always carrying along the issue of the toleration of the intolerant, which far from being an extreme case is the rule when circumstances of toleration arise in politics. Concerning the claim sub a), I would simply rehearse the argument made earlier relative to the reasons for toleration. If one does not adopt a moralized view of toleration, any kind of reason can ground toleration, from prudential to moral. In case of a standoff between two positions over the toleration of a certain practice, certainly the public authority has the wish to settle the question and regain social peace. Yet the solution cannot be derived by this motivation alone, for the decision in one direction or in the other must be publicly justified and with arguments from toleration. In the political decision, very likely considerations of power, of the relative power of the two parties, will be present, yet the public presentation should refer to the reasons for interference or non-interference, that is reasons for or against toleration, and the public phrasing constrains the possibilities of the coercive power of the state. Besides, in a democratic regime, the political decision will be subject to public discussion, and many critical arguments will be advanced in the public forum and in the academic milieu, so that at the end the decision may be reversed, thanks to the successful arguments in the public forum. Even though the reasons backing a political decision on questions of toleration are usually mixed, as all political decisions are, reasons for or against toleration play definitely a crucial role, and go on playing a role in the following public debate if the political decision is not capable to settle the issue. It seems to me that Newey's insistence that political decisions for non-interference with a certain contested practice are not tolerant reasons

and that the state action or omission is not toleration follows from his view of toleration as a distinctive moral virtue. In the political reality, though, if the state decides to refrain to act on the disapproval of a social party for whatever reasons, it acts or omits to act in a tolerant way, especially if compared with the alternative, though it may not be a display of the virtue of tolerance. I think it strange that a supporter of political realism insists on the purity of tolerant reasons for a political outcome to count as tolerant.

Concerning the claim sub b), this seems to me the most corrosive argument advanced by Newey for if true, it would make toleration hostage of partisan politics, to be settled only by contingent political decision, but useless as a theoretical concept and a normative ideal in politics. If toleration, as Newey contends, is subject to the replication problem, then the accusations of intolerance are necessarily circular, making political toleration, as far as it is possible, always a case of toleration of the intolerant, for both parties involved in a conflict of toleration are intolerant of the other. At that point, political toleration is not awkward, as Newey has repeatedly affirmed, but rather a rhetorical appeal to an utterly useless ideal. If the possibility conditions of toleration are not symmetrically matched by the possibility condition for intolerance, then toleration may remain a virtue of the character, but should be given up in the social and political realm, and substituted by some concept free from the circularity allegedly attached to toleration. To this allegation, I shall respond in the next section, with an analysis of intolerance, intolerable and response to intolerance, which are meant to break up the circularity pointed out by Newey. Here I like to make some final remarks on his view, starting with pointing out that the corrosiveness of Newey's critique of political toleration specifically derives assuming a moralized view of toleration, at odds with the circumstances of political toleration, as he rightly acknowledges. The fact is that the latter would require developing a specific political conception of toleration where the conditions for toleration match the appropriate circumstances, making sense of judgements such as "the French Stasi ruling is not a tolerant one".⁵ Adopting a less demanding view of toleration in politics, one needs not do away with toleration altogether.

⁵ I am here referring to the disposition enacted in France in 2004 relative to the banning of ostentatious religious symbols in public place and specifically in state schools, which settled a long controversy over the use of hijab at school, erupted back in 1989 (Galeotti 1993).

A final remark on the issue of power. Newey is very keen of underlining the power condition and the circumstances of power for toleration, which he holds have been downplayed in the liberal literature on toleration. However, he does not consider the asymmetrical power of social parties, as an important circumstance of political toleration. First, when we move from the interpersonal level to the social and political domain, issues of toleration erupts and becomes political issues only if groups are involved, not individuals, usually groups asymmetrically situated (Galeotti 2002). If the disapproving social party has the power to contain the other group, concerning the disliked practice, then the issue of toleration does not arise; in turn, the other group must be willing and capable to resist the imposition in order for a conflict to arise calling for political settlement. If the relative power of social groups involved in issues of toleration is duly taken into account, toleration conflicts appear to concern not just the disapproval of different practices, but also the relative public standing of the two parties, and the control of the disapproving party over social standards (Galeotti 2017). The consideration of the different stakes in the standoff between the two social parties provides an interpretation of the issue of political toleration less idealized, and closer to the actual real complexity, making sense of the disapproval outside morality and in the language of power. That does not imply that the solution of the standoff must dispense with using the normative guidelines of a theory of toleration.

3.

In this last section, I shall try to respond to Newey's most formidable criticism, naming the replication problem of toleration and the consequent circularity of accusation of intolerance. I shall argue that drawing theoretical distinctions between toleration, intolerance, responses to intolerance and intolerable will help breaking down the vicious circle and reinstating toleration as an analytical and normative category. I shall start with a brief rehearsal of the core concept of toleration and of its main conceptions.

I hold that toleration is a concept articulated in different conceptions. While there is an ongoing debate about which conception is the most suitable for addressing certain issues, there is basic agreement on the concept of toleration despite the fact that it is spelled out differently by different authors

(King 1976; Newey 1999; Cohen 2004; Forst 2013). Briefly, the core features of the concept of toleration are: 1) agent A's dislike of agent B's views, codes, or convictions. 2) A's wielding of some power of interference with the difference in question. 3) A's withholding of such power in favor of leaving B free to live by and pursue her ideals, 4) within the limits of self-defense and of harming others.⁶ Toleration, as a relevant social and political category, applies in a context of religious, moral and cultural pluralism where social differences do not harmoniously combine and social groups disagree about what counts in life and how one should live. There is no toleration if there is no original dislike, be it moral disapproval or non-moral objection, and if such dislike is not eventually overcome in favor of non-interference, despite the possibility of intervention. Yet, overcoming one's dislike and not acting out of it can be said 'tolerant' only within the limits fixed by the principle of self-defense and of harm to third party.

The different conceptions of toleration then organize, and partly readjust, these core features according to two criteria. The first criterion pertains to the reasons justifying toleration, which can vary from *modus vivendi* to equal liberty, and equal respect. The second concerns whether toleration applies horizontally, among individuals and groups, or vertically, directed by the state or political institutions at certain groups of citizens. While the concept of toleration spells out the general features that any instantiation should have in order to be recognized as toleration, set apart from indifference, acquiescence and culpable indulgence, the conceptions of toleration specify why toleration is a value, for what reasons, and in what setting. I am now going to consider three conceptions of toleration as illustration of how the varying justifying reasons and the horizontal or vertical dimension affect the resulting conception (Galeotti 2015). I shall start with the social virtue of toleration, and then proceed to the liberal model of toleration and to toleration as recognition.

The conception of toleration as a *social virtue* articulates the core concept in the horizontal relationship of two social parties, one of which objects to the other's conduct (or convictions, or lifestyle), but withholds the possibility of interfering, choosing to tolerate the disapproved or disliked conduct.

⁶ Although Glen Newey acknowledges the limits of toleration as part of the possibility conditions for toleration, he never mentions, let alone discusses, the harm principle, which may represent one of the tools to break down the circularity of accusation of intolerance.

The reasons why the tolerator decides to withhold his power of interference, then, characterize the social virtue of toleration either as negative, if based on instrumental and pragmatic reasons, or positive, if backed by moral considerations.⁷ The social virtue thus bifurcates in two further conceptions according to the type of justification for toleration.

While toleration as a social virtue applies horizontally, the liberal conception of toleration is vertical and addresses the relationship between the political authority and citizens. The move from the horizontal to the vertical dimension changes the structure of the problem and implies a readjustment of the core features: the problem still originates in the dislikes among different social parties, but, in this case, the decision to intervene or tolerate the object of dislike resides with the political authority, which has the monopoly of coercion. Hence, a horizontal dislike between two social parties gives rise to a vertical decision for or against toleration. In this way, the parties involved are at least three: the objecting party, the objected party and the political authority, which has the power and will settle the question in favor or against toleration. The core features – dislike, power to interfere, suspension of interference, within the limits of toleration – are all in place, but it is the state which has the capacity to intervene or not on the ground of agent A's dislike.

Within liberalism, the principle of political toleration recommending political non-interference with religious and moral convictions of people, if there is no disruption for law and order, is generalized in equal liberty rights. Accordingly, liberal toleration is justified by the principle of liberal neutrality. The ideal of neutrality addresses disagreement and dislike over religious, moral and cultural difference by granting equal liberty to all, without judging the content of the dispute, as long as the harm principle is not violated. The state thus requires toleration of its citizens in their reciprocal relations, that is, it requires that citizens withhold their disagreement and respect each other's liberty. The political duty to tolerate each other is compatible with either social tolerance or with acquiescence with the state requirements, according

⁷ Within the discussion on toleration, negative tolerance as forbearance and non-interference has been opposed to positive or affirmative tolerance as acceptance (see for example Apel 1997 and Zolo 1997). I have instead argued that toleration is always non-interference, but that the varying reasons for non-interference confer a negative or positive meaning to the act respectively (Galeotti 2015).

to whether citizens adjust their internal dispositions with the civic duty to tolerate disliked practices.

Newey contends that neutrality cannot ground toleration, because the condition of dislike is precisely absent in the neutral attitude of the liberal state (Newey 1999, 123-127). Yet, he does not consider that neutrality of the state is the response to the conflict among social differences and to the dislike of one group toward another. In the circumstances of political toleration, the disapproving agent is not the agent choosing non-interference, because only political authority possesses the power to prohibit any practice. Neutrality is rather the reason backing political toleration in the form of equal liberty rights. Political toleration implies precisely that a social dislike is dealt with by a political decision to withhold the dislike, within the boundary of the harm principle, because of the principle of neutrality.

Lastly, toleration as recognition relates both to the vertical dimension and to the horizontal dimension, and in the vertical dimension is meant to supplement liberal toleration in the circumstances of contemporary pluralism (Galeotti 2002). In contemporary democracy, where liberty rights are enshrined in constitutions, it would seem that significant questions of toleration were preempted. Yet they still arise, from veil wearing to places of worship, from gay marriage to religiously dietary restrictions. These contemporary issues are special because a) they explicitly concern *public* toleration and b) they imply a claim to recognition of the contested differences. The standoff is usually produced by social majorities demanding that practices perceived as being at odds with the host society's principles and customs be restricted, contained, and rendered invisible, and symmetrically, by minorities claiming public toleration of their practices and political protection against offenses, humiliation, and discrimination. There is more than equal freedom at stake: there are asymmetries of power deriving from the social standing of different groups and defining inclusion in, or exclusion from, society, with significant political implications. The principle of neutrality is not sufficiently sensitive to perceive the struggle over exclusion/inclusion underlying issues of toleration. Neutrality does not see that the public space is not difference-free, but populated by the majority's customs and conventions, and that difference-blind politics runs the risk of reproducing existing exclusion, for not all members of society enjoy the same freedom to follow their convictions and lifestyles, and such asymmetries in freedom correspond to asymmetries in inclusion. Beyond toleration in the sense of equal liberty for minorities, here at stake

there is the recognition of minority members, with their different practices and customs, as equal members of the polity worthy of the same respect as members of the majority. In this sense, it is important that the difference in question not only is not prohibited, but also receives *public* toleration, and for the *right reasons*, meaning the recognition of its legitimate presence in the public space. Liberal neutrality tends to bracket all social differences together as equally irrelevant politically, thus obscuring the asymmetries among social differences and their implications in terms of inclusion in the polity. Toleration as recognition intends to overcome this specific blindness, by making room for all social differences (within the bounds of the harm principle), while yet reaffirming the principles underlying liberal neutrality, that is non-perfectionism and impartiality.⁸ For the public recognition of a social difference implies its recognition as a legitimate option of the pluralist society. But it does not imply a substantive evaluation of that difference as good and worthwhile; liberal institutions must not abdicate from their non-judgmental, non-evaluative, impartial stance: toleration as recognition does not imply taking sides. In this respect, toleration as recognition is neither *permission* nor *acceptance*, since liberal institutions are not entitled to forbid or accept, let alone embrace, anything within the bounds of the law, but *legitimization*: a public declaration that a given practice, if it does not infringe any right, is a legitimate option among others. The literal meaning of toleration does not change from liberal toleration to toleration as recognition, but the symbolic meaning does, for the reasons in favor of toleration are not negative, but positive. The difference in question is tolerated not because it does not infringe the harm principle, but because it contributes to fully include the bearers of that difference. The legitimization of the public presence of a difference then brings along an accommodation in the social practices and a revision in social standards so as to make room for the difference in question and for its bearers (Galeotti 2008). Newey would say that toleration as recognition is turning the awkwardness of toleration into a neater principle than toleration

⁸ I like to stress that toleration as recognition is an extension of liberal toleration, within the same normative framework of liberalism. In that respect, it may sound misleading to talk of the conception of liberal toleration. I use such label for that is the standard view in the liberal tradition, while toleration as recognition is not. I would add that the standard view, focused on the principle of neutrality, is not uncontroversially acknowledged as a conception of toleration, which is instead my position.

itself. Yet, I think that social conflicts over disagreement are what characterizes political toleration, and whatever the backing reasons are – equal liberty, equal respect, public recognition of differences or prudential motivations – if the political decision is for non-interference, then we are confronting a case of political toleration.

To sum up, the three conceptions of toleration supplement each other, depending on the circumstances of their application and the issue at hand. The social virtue of toleration applies horizontally among social agents, and according to the reasons backing the choice for toleration may mean either 'putting up' or 'accept out of respect'. This conception however is inadequate as a political principle because in politics the primary condition of dislike or disapproval pertains to a social party, while the decision to refrain from interference or not is up to democratic authority. In other words, political toleration, either according to the traditional liberal model or to toleration as recognition, resolves a social conflict engendered by the objection of one social group toward the difference of another. The two vertical conceptions differ concerning their backing reasons and their symbolic meaning. Which is the most adequate depends on the issue at hand: whether it has to do just with equal liberty or whether it has to do with equal respect and equal standing in the polity as well.

Let us now move to what is intolerable and what is intolerance. As said, toleration is a value, both as a virtue and as a political principle, only within limits, as generally acknowledged, for 'toleration' of murder or rape is certainly not a value. Beyond its limits, toleration turns into culpable indulgence of conducts and practices that are 'intolerable'. In the doctrine of toleration, the self-defense of the political and social order, coming from Locke ([1685] 1991), and the harm principle, coming from Mill ([1859] 1972) represent the two, widely shared boundaries separating objects for toleration from what is intolerable. While the two principles are uncontentious, what counts as a threat to the social and political order, as well as what counts as harm is a matter of ongoing controversy (Forst 2013, 369-370; Cohen 2014, 36-54). Without getting into this discussion, I here assume the two limits in their bottom-line definition, which no one can reasonably rejects. That is to say, I take that harm is any violation of other people's bodily integrity, their liberty and their property. Similarly, I take that self-defense kicks in when actual threats to law and order are the case, such as terrorist attacks. The two limits of self-defense and harm to others qualify acts trespassing on

them as 'intolerable'. Consequently, the response to the intolerable should be non-toleration of those very acts. The non-toleration of murder or rape, however, is not 'intolerant', for the prosecution of crime is mandated by the rule of law, and not ascribed to disapproval or disagreement between social parties. The response to the 'intolerable', to whatever has infringed the limits of toleration, is therefore not an intolerant act even though it implies the non-toleration of the 'intolerable'.

What is then intolerance? First, intolerance properly applies to the same domain of objects for which toleration is in order. Intolerance is to be detected within the scope of what can be tolerated, and it is a value to tolerate. It does not apply to what trespasses on the limits of toleration: thus one can be tolerant or intolerant of vegetarianism, but she cannot be said to be tolerant or intolerant of rape. Imposing a meat-based menu in a cafeteria is an intolerant act towards vegetarians, while prosecuting rape is the proper response to the intolerable. In this way, we have in principle drawn a clear line between intolerant acts and proper responses to intolerable acts. This distinction is important descriptively, but it has also very important political implications. Since in liberal democracy, being tolerant is generally considered a value, while being intolerant is generally disapproved, then agents tend to present their intolerant attitudes as responses to the intolerable, for in that case they would be justified and not at all intolerant. Yet, such justification is valid only if the object in question oversteps the limits of toleration, hence it is justifiably defined as intolerable. In this case, I think that conceptual analysis can help dispelling the fog of political rhetoric.

What constitutes an intolerant act within the boundaries of the tolerable? The answer is not obvious for lack of toleration may depend on indifference or acquiescence, and requires going back to the concept of toleration. The core concept of toleration comprises both an *original objection* by a social agent with some power of interference and the *suspension of that objection*. If there is no original objection, there is no case for either toleration or intolerance. Intolerance follows from the original objection. More precisely, intolerance is the case when social party A, endowed with some power of interference, objects to some difference x of party B and, instead of suspending the objection in favor of toleration, *chooses to act on that very objection*, even if x does not infringe the limits of toleration.

Contrary to what Newey maintains, toleration is not subject to the replication problem for we have the theoretical means to set apart accusations

of intolerance from responses to intolerance, beyond the contentions of the involved parties. Attitudes and behavior that are intolerant, implying the *non-suspension* of the *original objection*, can be set apart from attitudes and behavior that are *responses to intolerance*, that is, acts of resistance to the interference with one's convictions and lifestyles by another party. If the KKK, out of its dislike of non-white people, organizes a racist demonstration, displaying all the symbols of white supremacy and exercising its power of intimidation, this is a display of intolerance, of a dislike openly exhibited with the purpose of intimidating. If African-Americans protest against such a demonstration, which targets them as a racial group, their claim to stop such racist displays is not intolerant, but, more properly, is the response to intolerance. Similarly, those who object to the construction of mosques, and pour pig's blood on the building site, are acting intolerantly, whereas Muslims protesting against such behavior are resisting the intolerance directed at them. The line between intolerance and response to intolerance is thus based: a) on the decision to act on the original objection instead of withholding it, on the one hand, and on the response to the interference with one's convictions and customs on the other; b) on the content of the objection, whether it concerns the convictions, way of life, and customs *of the other party*, or whether it concerns the rebuttal of the attack on *one's own* convictions, customs, and way of life. Resistance to the attack and defense of one's convictions and lifestyle cannot be equated with the intolerance of those who, disliking those convictions and lifestyle, act in order to penalize them. For example, the aggressive display of homophobic attitudes is intolerant of the sexual orientation of gays and lesbians; in contrast, the gay pride parade is an affirmation of the legitimacy of homosexual orientation, and not an attack on the heterosexual lifestyle. Those who protest against the gay pride in fact claim that the gay display in the parade offends, hence harms, their convictions and pollutes the moral fabric of society, hence it is *intolerable*.⁹ Yet, if we allow such a stretching of the limits of toleration, the room for personal liberty of minority groups would be unduly reduced and equal liberty of all would be undermined. For, heterosexuals would be free not only to follow their sexual orientation, but

⁹ A well-known debate over the intolerability of homosexuality and the problematic consideration of offences as harm took place in the sixties between Lord Devlin (1959) and Herbert Hart (1962).

also to limit the correlative freedom, and hence the public consideration of homosexuals. Thus, there are good reasons to stick to the bottom-line definition of the limits of toleration provided above. Summarizing, there seem to be two conditions for intolerance: a) the original and non-suspended objection; b) the other-regarding nature of the objection. By contrast, the response to intolerance is characterized by a) being the counter-objection to a previous objection targeting the respondents, b) being self-regarding.

In sum, when we are confronting acts harming other people or threatening the security of the political order, we are confronting the 'intolerable' and toleration and intolerance are likewise beside the point. If we consider instead practices, conducts, convictions, which are not violating any right, but are the object of moral and social disagreement, this is the area where indifference, acquiescence, toleration, intolerance and, lastly, response to intolerance are all possible attitudes and types of conduct. Displays of social intolerance are often translated into political claims for the prohibition of the contested practice or conduct, for a social party can socially sanction a disliked practice, but has no power to prohibit it. Such a claim is usually phrased presenting the disliked practice as intolerable, overstepping the limits of toleration, given that no social party likes to be defined as intolerant, by means of a stretching of the notion of harm. Symmetrically, responses to intolerance usually lead to claims for the public toleration of the practice. A horizontal issue is thus translated into a vertical issue of toleration requiring political settlement, and usually the public controversy revolves on whether the conduct or practice that is the object of dislike or disapproval can be defined as intolerable or not. The almost exclusive focus on the intolerable, on the one hand, has induced an excessive stretching of the notion of harm and self-defense, while, on the other, it has prevented from seeing certain claims as bluntly intolerant. The solution of such conflicts over toleration may be difficult in practice for a variety of contingent reasons; yet, theoretically it is not difficult to draw a line between, say, those who are intolerant of homosexuality and would like it to be legally proscribed, and those who resist and respond to this claim. If the political decision is against prohibiting homosexuality, that decision cannot be interpreted as intolerant of the disapproving party, nor as a case of tolerance of the intolerant, as Newey contends. For both his contentions rely on the idea that intolerance is displayed by both parties involved in a conflict over toleration, both the original disapproving party and the party that is the target of disapproval. His reading does not seem right in more

than one respect. First, it does not consider that the target of disapproval and of social sanctions would not have anything to disapprove had it been left alone. Second, it does not take into account that if the object of either tolerance or intolerance is practice P, toleration implies a basically asymmetrical relationship between those who object to P and those who practice P. Finally, it does not consider the other-regarding nature of the original objection versus the self-regarding nature of the resistance to intolerance. In sum, the supposed circularity can easily be broken down by available and clear criteria establishing who is being intolerant and who is resisting intolerance.

CONCLUSION

Newey contends that political toleration is awkward and that its room is just in the interstices of democratic states' action. His position depends on his argument on political circumstances of toleration, which are different from those of interpersonal relations and makes political toleration as a general policy of democracy impossible. I have argued that Newey is right in drawing a clear distinction between the circumstances of toleration in social intercourse and in political relations. Yet, contrary to what he thinks, I argue that this difference should lead to different conceptions of toleration, according to whether it applies horizontally or vertically. The core features of the concept of toleration are present in either case, though they require some adjustments when moving to the three party circumstances proper of the vertical dimension. He moreover contends that political decision settling issues over toleration of a contested practice are never tolerant, grounded on tolerant reasons, but coercive and grounded on some other reasons. No one denies that state decision are coercive, and yet a clear distinction can be traced between decisions in favor of permitting the contested practice and decisions prohibiting the same very practice. Adopting Newey's perspective, both kinds of decision are coercion, and yet they are not the same and impact citizens in a very different way. Lastly, he claims that in a political conflict over toleration, the accusations of intolerance are circular, and in fact both parties are intolerant, so that the toleration of the intolerant represents the usual political issue over toleration. I have rebutted this claim, by showing that, in principle, clear criteria for setting apart toleration from intolerance and intolerable are available through conceptual analysis. Such criteria enable us to understand

the standoff over toleration: the claim for intolerance, usually phrased in terms of the intolerable, on the one side, and the resistance to intolerance on the other, usually phrased as a claim for toleration. Conceptual clarification and clear criteria help making sense of conflicts even if they do not dispel the messiness of political reality, and do not provide clear-cut responses for any actual issue over political toleration. Yet, doing away with any political theory of toleration leaves room only to power struggle, depriving one of any capacity for justified criticisms and alternative perspectives.

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