

AN URGENT CONCEPT OF TOLERATION

(Irene Garcia Aguilera)

Introduction¹.

Surpassing toleration?

Some years ago an eminent professor asked me what “extra” value toleration can have nowadays insofar as the language of rights provides us better defence for human liberty and well-being. A vast and ever expanding literature has considered the language of toleration surpassed by the language of rights². “In Western countries it is not that people are tolerated in worship but that they have right to liberty of worship” (Garzón Valdés, 1993: 410, translated quotation). The supporters of the rights have not been the only in declaring the redundancy of toleration as normative-political value. Even those with doubts about the adequacy of the liberal scheme of equal rights have concurred in thinking that the day of toleration has passed. Thus, for instance, by thinkers associated with the so-called *politics of difference*, who are worried about the structural injustices faced by disadvantaged groups in society, toleration is accused of playing a central role in the processes of exclusion and *normalization* of the disadvantaged groups (see Herman, 1996: 61; Young, 2000; Brown, 2006: 28).

In one way or another, the replacement of toleration by more promising concepts like *rights* and the *politics of difference* have been taken to justify the current tendency to locate toleration at the “margins” –or, at least, at several removes from the core– of normative political theory.

Nevertheless, toleration cannot be relegated in this way. There are several kinds of toleration and although some certainly are ripe for supersession, others are not. One kind of toleration in particular is not: *Horizontal Social Toleration*. This kind of toleration cannot be repudiated nor overcome, least of all by rights theorists and proponents of the politics of difference, because it is necessary if rights and difference

¹ I want to thank the re-elaboration of this paper to the members of the Morrell Centre for Toleration at the Politics Department of the University of York. Especially, I want to thank Susan Mendus and Tim Stanton. Tim helped me in an extremely valuable way with his several notes of English translation.

²See Tomás y Valiente (1996: 247), De Lucas (1996: 152), Raz (1996: 173), Heyd (1996: 4), Galeotti (2002: 2), Escámez (2004: 51)....

are to be taken seriously. Without *Horizontal Social Toleration* neither the language of rights nor the aims of the politics of difference can be sustained. Because of this, *Horizontal Social Toleration* needs to be analysed urgently. Nowadays we assist to the dramatic phenomena provoked by its breach or rather by the accumulation of its breaches. I am talking about phenomena such as the pressure to assimilate, second-class citizenship, segregation at work and in neighbourhoods, and the creation of ghettos mainly.

I divide the paper in three sections. The first section discusses toleration as general concept. I will show why *Horizontal Social Toleration* is one kind or conception of toleration, in contrast to other possible conceptions. I call toleration a ‘polyhedral concept’ because it can be configured in many different ways. The second section focuses on the concrete figure of *Horizontal Social Toleration*. This conception of toleration arises in a very special way from reflection on *civil society*’s contractual basis, conceived according to the language of rights. It is to be examined how the categories of *tolerable* and *intolerable* and the very power to not tolerate that people give to institutions take place at the language of rights and the social contract. The third and last section analyses the meaning of violations of *Horizontal Social Toleration*. Such violations constitute the essence of the structural injustices that the *politics of difference* tries to tackle.

Through the second and third sections especially, I hope to explain the “extra” value supplied by *Horizontal Social Toleration*. Perhaps in this way we can find an answer to the question posed by that eminent professor.

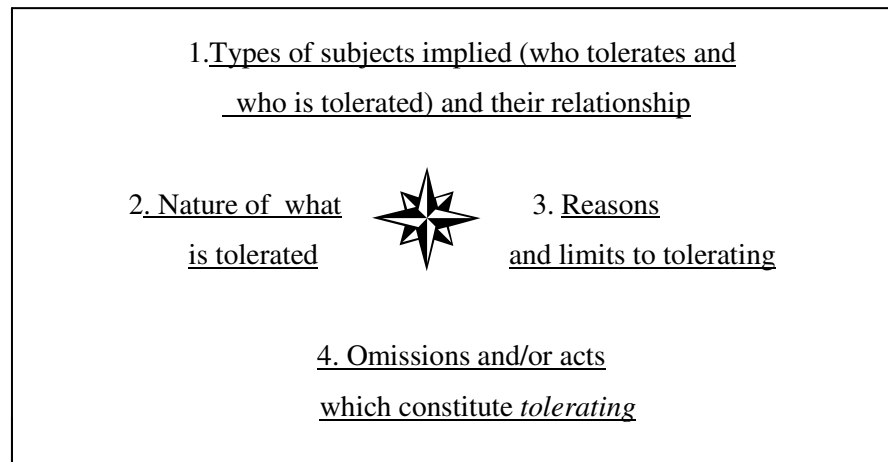
1. On general toleration

1.1. Toleration, a polyhedral concept

As noted above, this first section reflects upon toleration as general concept. As such, toleration is a polyhedral concept³. It allows different figures or conceptions of toleration. This is so for several formal dimensions are present in toleration (graphic 1). To these dimensions people at different points of history have given different substantive content, and from the non-contingent combination of them diverse figures of toleration have been constructed.

³ See Mendus (1989: 17), Heyd (1996: 10), Fletcher (1996: 159), and Brown (2006: 3).

Graphic 1. THE FORMAL DIMENSIONS OF TOLERATION



Source: Own elaboration⁴

Very briefly, in purely descriptive terms:

i) At the dimension (1) *of the subjects involved* the specifications of substantive content have gone from institutions to subjects of citizenship and society. This means that the subjects who tolerate have been variously public institutions or political groups or particular people. Likewise the tolerated subjects have gone from institutions and governments in the international system to political parties and people in society⁵. In this sense, the relationship between the subjects implicated in toleration has been more vertical or horizontal-reciprocal depending on the cases (Cf. Garzon Valdes, 1993: 404). Given the disparities of power that have obtained and continue to obtain between human beings and the historical prominence of certain institutional incarnations of toleration, the vertical cases have been the most usual.

ii) With regards to the dimension (2) *of the nature of what is tolerated*, specifications have gone from beliefs to ways of life to even inherited physical

⁴ I owe the inspiration to Ernesto Garzón Valdés who articulated the polyhedral character of toleration when he defined it as a complex relation: $AtbX^c_{ti\dots tn}$. In this formula, “A” is the subject who tolerates; “T” means to tolerate; “b” is the addressee of toleration; “X” is the tolerated act and “c” is the specific circumstance of toleration; all this having into account the times $t_1\dots t_n$ in which the activity of tolerating takes place (Cf. Garzón Valdés, 1993: 404).

⁵ About different subjects involved in toleration, see Nicholson (1985: 160), Walzer (1997), and Brown (2006: 2).

characteristics like the race. The nature of the beliefs and acts has been in turn political, cultural, religious, and sexual to name only four⁶.

iii) The dimension (3) *of the reasons for toleration* is without any doubt the most varied in content. Almost every type of reason or justification, most of them mixed, has been adduced for tolerating: religious reasons, ethical, prudential (in search of peace or order), epistemological reasons (of sceptical search of truth), communitarian reasons, economical reasons, practical reasons revolving around the inefficacy of coercion⁷. In consequence it is understandable that the dimension of reasons for tolerating has inspired rich classifications of toleration⁸. What is crucial is that the grounds of tolerating have brought with them their own limits (Cf. Mendus, 1987: 12). The limits change according to the kind of reasons people have for tolerating. For example, if the reason for tolerating is prudential –to secure the order and peace– anything that threatens the peace is beyond the limits of toleration. Or, if the reason is a religious one, anything that attacks or puts in question the core ideas of the religion is liable to be judged intolerable. Or, if the reason is one moral-political, relating to the perceived need to respect to the rights of people, anything that violates rights will be intolerable⁹.

iv) The last dimension (4) *of acts or omissions that constitute the exercise of tolerating* can be filled out differently too, since the classic answer of passivity or non-interference is ambiguous. “How serious must interference with the disapproved conduct be for it to be compatible with toleration?” (Horton, 1996: 28). The interpretations have gone from the non-persecution in physical terms of the tolerated subject to her non-discrimination at schools, or at work, or in neighbourhoods... It can be said that the different content attributed to this dimension of toleration is a dependent variable, for it depends of the various contents attributed to the other dimensions of toleration. The margin of omissions and/or acts that constitute tolerating varies from one kind of subject to another (institutions, citizenship, particular persons in society) and from one kind of reasons to another (moral-political reasons will involve an activity

⁶ Reflecting the different objects of toleration, see Susan Mendus and John Horton (1985).

⁷ The literature on the grounds of toleration is immense, inspired in classics as John Milton, John Locke, John Stuart Mill...See main current works in Susan Mendus and John Horton (1988 and 1991).

⁸ See Del Águila (2003 and 2004).

⁹ Illustrating the complexity of human heart and the mix of limits of toleration there is a wonderful article of Peter Johnson (1992).

probably more exigent than that demanded by purely prudential or consequential reasons)¹⁰.

All the dimensions of toleration are connected (see Brown, 2006: 78). The content attributed to one dimension conditions the content attributed in turn to the other dimensions. Hence the different figures of toleration that arise from the non-contingent combination of the different dimensions construed in particular substantive ways. Some of these combinations have been pervasive at certain moments in ancient and more recent history, as when in early modern Europe institutions were the subject who tolerated and religious minorities those tolerated. The religious way of life used to be then the object of toleration, and the reasons for tolerating seemed basically prudential. To tolerate meant simply not to forbid the way of life of the minorities in question. But this toleration was or is only one figure among others. There are other figures of toleration, since there are other ways of filling out and combining the different dimensions of toleration.

With *Horizontal Social Toleration*, the content attributed to the dimensions is extracted from the language of rights and what is crucial it makes sense of such language by expressing its core ideas. But before considering this point at greater length in the second section of the paper, we should pause to observe that certain historically influential figures of toleration deserve to have been surpassed. The languages of rights and of the *politics of difference* have been correct in rejecting certain conceptions of toleration. In order to understand why, it is necessary to know a little more about the dimensions themselves and meaning of general toleration.

1.2. On the minimum meaning of toleration and its dimensions

Toleration is a “perspective-concept”: it always supposes in all its thinkable figures the perspective of a subject or subjects, the subject who tolerates (subject “A”). In “A” a double movement takes place¹¹:

¹⁰ For more about the interaction between the reasons of toleration and the very activity of tolerating, see John Horton and Peter Nicholson (1992: 3).

¹¹ For the description of this double movement, I have partially borrowed elements from the works of Ernesto Garzón Valdés (1993), Sebastián Escámez (2004) and Wendy Brown (2006).

- 1) Firstly, “A” has a belief or preference, which is injured or damaged because of another subject/s (“B”). “B”’ s beliefs or acts or physical attributes... are too different to “A”’ s. Then, “A” disapproves “B”;
- 2) Subsequently, “A” overcomes the injury provoked by “B”, persisting or continuing what provoked it. This means that “A” bears with that which provoked the injury.

As example, let’s imagine that a subject “A” suffers the injury of her religious convictions because of homosexuality of other (subject “B”). “A” tolerates when she overcomes the injury, bearing with what provoked it (i.e., the homosexuality of “B”). In this example and the above minimalist definition of toleration, the formal dimensions of the concept are appreciated:

·Dimension 1) Subjects implied and their relationship → Subjects “A” and “B” involved in the injury of the conviction and their relationship;

·Dimension 2) Nature of what is tolerated → Nature of the injury of the conviction. This injury is what is tolerated, which leads to the question of how the conviction is injured;

·Dimension 3) Reasons for toleration and their limits → Reasons why “A” overcomes the injury of her conviction, and within which limits; and

·Dimension 4) Conducts and /or omissions that constitute the exercise of tolerating → Conducts and/ or omissions that constitute “A”’ s overcoming the injury of her conviction.

The previous shows that what makes toleration so special lies above all in the connection between:

- i) On the one hand, a situation of injury of convictions or preferences of someone, and
- ii) On the other hand, the response that that someone gives to the situation. It is a very special response, one in which what provoked the injury persists or continues. Just there the specificity of tolerating is discovered.

The overcoming of “A”’s injury is continuous with “B” continuing to live, act or believe in the way that provoked the injury¹².

With the general meaning of toleration a little clearer, we are now in a position to understand why certain particular figures of toleration have deserved to be surpassed. These are the figures of toleration I call respectively *institutional toleration* and *vertical social toleration*. The first figure takes public institutions as the subject who tolerates and some group in society as the tolerated subject. The second figure, that is, *vertical social toleration*, takes a part of society as the subject who tolerates and another part – usually minorities – as the tolerated subjects. In this latter case, the people who tolerate flatter themselves that they occupy a privileged position in relation to the others who are to be the tolerated and offer them the toleration of condescension.

Deeply connected, the situations that *institutional toleration* and *vertical social toleration* presuppose are problematical in normative-political terms:

a) Firstly, *institutional toleration* is incompatible with the neutrality we require of public institutions (see Escamez, 2004: 123; and Galeotti, 2002: 104). Public institutions are not legitimised to tolerate, i.e., to feel disapproval of people’s lives or beliefs. Institutions must be neutral between the different conceptions of a good life that people have. This neutrality is implied by institutions’ role in protecting and guaranteeing people’s equal right to develop freely their lives (see Weale, 1985: 26 and 28; Baldwin, 1985: 39; and Heyd, 1996: 16). If people were tolerated by institutions they would have reasons to perceive themselves as unequal in the respect to their right and, as a result, they could have reasons to perceive their very own conception of the good life as inferior or unworthy. How could it be otherwise if their conception of life provokes institutional disapproval? This strongly suggests that institutions are not *to tolerate*; they are only *not to tolerate* the violations or absences of rights and liberties. Institutions must *respect* the lives of all people by protecting and guaranteeing their rights and liberties¹³ (Cf. Baldwin, 1985: 41);

¹² Therefore Joseph Raz (1988: 163) is not entirely right when he says that the essence of toleration lies in its grounds and object. The activity of tolerating is also part of the essence of the concept.

¹³ Nonetheless at this point and, as Susan Mendus has said to me, perfectionist liberals believe that the state must be able to tolerate/disapprove some conceptions of good life. Personally, I do not agree with liberal perfectionism. It is neutralism what should be demanded from institutions according to the language of rights.

b) Secondly, *vertical social toleration* is incompatible with the equality of rights that characterises members of a civil society. With *vertical social toleration* equal membership is transformed into an act of condescension of some social group over other (see Garzón Valdés, 1993: 410). This is contrary to the nature of the civil society conceived according to the language of rights, in which people as equal members are called to have an EQUAL right to develop freely their conceptions of a good life. In civil society nobody is to have a “higher” right because of a privileged conception of life; nobody is justified in adopting the privileged position of subject who tolerates over others whom they tolerate (see Raz, 1994: 172).


Institutional toleration and *vertical social toleration* go hand in hand when, as often happens, the first creates or recreates the second, or vice versa. The degree of oppression this involves may vary however. The most dramatic violations of rights do not necessarily develop through *vertical social toleration* and *institutional toleration*, as various communitarian thinkers have pointed out. Communitarian thinkers point out that the institutional defence of conceptions of good life does not involve violations of basic rights of those who apart from the conceptions and who are therefore tolerated (see Taylor, 1992; and Crisp, 1992). But even though the violations of basic rights of the tolerated could never take place, which is doubtful, it is sure that the tolerated people, i.e., those who apart from the institutional/social conception of good life, would have always good reasons to:

- i) perceive themselves as “second-class citizens” (see again Raz, 1994: 172), and
- ii) conceive their own conceptions of life as *the different* and not good enough. The institutional/social “good life” is the *normal*. Because of this, it could be said somehow that behind institutions and/or the part of society that tolerates there is always a frustrated attempt at homogenizing and assimilating conceptions of life (see again Brown, 2006: 45).

Thus, as the problems inherent in *institutional toleration* and *vertical social toleration* have become more obvious as the early modern world has ceded to the modern, it is understandable that some have thought that the language of toleration has been surpassed by the language of rights and the *politics of difference*. Both want to

overcome *institutional toleration* and *vertical social toleration*. They wish to replace them with something better.

Now if, according to the language of rights, neutralism should replace toleration at the level of institutions, what should replace *vertical toleration* at the level of society? This brings us the *Horizontal Social Toleration*. And then, in turn, in order to alleviate the harms involved by the accumulation of violations of this form of toleration, the *politics of difference* arise. These politics propose to replace institutional neutralism by positive discrimination and recognition of differences (see scheme below)

	LANGUAGE OF RIGHTS /	POLITICS OF DIFFERENCE
INSTITUTIONS	Neutrality	Positive discrimination and recognition of difference
CIVIL SOCIETY	<i>Horizontal Social Toleration</i> <i>Because of its violations</i> 	

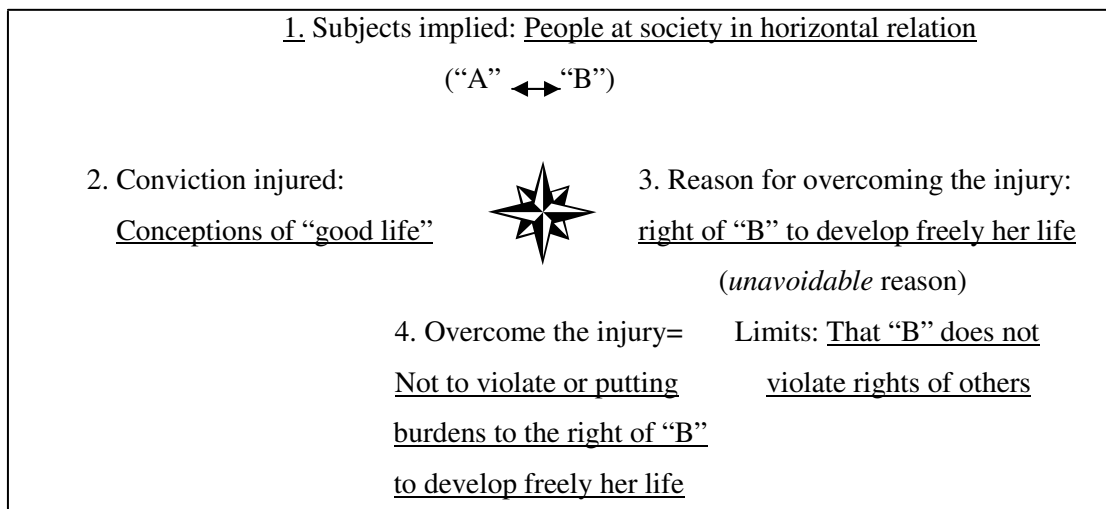
As this scheme suggests, *Horizontal Social Toleration* needs to be taken seriously by both the language of rights and the *politics of difference*. Accordingly, the next section discusses the relationship between the language of rights and the *Horizontal Social Toleration*, while the third centres on the relationship between this toleration and the *politics of difference*.

2. The *Horizontal Social Toleration* and the language of rights

“Today toleration to exist has to be horizontal
as reciprocal respect between men
equal in rights and liberties”
(Tomás y Valiente¹⁴, 1996: 249;
translated quotation).

In this section, we shall see how *Horizontal Social Toleration* expresses core ideas about the language of rights. Because it does so, it is not a coincidence that *Horizontal Social Toleration*'s contents attributed to the formal dimensions of toleration derive from the language of rights (see the graphic 2).

GRAPHIC 2. The figure of *Horizontal Social Toleration*



Source: Own Elaboration

¹⁴ With Francisco Tomás y Valiente this paper is in debt. However, before him, Albert Weale (1985: 47) asserted the need of reciprocity at *equal respect* at society. And a jurist, Ernesto Garzón Valdés (1993), was also very next to the phenomenon of *Horizontal Social Toleration* by talking about a *public reciprocal toleration*, although this author located it in a sphere surpassed by that of rights.

According to the graphic of *Horizontal Social Toleration*, and in broad terms:

- 1) The subjects “A” and “B” involved are people at civil society in a horizontal relationship. To this I will come back later;
- 2) The injury provoked is to the conceptions of “good life” people have;
- 3) The reason to overcome the injury is one *unavoidable*, protected by public institutions: the right of “B” to develop freely her life regardless of the disapproval provoked in “A”. The limit (the *intolerable*) is that “B” do not violate the rights and liberties of others in developing her life¹⁵;
- 4) Overcoming the injury means neither violating nor undermining the right of “B” to develop freely her own life. To this I will also come back later.

It is not a mere coincidence that these contents fill the dimensions of the *Horizontal Social Toleration* if we attend to the hypothetical contract that underwrites *civil society* according to the language of rights. In this contract, the point of departure is that everybody is a subject with the same *right* to develop her life. And in the development of such life, two kinds of disapproval may be provoked in others:

- a. On the one hand, there is the disapproval because the life develops in ways contrary to what others consider the “good life”. We talk in this case about violations of the Good. These violations are thought to be *tolerable* according to the language of rights: the actions or beliefs that provoke the disapproval can continue. The very right of people to develop freely their different conceptions of life implies in its terms the right to do so regardless of the disapproval it provokes in others;
- ii) On the other hand, there is the disapproval because the life developed puts *unfair* burdens on others’ lives. These *unfair* burdens involve violations of the rights and liberties of others. Just rights and liberties are the conditions (civil, political, social, economical and cultural conditions) that people are entitled to so that they can develop freely their lives. The violations of these conditions are thought to be

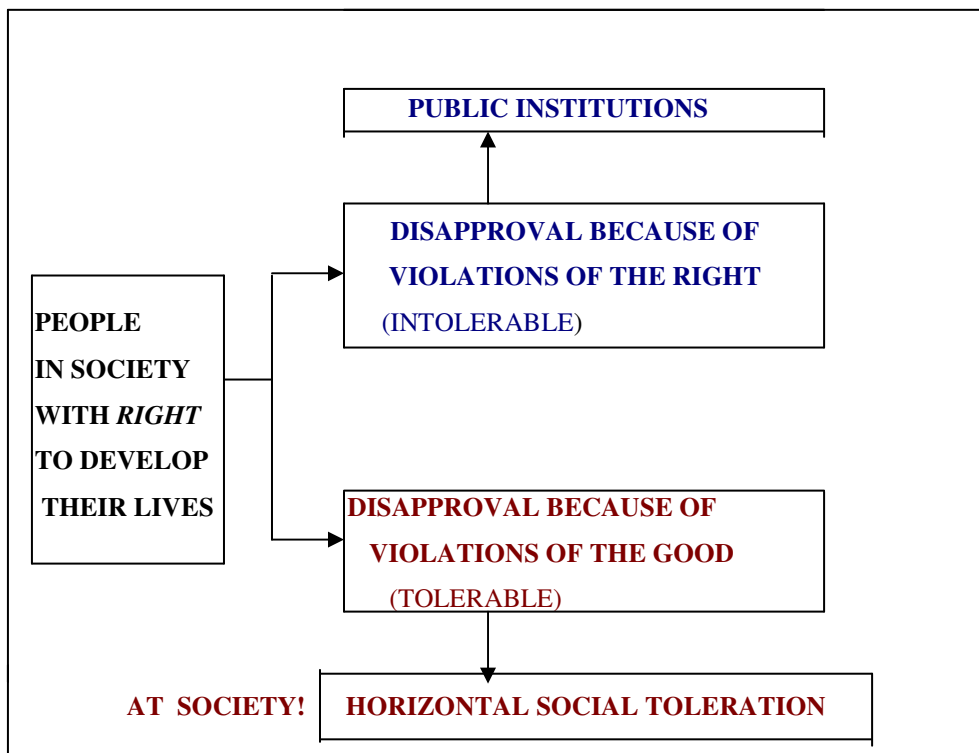
¹⁵ The mention of these limits of toleration in Baldwin (1985: 39), Nicholson (1985: 169), Mendus (1988: 5); Raphael (1988: 147); Horton and Nicholson (1992: 4-5)...

intolerable. They are violations of the *Right*. Unlike the tolerable, now what provoked the injury cannot persist or continue. When confronted with the *intolerable*, something must be done to stop, restrain, or remove it. This is why people go to the courts or the political arena in order to stop the violations of rights and liberties.

Because violations of the *Good* and violations of the *Right* are different (the first violations are tolerable, and the others intolerable), the social contract according to the language of rights establishes two distinct treatments to be given to the disapproval implied respectively:

- i) On the one hand, disapproval of violations of *Right* calls for the use of public institutions and courts (see graphic 3). Public institutions must protect and guarantee rights and liberties. Indeed public institutions are created or rather legitimised for this purpose. The very power people give to public institutions, according to social contract theory, is the power to coerce; that is, the power to not-tolerate (to not tolerate the *intolerable*, i.e. the violations and absences of rights and liberties). To this power it is what people renounce when they abandon the “nature state” and entry into the *civil society*;
- ii) On the other hand, disapproval of the violations of *Good* demands a treatment to remain at society, i.e., to be given only by people at society: it is the treatment of the *Horizontal Social Toleration*. Its action is at the level of society as opposed to institutions. It is the action of people in civil society. It is people in society and not institutions who are expected to tolerate in a horizontal relationship what is *tolerable*. Where the *intolerable* is to be tackled by institutions, what is *tolerable* –the violations of the *Good*–should remain and be dealt with at the level of society. I explain this now.

Graphic 3. The *tolerable* and the *intolerable* and their treatments



It is people in society and not institutions who are expected to tolerate what is *tolerable* because only people, *qua* holders of the right to develop their own lives, can be legitimate subjects “A” and “B” of toleration in the case. According to the language of rights:

- a. Only people can be subject “A” because it is them who can feel injuries of convictions about their “good life”. Unlike institutions if we remember the case of *institutional toleration*, people can certainly feel disapproval because of the ways others understand the “good life”. When people exercise their right to decide and develop their lives they have precisely liberty of conscience, opinion and expression about what the “good life” is. People cannot be expected, still less required, to show neutrality with regards to views of the “good life”;
- b. Likewise, people must overcome the injury of their conceptions of a good life by coming to terms with the differences in belief, conduct or way of life that provoked it, because of the very same right of the others to develop their lives. Those who provoke disapproval in others have right to continue developing their own conceptions of a good life.

The crucial point of the above is that the right of people to develop freely their own lives is what makes all people equally able to be subject “A” as well as subject “B” of toleration. Everybody is EQUALLY called to be subject “A” and “B”. The very same right to develop one’s own life makes it legitimate for people to feel as well as to provoke injuries of the Good. The toleration this involves is not therefore vertical – the condescension of some part of society to another - but horizontal, a duty owed reciprocally by every member of civil society to every other.

Subsequently, *Horizontal Social Toleration* remains at the level of society. People are supposed to be able to overcome as well as to provoke injuries of the *Good* while they develop their different lives in society. With this the due separation between society and institutions has to be. Life in society is to be developed freely without the intervention of institutions insofar as it is only violations of the *Good* and not the *Right* what takes places. At the case and only at the case of violations of the *Right*, that is, with the *intolerable* (violations or absence of civil, political, social, economical and cultural rights of people), institutions must intervene. Institutions intervene when people do not have the conditions they are entitled to develop freely their lives.

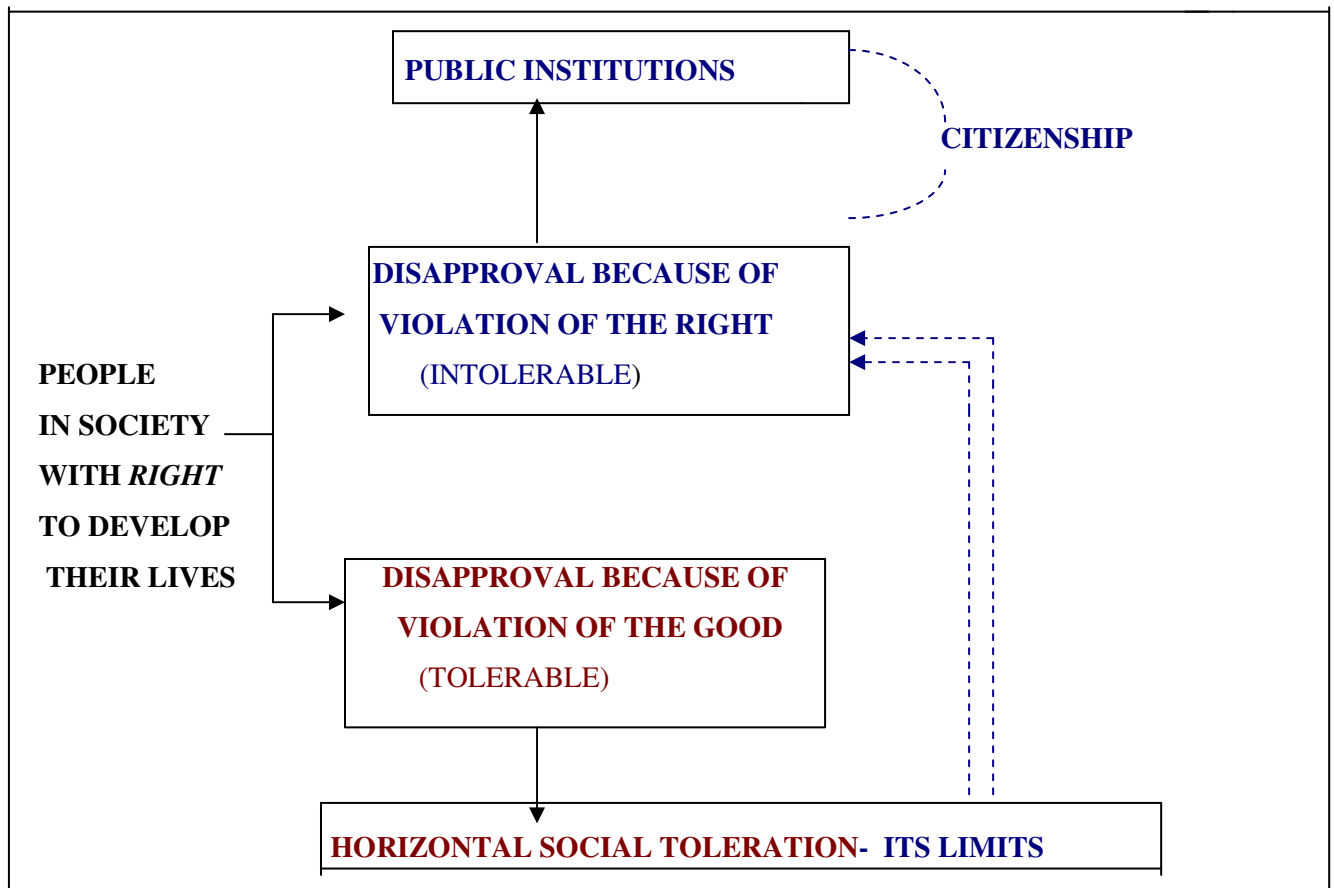
So, the very same logic that justifies *Horizontal Social Toleration* for violations of the *Good* justifies at the same time the use of public institutions for violations of the *Right*. It is the logic of the right of people to develop freely their lives. With this, i.e., with the treatment of *Horizontal Social Toleration* for violations of the *Good* and the use of the public institutions for violations of the *Right*, we talk in some way about the two sides of a same coin:

- i) *Horizontal Social Toleration* is justified on the *tolerable* character that the violations of the *Good* have because of the right of people to develop freely their lives; and
- ii) The use of public institutions is justified on the *intolerable* character that the violations of the *Right* have also because of the right of people to develop freely their lives.

The foundation of the building of rights and liberties is the very same that founds *Horizontal Social Toleration*. Precisely the limits of tolerating are at violations of the

rights and liberties. When the violations of the *Good* become violations of *Right* the door to the public sphere is opened. People go then to the courts. And in the cases where people think they are entitled to conditions that do not yet enjoy public recognition as constitutive of, or as necessary to the exercise of, their rights and liberties, they go to the political arena in order to change this, in order to struggle and protest. Their *citizenship* and their political rights serve to this end. They constitute the “bridge” that spans the initial separation between society and institutions. People move from society and its *Horizontal Social Toleration* to *citizenship* and its political deliberation for defining the ways in which institutions must do their work (see graphic 3 re-elaborated).

Re-elaborated scheme 3:



It turns out that *Horizontal Social Toleration* reflects the very right of people to develop freely their lives when the right is lived out by or “seen” through the eyes of its own holders -people at society- in their mutual legitimate/ tolerable relationships. **The**

legitimate relationships in society include violations of the *Good*. This is what makes *Horizontal Social Toleration* a so delicate attainment. There is more than one way in which people can think or “see” the attainment, because there is more than one way in which people can conceive the right to develop freely their lives. All we know is that the right needs to be thought or “seen” as to be respected in the mutual relationships.

A comprehensive-“totalitarian” liberal view needs to be therefore ruled out from the beginning in the construction of *Horizontal Social Toleration*. People must never be forced to “see” the rights of the others in a particular way. “A” is free to think about why the non-violation of the right of “B” takes place. Perhaps “A” thinks about it in pragmatic terms, or according to religious reasons, or on the basis of ethical convictions... Because of “A”’s right to decide and develop her life, it is not established how exactly “A” must see or think the non-violation of the right of “B”. All what is asked is that “A” does not violate the right. This is why we say that the right of “B” to develop freely her life is the *unavoidable* reason for “A” overcoming the injuries of convictions about the good life “B” provokes. It is the *unavoidable* reason protected by public institutions, although “A” can explain it in whatever ways she wants. In a Rawlsian language:

“It is left to citizens individually, as part of their liberty of conscience, to settle how they think the great values of the political domain relate to other values within their comprehensive doctrine” (Rawls, 1997: 279; see also Rawls, 1993: 127).

Therefore at *Horizontal Social Toleration* the subject “A” is free to think about why the non-violation of the right of “B” takes place. But the freedom of “A” does not finish here. “A” is free also to see or think of course her very right. “A” must never be forced to see her right in a particular way, even in a comprehensive liberal way. “A” cannot be forced to see the language of rights as the reflection of individuality and “deep autonomy” of human beings. The language of rights is not to be founded in a comprehensive liberalism. Perhaps “A” wants a “non-autonomous” life according to the liberal meaning people give to autonomy. The right of “A” to develop her life involves needless to say that “A” is free to develop whatever conception of life she wants. What “A” is required is to not violate the right of the other (“B”) to develop the life she also wants. To not violate the right the others have to develop their lives is the only thing demanded by *Social Horizontal Toleration*. This is what frames the “minimal look” of

people at the language of rights in society, at situations of violation of the *Good*. The look of people to the rights has to be one as to no-violating them¹⁶.

Unluckily we are too used in political theory to privileging the eye of institutions when looking at the language of rights, without considering how the eye of society should be. The eye of society is crucial, though different to that of institutions. I mean that people and institutions have a different way of looking at the language of rights. The eye of society is less demanding than public institutions'. What should be demanded of people as particular agents is implicitly different and less demanding from what should be demanded of public institutions. At this point, while neutrality should be at the level of institutions, *Horizontal Social Toleration* is what should be at the level of society¹⁷.

To conclude this section: *Horizontal Social Toleration* constitutes that minimal look of people in society at the rights of others in situations of injuries to the *Good*. It is **the device necessary in relationships at the level of society because of the demand that people do not violate the right of the others to develop freely their different conceptions of life**. Irremediably, the device is needed. For where people are legitimised to feel injuries of convictions about the good life, overcoming such injuries is unavoidably required.

¹⁶ Great difficulties arise with this without doubt. The debate about justification and motivation for justice is at stage (see Rawls, 1971; 1993; and Mendus, 2002). We need to ask thus why and how the referred “minimal look” of people at the language of rights may take place. When someone feels an injury of convictions about the “good life”, why and how could her conception of good life be *compatible* with the *unavoidable* reason of the right of “B” to decide and develop her life?

¹⁷ This distinction of subjects-looks and activities to be demanded is not usually made in literature on toleration (see Baldwin, 1985: 36; Nicholson, 1985: 172; Horton, 1996: 36; Williams, 1996: 25; Weale, 1985: 18; Newey, 1992: 101).

3. The violations of *Horizontal Social Toleration*.

Its relation with the *politics of difference*

The political-normative phenomenon that *Horizontal Social Toleration* designates is at once very basic and very complex. Every day, people move within its parameters and sometimes violate them. Indeed the violations of *Horizontal Social Toleration* are far from being rare in societies. To understand this, further investigation into what actions or omissions *Horizontal Social Toleration* requires is needed. We do, however, know something in advance about what we will find:

- i) It is not required that the subject “A” renounces her conviction about the good life. “A” has the right to have and develop her conviction¹⁸;
- ii) “A” is required to not violate the *right* of “B” to also decide and develop her life. This involves the non-violation or undermining of the rights and liberties of “B” (the conditions “B” is entitled to develop freely her life).

The difficulties arise at ii). People violate the requirements of *Horizontal Social Toleration* when they violate or undermine the rights and liberties of others because the others injured their convictions about the good life. This implies that to identify the violation or undermining of rights because of an intolerant motivation is a complicated business:

- i) It is difficult to identify the specific motivation people have when they violate or undermine the rights and liberties of others; and
- ii) It is a complex matter to specify the contents of the rights and liberties so as to know when they are violated or undermined.

In spite of these difficulties, it is evident that the physical coercion of subjects is not the only way of violating *Horizontal Social Toleration* (see Raz, 1988: 163). The right to physical integrity is a basic right, but there are more rights (civil, political, social, economical and cultural rights) that can be violated because of intolerance, i.e., under the specific motivation that the other injured convictions about the good life. Thus, for example, if a homosexual who injures the religious convictions of a Catholic did not have access to a job or a house because he injured the Catholic convictions, we

¹⁸ Hence Peter Gardner asserts that there must be possible to respect people without renouncing one’s beliefs and convictions (see Gardner, 1992: 78; see also Heyd, 1996: 14).

would find a violation of *Horizontal Social Toleration* via the undermining of the social-economical rights to labour and dwelling.

I say “undermining” instead of “violation” of social economical rights because it is popular the idea that the social and economical rights are differentiated from classic civil rights with regards to their impact on the relationships between particular agents in society. It is said that if someone does not give, for instance, a job to another, it does not constitute a violation of the right to labour. Likewise, if someone does not sell or rent a house to other, it does not constitute a violation of the right to dwelling. This is not the place to discuss the social-economical problems of the capitalist system¹⁹. The key point in *Horizontal Social Toleration* is the question of the motivation of who do not give a job or a house because the other injured the convictions about the good life. The intolerant motivation is the key issue for it is agreed that, because of the *right* of people to decide and develop their own lives, it is unfair for them to suffer “burdens” of their rights and liberties **because of the injuries of convictions the exercise of the *right* to develop their life provokes in others**. In other words, it is agreed that it is unfair that people are discriminated against in their participation in rights and liberties because they develop ways of life that injure the particular convictions of others. This point is what has inspired most of the current legislation on non-discrimination at works, schools and housings basically.

It would be unfair so in the previous example that a Catholic person did not give a job to the homosexual because this provoked an injury to her religious conception of a good life. The homosexual should be given the job if the only reason to not do it is the injury of the Catholic convictions. Thus “A” must not discriminate against “B” for the job. **Herein lies the overcoming of the injury of convictions that is central to *Horizontal Social Toleration***.

The meaning of the violations or undermining of rights originated through violations of *Horizontal Social Toleration* is very special and specific, as the previous example makes plain. It is not every kind of violation or undermining of rights that is at stake. The violations of *Horizontal Social Toleration* are only those violations or undermining of rights motivated by intolerance (because someone injured the convictions of other about the good life). In such a way, the violations or undermining of rights we treat are special because of several points to be explained:

¹⁹ See Gill (2002).

- i) The special damages that people as subjects “B” of toleration suffer through these violations;
- ii) The special institutional difficulty of identifying and avoiding the damages (of this the formulation of politics of difference is a clear proof as we will see); and
- iii) The putting in check the foundation of language of rights. The violations of *Horizontal Social Toleration* threaten in a very special way the point of departure of the social contract.

Let us observe first the special damages involved in violations of *Horizontal Social Toleration*. To begin with, there is the damage to the rights themselves because of their violation or undermining. This is the damage to the civil, political, social, economical or cultural conditions that people are entitled to in order to develop freely their lives. At the example of the homosexual, this damage is illustrated with the undermining of the social-economical right to work insofar as the Catholic does not give the homosexual the job because of his homosexuality. This said, to the damage to the rights it is added an “extra” damage: the damage to the difference, given the intolerant motivation for the violation or undermining of rights. The damage to the difference is “extra” since it is absent at the other kinds of violations or undermining of rights, i.e., those motivated by anything else than intolerance.

The damage to the difference is one to the *legitimacy* of the very difference of “B” with regards to “A”. Such difference is treated unfairly as *intolerable*. In the example again, the homosexual would suffer by knowing that for the Catholic it is intolerable to work with him because of his homosexuality. The homosexual would be prone to feel uncomfortable with his difference with regards to “A”, i.e., with his own homosexuality. This damage is not one subjective or alien to the language of rights. The damage to the difference has to be with the damage to the legitimacy of the exercise the subject “B” (in this case, the homosexual person) makes of her own right to develop freely his life²⁰.

²⁰ Even the damage to the difference can have to be also with the damage to the legitimacy of “B” *qua* equal holder of the right to develop his life. This is the case of racial intolerance. Here it is not a concrete exercise of the “B”’s right what is intolerable to “A”, but “B”’s being equal holder of the right to develop freely the life.

Besides and because of the parallel damages to the rights and to the difference, there exists a third damage at violations of *Horizontal Social Toleration*: it is the damage to membership of civil society. It is a fundamental axiom of modern liberal thought that the members of the *civil society* conceived according to the language of rights must not be required to share the same conceptions of life to access and participate in the conditions that would allow develop freely any life. In *civil society* people are to develop freely their lives with rights and liberties without having, for all that, to share the same conception of life. All people are human beings and, as such, they are equal holders of the right to develop freely their own lives. Then in civil society the only *intolerable* are the violations of rights and liberties, not the differences among people. Because of this, “B”’s membership of civil society would suffer through the violations or undermining of rights motivated in intolerance to his difference (motivated because for someone the *tolerable* was *intolerable*). Moving back to the example of the homosexual, his membership of civil society would suffer by his knowing that his very homosexuality is intolerable for the Catholic and this prevents him from participating fully in rights and liberties at society. The homosexual would feel that for some people he is to be heterosexual in order to apply for a job.

Nonetheless, on the other hand, someone could say that the associations created to share common characteristics or a determinate end or conception of good life (*private associations*) have a certain right to choose and discriminate their members and these associations operate just within *civil society*. At our example of the homosexual, let’s imagine thus that the job he applies belongs to a religious association that has created the firm to share the same ends. In such a case, the firm could be right in discriminating the person who injures the beliefs of the association. This is a case too hypothetical and to it I will say that membership in the *civil association* is indeed distinguished from membership in associations created to share a determinate substantive end or conception of good life²¹. But precisely, because the *private associations* operate within the *civil society*, they can never become so comprehensive and powerful that those who injure their convictions of life stop accessing and participating in rights and liberties at society. If this happened, the society itself would stop being a *civil society* to become a *private association*. The limits of the civil society and its toleration would be broken then. People would stop being free to feel as well as to provoke injuries of convictions of the

²¹ See here the notion of *enterprise associations* for shared ends in Oakeshott (1990).

Good. Because of it, membership of the civil association needs to be taken seriously. As argued Kant:

“Where a multitude of persons live in such a way that they affect one another, they are under moral necessity to enter together into a *civil society*” (Kant, in Herman, 1996: 175).

The pressure to assimilate, second-class citizenship, segregation at work and in neighbourhoods, the creation of ghettos reflect each in their own way the breach of civil society and its *Horizontal Social Toleration*, or rather the accumulation of the effects of the breach (see Young, 2000).

It is worth underlining the peculiar character of the violations or undermining of rights have when their origin lies in intolerance. For it suggests an intrinsic institutional difficulty in tackling the violations or undermining of rights and their damages. Something that *the Horizontal Social Toleration* showed about the language of rights (in section 2 above) complicates the effectiveness of any institutional legislation on non-discrimination. There is, to be specific, an initial separation between civil society and institutions in the interstices of which the issues that are at stake arise. It is people in society who are expected to tolerate what is tolerable. People are supposed to overcome their injuries of convictions about the “good life” while they develop their own lives. Just because of this, the burdens of rights that are threatened by the intolerance of people are intrinsically difficult to be taken into and demonstrated to the public sphere. Public institutions were created under the presumption of a civil society that tolerates the tolerable. Because of this, it is not a mere coincidence that in order to tackle the damages involved in violations of *Horizontal Social Toleration*, institutions would have to do something alien to their proper function: they would have to tackle the motivation of the subjects when they violate rights and liberties, which is extremely delicate²².

Think for a moment about the first example of the homosexual. The Catholic could always argue that anything else than intolerance was in fact what motivated him to not give the homosexual the job (the motivation could be that the homosexual did not present enough competence for the job).

²² For the difficulties of proving discriminations at society, see Galeotti (2002: 144).

Given the innate limits of public institutions to tackle breaches of *Horizontal Social Toleration*, it can make sense for the case of those that are systematic or widespread in societies to support the so-called *politics of difference* (see Young, 2000; Phillips, 1995: and Galeotti, 2002). These politics arise precisely to alleviate the oppression of those people who suffer too violations or burdens of their rights and liberties because of the injuries of convictions of others.

The double logic of the politics of difference, i.e., the logic of positive discrimination or redistribution of rights and the logic of recognition of the difference, works on the premises involved in violations of *Horizontal Social Toleration*:

- i) The logic of positive discrimination and redistribution of rights focuses on the violations or burdens for the rights and liberties of people. The redistribution is to alleviate the damage to the rights;
- ii) The logic of the *recognition* of the difference focuses on the motivation lying at the violations or undermining of rights. The *recognition* is to alleviate the damages to the difference and to membership of society. People would need this as far as they would have suffered accumulated damages to the equal dignity/ legitimacy of their differences and damages to their membership of society. The very violations or undermining of the rights had its origin in such damages²³.

To end the section, the violations of *Horizontal Social Toleration* put in check the language of rights by denying the point of departure of the social contract: the right of people to develop freely their lives. The “extra” damages this denial provokes constitute the very essence of the structural injustices that the *politics of difference* tries to tackle.

4. Conclusions

This paper has presented a concept of toleration not yet ready to be surpassed. Quite to the contrary, *Horizontal Social Toleration* is to be taken seriously and urgently. *Horizontal Social Toleration* is not something different from rights. It is not to be considered apart from the language of rights. It just articulates the right of people to develop freely their different conceptions of life in situations of violations of the *Good*.

²³ Perhaps more than one violation of the *Horizontal Social Toleration* is necessary for people suffering these damages. I am not sure. I mean that, for example, for the homosexual his homosexuality may not be really threatened until he suffers several violations of the *Horizontal Social Toleration*. This is why the *politics of difference* have focused in groups with a history of systematic or widespread violations.

The first section of the paper discussed toleration as a general concept, showing that *Horizontal Social Toleration* is just one kind of toleration, in contrast to other possible types or figures. Toleration is a polyhedral concept that allows different figures. Some, such as *institutional toleration* and *vertical social toleration*, definitively deserve to be surpassed through the language of rights and the language of difference.

The second section centred on the concrete figure of *Horizontal Social Toleration* as arising in a very special way from reflection on *civil society*'s contractual basis, conceived according to the language of rights. The connection between violations of the *Good* to remain at society and violations of the *Right* to be tackled by public institutions was developed.

The third and last section has analysed the meaning of violations of *Horizontal Social Toleration*. These violations give rise to the damages that the *politics of difference* tries to alleviate through its logics of redistribution of rights and recognition of difference.

One may or may not agree with the *politics of difference*. Without any doubt these politics are complex. But what is certain is that the damages they try to alleviate are real and dramatic, according to the very language of rights. Perhaps the following example is the clearest of all. If a woman is hit while being shouted at for being a "Jew!" there is not only the damage of the violation of her right to physical integrity. There is also the damage of her tragically perceiving that being a Jew is what provoked the hitting (the violation of rights). This last would create in turn the subsequent damage to the legitimacy of the difference of the woman (and with it of her right to develop freely her life) as well as the damage to her membership of civil society.

With this, answering the question of the professor I mentioned at the beginning, the extra-value that the idea of *Horizontal Social Toleration* adds is revealed by its capacity to capture the extra-damages that its violation entails according to the language of rights. *Horizontal Social Toleration* is the device necessary in the relationships of civil society because of the minimal demand that people do not violate the right of the others to develop freely their different conceptions of a good life.

BIBLIOGRAPHY

- BALDWIN, Thomas (1985): "Toleration and the right to freedom", in S.Mendus and J.Horton (eds) *Aspects of toleration*, Methuen: London, pp: 36-52.

- BROWN, Wendy (2006): *Regulating aversion. Tolerance in the age of identity and Empire*, Princeton University Press, New Jersey.

- CRISP, Roger (1992): "Communitarianism and toleration", in J.Horton and P.Nicholson (eds.) *Toleration: Philosophy and Practice*, Avebury: Hants, pp: 108-125.

- DEL ÁGUILA, Rafael (2003): "La Tolerancia", en *Teoría Política: poder, moral, democracia*. Aurelio Arteta, Elena G. Guitián, Ramón Máiz (eds.). Ciencias Sociales, Alianza Editorial. Madrid. pp: 362-383.

- DEL ÁGUILA, Rafael (2004): "Tolerancia política y Democracia", *Revista Aragonesa de Administración Pública*. núm. 25, pp. 11-45.

- ESCÁMEZ NAVAS, Sebastián (2004): "Ideas liberales de tolerancia: aspectos contemporáneos", thesis directed by Fernando Vallespín, Universidad Autónoma de Madrid.

- GALEOTTI, Anna Elisabetta (2002): *Toleration as Recognition*, Cambridge University Press.

- GARDNER, Peter (1992): "Propositional Attitudes and Multicultural Education, or Believing Others are Mistaken", in J.Horton and P.Nicholson (eds.) *Toleration: Philosophy and Practice*, Avebury: Hants, pp:67-90.

- GARZÓN VALDÉS, Ernesto (1993): "No pongas tus sucias manos sobre Mozart. Algunas consideraciones sobre el concepto de tolerancia", *Derecho, Ética y Política*. Centro de Estudios Constitucionales: Madrid. pp: 401- 415.

- GILL, Louis (2002): *Fundamentos y límites del capitalismo*, Editorial Trotta, Madrid.

- HERMAN, Barbara (1996): "Pluralism and the community of moral judgment", in Heyd (ed.) *Toleration, an elusive virtue*, Princeton: New Jersey, pp: 60-80.

- HEYD, David (1996): "Introduction", in Heyd (ed.) *Toleration, an elusive virtue*, Princeton: New Jersey, pp: 3-17.

- HORTON, John (1996): "Toleration as a virtue?", in Heyd (ed.) *Toleration, an elusive virtue*, Princeton: New Jersey, pp: 28-43.

- JOHNSON, Peter (1992): “As long as He Needs me? Toleration and moral character”, in J.Horton and P.Nicholson (eds.) *Toleration: Philosophy and Practice*, Avebury: Hants, pp: 146-164.

- LOCKE, John (1991): *A Letter Concerning Toleration*, in Mendus and Horton (ed.) *John Locke, A letter Concerning Toleration in focus*. Routledge. First published in 1689.

- MILTON, John (1956): *Areopagitica*, Montaigne: Paris. First published in 1644.

- MENDUS, Susan and HORTON, John (eds.) (1985): *Aspects of toleration*, Methuen: London.

- MENDUS, Susan (1987): “Introduction”, in S. Mendus and D.Edwards (eds.) *On Toleration*, Clarendon Press: Oxford. pp: 1-16.

- MENDUS, Susan and HORTON, John (eds.) (1988): *Justifying Toleration. Conceptual and Historical Perspectives*, Cambridge University Press.

- MENDUS, Susan (1989): *Toleration and the limits of liberalism*, MacMillan: Hampshire and London

- MENDUS, Susan and HORTON, John (eds.) (1991): *John Locke, A letter Concerning Toleration in focus*. Routledge

- MENDUS, Susan (2002): *Impartiality in Moral and Political Philosophy*, Oxford University Press.

- NICHOLSON, Peter P (1985): “Toleration as a moral idea”, in S.Mendus and J.Horton (eds.) *Aspects of toleration*, Methuen: London. pp: 158-173.

- NEWY, Glen (1992): “Fatwa and Fiction: censorship and toleration”, in J.Horton and P.Nicholson (eds.) *Toleration: Philosophy and Practice*, Avebury: Hants, pp: 91-107.

- NEWY, Glen (1999): “Tolerance as a Virtue”, en Mendus y Horton (eds.) *Toleration, Identity and Difference*, New York, Palgrave Publishers, pp: 38-64.

- OAKESHOTT, Michael (1990): “On the civil condition”, second essay de *On Human Conduct*, Clarendon Paperbacks. pp: 108-184.

- PHILLIPS, Anne (1995): *The Politics of Presence. The Political Representation of Gender, Ethnicity, and Race*. Clarendon Press, Oxford.

- RAWLS, John (1993): *Political Liberalism*, Columbia University Press, New York.

·RAWLS, John (1997): “The Domain of the Political and Overlapping Consensus”, reeditado en R.E. Goodin y P.Pettit eds., *Contemporary Political Philosophy: An anthology*. Blackwell: Oxford. pp: 273-287.

·RAZ, Joseph (1994): “Multiculturalism: A liberal perspective”, en his *Ethics in the Public Domain*. Clarendon: Oxford. pp: 170-191.

·STUART MILL, John (1971): *Sobre la libertad*. Madrid: Aguilar. First published in 1859.

·TAYLOR, Charles (1992): “The Politics of Recognition”, en A. Guttman ed., *Multiculturalism. Examining The Politics of Recognition*, Princeton University Press: Princeton, NJ. pp: 26-73.

·WALZER, Michael (1997): *On toleration*, Yale University Press: New Haven.

·WEALE, Albert (1985): “Toleration, individual differences and respect for persons”, in S.Mendus and J.Horton (eds.) *Aspects of toleration*, Methuen: London. Pp: 16-35.

·YOUNG, Iris Marion (2000): *Inclusion and Democracy*. Oxford University Press: Oxford.