The dialectics of toleration and the power of reason(s): Reply to my critics

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(Translated by Ciaran Cronin)

Philosophers – even Kantians – have dreams. And one of them is to have a group of great minds discuss your work and force you to surpass your previous philosophical attempts. With the chapters collected in this volume, the first part of that dream has come true; whether the second part has also come true is for the reader to judge. I will forever be indebted to the friends and colleagues who did me the honour of delving deeply into my ideas and pointing out their possible shortcomings to me. In one way or another, all of them take issue with the rationalism of my view, which they find excessive or one-sided. The challenges they pose are major ones and require us to reflect together about the very nature of political philosophy.

I The power of arguments (reply to Teresa Bejan)

It is a great pleasure and honour to be the subject of Teresa Bejan's criticisms, since she is one of the foremost political theorists and intellectual historians of toleration. Her book *Mere Civility*¹ masterfully reconstructs and interprets the discourses on toleration in seventeenth-century England (including its American colonies) emphasising the importance of the social virtue called civility. Her brilliant style brings the thinkers she discusses and the contexts in which they developed their ideas back to life, and it shows how much power their thinking retains.

Bejan is an exemplary close reader and she exhibits a superb grasp of my project in general and of *Toleration in Conflict* in particular. She rightly points out that my historical narrative is primarily intended to be a history of arguments rather than a history of ideas which are explained exhaustively with reference to their historical contexts.² I believe that there is great merit in a detailed history of ideas, and I confess that my attempts to situate the authors I discuss in their historical contexts and networks often fail to measure up to the standards of historical experts, as Bejan indicates (TB 33)³ when she reminds us of the many aspects of the biographies of Locke or Bayle which must be taken into account when we try to understand the development of their thought. But I cannot accept her criticism that I neglect the practical experiences of the thinkers I discuss and reduce their context to 'high-altitude snapshots of state laws and policies' (TB 34). With regard to Bayle, for example, I go to considerable lengths to demonstrate how his experiences of persecution in France and the harassment he suffered at the hands of his fellow Huguenots in the *refuge* community of Rotterdam shaped his thought and how this treatment was a reaction to his works. I am convinced that we cannot understand a theorist of toleration if we do not understand the social struggles and conflicts in which his or her thought was formed.

Nevertheless, there is a deeper issue at work here. Apart from doubts about whether a historian of past centuries can ever claim to have shown 'how it really was' – *wie es eigentlich gewesen ist*, to cite the words of Ranke which Bejan (TB 31) uses – what I have in mind is the question of what it means to take a past thinker seriously *as a thinker*, as a philosopher. For we may treat him or her as an object of historical study and paint a detailed picture of all of his or her experiences, readings, networks and so on – in other words, we may try to draft a complete social-noumenal map of an author's formation. But – and here I follow Gadamer's hermeneutics – I think that we will fail to understand a philosopher if we do not relate to his or her works as works of philosophy, as raising truth claims whose genesis can be partly, but never fully, explained by their

social context, since we can never completely reconstruct a noumenal map of a philosophical mind in a genealogical mode. But however perfect (or imperfect) our understanding of the genesis and context of an idea or a body of thought may be, we do not understand a philosopher in the sense of *Verstehen* (in contrast to *Erklären*)⁴ if we do not relate to the validity claims raised by his or her work as truth claims *for us*. These claims were addressed to his or her contemporaries, to be sure, but, more than that, they developed an argument that ought to be taken seriously and that may transcend its particular context, even though it can and should also be understood as part of that context. The point of my history of arguments must be understood in this sense: they are ideas in context, but they are also ideas beyond context – or at any rate their contexts are multiple, and one of them is the context of reasoning about what is right.

With respect to that perspective, Bejan objects to what she regards as the progressive narrative of my work that it is not surprising that the 'preferred foundation and its corresponding conception of toleration should emerge victorious in his historical account' (TB 38), because it follows a 'preordained trajectory of the respect conception' (TB 38). And she concludes: 'What is the use, we might ask, of doing history or genealogy, if we are not going to learn anything more from our encounter with the past than what we already knew already going in?' (TB 38). I would like to offer a few remarks in response to this challenging criticism. First, as I hope is clear from the book as well as the lead essay in this volume, I am far from regarding the history of toleration, whether understood as real history or as a history of moral reflection, as a history of progress *tout court*. In my dialectical history, there have been steps of regress as well as steps of progress, as well as many steps in between; the real social space of noumenal power never fully clears up in a rational way. All I claim is that, *when* progress has been made, it was a matter of overcoming false and one-sided justifications of toleration and establishing more reciprocal terms of toleration. But I make no general claim about the facts of such progress, past or present. So

the respect conception is not ‘victorious’ in any historical, Hegelian or Whiggish sense. It is still contested and is often marginalised, while the permission conception is the dominant one, even in democratic societies. That is the implication of my critical theory of toleration.

But second, and even more importantly, I do hold that a Baylean – sometimes proto-Baylean, sometimes neo-Baylean – justification of the respect conception is superior to the others. And although I am not sure exactly how I did what I did looking back at the process of writing this long book, I don’t think it was ‘wishful thinking’ (TB 38) to argue that one particular strand of the justification of toleration is more justifiable than others, namely one which does indeed connect Bayle and Rawls and which I radicalise by constructing a reflexive justification of toleration based on the principle of justification itself (something which Rawls never did). But even though I interpret Rawls in a (hopefully illuminating) Baylean light, I do not turn Bayle into a Rawlsian. And I am indebted to Teresa Bejan for pointing out to me (just recently, in January of 2019) that she found notes on Bayle in Rawls’s papers, probably stemming from the early to mid 1960s.⁵ That is highly interesting, similar to Rawls citing Bodin’s *Colloquium heptaplomeres* approvingly in his reflections on religion and reasonable disagreement (a reference of which I was not aware when I made the connection between Rawls and Bodin).⁶

These are important findings in their own right. But my point is a rather different one in the space of philosophical reason(s) and does not depend on genealogy or history, because Bayle’s (or Bodin’s) arguments can be understood *better* in the light of Rawls’s conception of ‘reasonable disagreement’, and Rawls can be understood *better* by reading him in the light of Bayle’s normative and epistemological arguments for toleration, because exactly these two components appear in Rawls in a form that is similar in some respects and quite different in others. Does this mean that I fabricate a preordained history in which Bayle and Rawls are destined to emerge victorious? I don’t think so. I merely reconstruct a set of powerful arguments as these emerged in very different contexts

(in the one case, seventeenth-century Calvinist thought, in the other, twentieth-century Kantianism with a Protestant background) and reconstruct their philosophical implications and claims (as well as their similarities and differences). The truth that emerges is not one beyond context, for Bayle developed his thought in the conflictual situations of his time; but nevertheless the power of his arguments transcends this context and is applicable to other social times and places. If we disregard that argumentative power, we do not really understand what his philosophy is about (in the sense of *Verstehen*), because we have to read and interpret him in our own language, which is the only one available to us.

So I think I explored the history of arguments for toleration with a philosophical as well as a historical intention, but the philosophical one was primary. This is why I reconstructed and distilled twenty-five different justifications of toleration in a number of versions and forms. Some are more dated than others, but all of them still speak to us, not because we are contemporaries of Augustine or Montaigne, but because their thought has a certain enduring force and we had better have an eye and an ear for their messages.

I did not and could not foresee what I would find in the dense history into which I delved; but I admit that I was looking for something, namely the best possible reconstruction of the many arguments for toleration that I could find. And my aim was not to provide a historical protocol of these arguments but to try to take them seriously as arguments, with their strengths, weaknesses and dialectical failures. Along the way I encountered many surprises and (for me) unknown, interesting thinkers, so I don't think I only found what I already knew. Yet I admit that I cannot imagine how a historian of ideas could explore a field of thought and knowledge without any *Vorbegriff* of what can be found there. That pre-judgement can and must be corrected, if necessary; but I am not sure how different my way of doing history is from a theorist who finds the virtue of civility in the works of a number of seventeenth-century authors to be a response to the problem of

intolerance. We find a lot of new and surprising things when we conduct historical research; but if we do not begin with some notion of what we are looking for, we will find nothing.

However, one thing one can learn, and I think I definitely did learn, even from less well-known thinkers, is modesty. For we often think, in some quarters of philosophy more than others, that we were the first to have a particular idea or develop a particular argument, so that we do not make much of an effort to look into the past of the discourse in which we are engaged to discover whether that idea existed previously and, if so, in what form and what counter-arguments were raised against it. That is a poverty of philosophy, which is often paired with immodesty, and historical knowledge helps us to overcome that poverty. I think that Bejan and I can agree on that (at least).

When it comes to what underlies our different conceptions of the virtue of tolerance, it appears to be a variant of the difference between the views of a Kantian moral philosopher and those of an empiricist-minded virtue ethicist. However, I think that the difference which Bejan discovers rests in large part on a misunderstanding – in fact, on two misunderstandings.

The first stems from a misreading of how I use the term ‘respect’. While I, like any Kantian, distinguish between respect and esteem and stress that respect toleration means respecting others as equal *persons* even though one objects to their *views* as false, wrong, crazy or blasphemous, Bejan (like many other writers)⁷ gets my position wrong when she assumes that my notion of respect is close to that of the UNESCO declaration, which states that ‘tolerance *is* respect, acceptance and appreciation of the rich diversity of our world’s cultures’ (TB 39). Not only is that not what I mean by respect; it also articulates a view in which there is no room left for objection, so that, according to my analysis, it is not even a view of toleration. That is a conceptual mistake that I am at pains to avoid.

Second, in her book Bejan criticises an interpretation of toleration that she calls *reductio at respectum*, by which she means a reduction of the complex virtue of civility as toleration to ‘a form of Neo-Kantian

respect for persons.⁸ In a recent review article, she scolds me for such a reduction,⁹ and this also seems to be at work in her criticism that my Kantian view, which asks persons to ‘imaginatively adopt the perspective of self-legislator’, may be ‘one thought too many’, as it were (TB 34), to use Bernard Williams’s nice phrase.¹⁰ Without that additional thought, tolerance appears as what it realistically is according to Bejan, namely ‘the habitual forbearance, the mental (and physical) toughness, of “putting up” with it and not asking why’ (TB 34). In her book, she stresses the plurality of motives for civility as tolerance, such as ‘unreflective habits of good breeding, from respect not for others but for God or the social order, from a recognition of another’s superior (or inferior) merit, from personal pride or chauvinism, or even from private intolerance and evangelical zeal’.¹¹ The reason why I think that this is a misreading of my view is that I consider the respect conception of toleration (based on a neo-Baylean justification) as only *one* among a considerable plurality of conceptions and stances of tolerance. It is a mistake not to recognise that, of course, I regard *all* versions of the other conceptions of toleration – permission, coexistence and esteem – based on all kinds of justifications and motives (religious, pragmatic, sceptical, epistemic, strategic and so on) as forms of toleration. So there is simply no such *reduction ad respectum*. That assumes that my *normative* argument for one particular justification and form of toleration constitutes the whole of my *analytic* and *reconstructive* argument. But if this was what I meant – namely that only that one conception and justification deserves to be called toleration – why would I write a book on four conceptions and twenty-five justifications of *toleration*? So when I am reminded of the many forms of toleration and its motivations assumed, I am eager to learn more; but I think I have an understanding of quite a few of these forms and motives. It is not part of my project to reduce this spectrum.

But Bejan might still think, as some of my other critics in this book do, that the respect conception based on a neo-Baylean and neo-Kantian perspective is not a plausible interpretation of tolerance at all because, let us say, it is too far removed from real life and what people

really think – or thought. So even if Bejan agreed that the argument I make here is a normative one, she seems to think that it is based on one thought too many, because it is indeterminate (TB 36f.) or is an example of Lutheran dogmatism (TB 37) in a highly rationalistic fashion (and in that respect is quite un-Lutheran). Again, many of these arguments derive from a categorical conflation of the normative and the empirical. For I would never deny that the term ‘respect’ is interpreted in very different ways in different cultures; but that is not a reason for not developing a critical conception of respect that relates to such ‘*contingent* historical factors’ (TB 37). Likewise, I do not see why we should not develop a critical, reflexive conception of toleration which can serve as a norm for evaluating the many other forms and justifications for toleration. The only reason for rejecting such an approach would be a thoroughly historicist scepticism concerning the possibility of making normative arguments at all that achieve a certain distance from social contexts, a distance created by (finite) reason. I suspect that this is what underlies the differences between us, and in that respect I must plead guilty: I believe that reason is a faculty that enables us to evaluate and distinguish better from worse arguments on the basis of principles. And I believe that this is neither one thought too many nor a rationalist dream, but instead just what we, as *participants* in social struggles, ought to do – namely reflect on the false justifications to which we are subject and may have adopted and question them. This is the most contextual, situated attitude of which critical minds like Bayle are exemplars. We can never be sure that we will not reproduce blind spots ourselves; but in a conflict in which both sides think that their killings are in accordance with God’s will, we would hope with Bayle that there is a voice of practical reason that cuts through this cruel clash of worlds of interpretation. The history of toleration and intolerance that I reconstruct is a history of social criticism, and without rational standards, such criticism is doomed to fail. A historicism that leaves no room for such critique turns into an affirmative mode of thought.

II Toleration and the masochism of reason (reply to Chandran Kukathas)

It is always a great pleasure and challenge to engage with Chandran Kukathas's work. He is unrivalled in how he questions established ideas and arguments in political theory by analysing the ways in which they constrain the value and practice of liberty – or, as in this wonderful piece, toleration as a limitless, and in that sense libertarian, virtue of reason.¹² Like Bejan, Kukathas does not think that there is a thought missing in my work but rather that it contains one too many (CK 57), although this time it is not an overdose of Kantian rationality, as in Bejan's critique, but quite the opposite. Kukathas wants me to become more of a Kantian discourse theorist and to interpret toleration exclusively as a virtue of reason that heeds the forceless force of the better argument and not as a virtue of justice at all. But whereas he thinks that because of the way I make toleration dependent upon justice (in the respect conception only, I need to add), toleration ceases to exist and becomes an 'ex-concept' (CK 68, n. 29),¹³ I believe that if we followed his interpretation of Bayle, not only would Bayle cease to be an inspiring thinker of toleration, but that three important concepts would be jettisoned, namely toleration, reason and justice. Let me explain.

Kukathas and I share an admiration for Bayle's genius.¹⁴ We cherish Bayle for presenting a proto-Kantian argument that tries to develop principles of rational impartiality (see the initial quote on the first page of Kukathas's chapter) which can identify the errors of the persecutionists and are not just theoretical but also practical principles, conveying 'truths of morality' (CK 51). We agree that Bayle developed various arguments against the perceived legitimacy of persecution, some religious, some moral and some epistemological. But while I think that the argument for the absolute freedom of the erroneous conscience (which has deep roots in Christian discourse and found an outstanding champion in Abelard)¹⁵ was an error that Bayle was quick to correct, Kukathas tries to develop that argument further and thinks

that Bayle's main importance resides there. By contrast, I argue that Bayle realised that that argument led to the paradoxical conclusion that the 'conscientious persecutor' was to be tolerated,¹⁶ and I believe that he found a way of resolving the problem, namely by reverting to the normative argument about the reciprocity of claims demanded by reason in combination with the idea of reasonable disagreement. Bayle did not believe that private conscience which was blind to the 'natural light' of reason ought to be tolerated, although he did not advocate forcing the unreasonable to change their ways as long as they did not act violently themselves. He explicitly states that 'a religion which forces conscience has no right to be tolerated'.¹⁷ For otherwise, *religious* conscience, dictating persecution, would completely usurp the place of reason and morality in *moral* conscience and lead to all of the conflicts and crimes that Bayle toiled hard to overcome – and the natural light would be extinguished.

However, Kukathas's interpretation, contrary to his intention, does extinguish this light. According to him:

The one mistake Bayle makes ... is to argue that it would be justifiable to use force to prevent the attempt by some to persecute others, even if it would not be justified to use force to change the minds of persecutors. If force cannot be justified by a claim to be in possession of the truth, it is hard to see how the use of force can be justified in any circumstances. (CK 54)

But here, I fear, it is not Bayle who makes a mistake but Kukathas. First, defining the realm and drawing the limits of toleration with the help of reason must be possible, for otherwise why write a treatise on toleration as a duty which all reasonable persons must accept? Second, to draw such limits does not mean that the exercise of force or violence is justified – for that, additional circumstances must exist. And third, if such force were exercised, it would not be exercised because one is 'in possession of truth' but in order to prevent intolerable crimes from being committed. And fourth, Bayle thinks that the natural light of reason, as a faculty of practical reason that would unite all human

beings if only they consulted it properly, is essential for the very definition of such crimes as immoral acts. So the use of force is not justified by an arrogant claim to possess the truth in speculative matters, which would indeed, as Kukathas says, be authoritarian and at odds with Baylean and Kantian rationalism. However, it is justified by the 'truths of morality' (CK 51) which the natural light conveys and which Bayle is at pains to emphasise. He argues that while agreement is not to be expected about speculative truths, human reason can know 'moral laws without exception' which 'enlighten every man coming in to the world'.¹⁸ This is what he means when he argues in the quotation with which Kukathas begins his chapter that impartial reasoning makes people understand the errors of colonising morality by religion and of declaring crimes to be good deeds.¹⁹ In Kukathas's interpretation, this difference between religious truths and moral truths gets lost. But that difference, which I call a proto-Kantian *deontological difference*, is what matters to Bayle. Justice as reciprocity must set the limits to what religion asks or allows you to do towards others.

With respect to the rationalism Kukathas defends, it is one thing to say that one can never win an argument by the use of force, as every good Habermasian or Kantian or Baylean would have to say, but it is quite another to conclude that the 'use of violence could never be justified by appeal to reason' (CK 54), since in that case one would never have good reasons to stop a killer or a violent attacker. On the contrary, one even has a well-founded duty to do so – however not in order to win an argument, but in order to save a person from being killed or attacked. Otherwise, reason turns into a powerless masochistic device, because it would never be conclusive enough to lead to a practical judgement. It would have to tolerate its enemies and be willing to be persecuted or destroyed by them.

In my normative argument, and I think in Bayle's, too, reason and justice are connected, for the limits of toleration need to be drawn by considerations of reciprocal and general justice. Kukathas, however, regards this as a mistake. He lists various reasons for this. First, he believes that toleration is not a normatively dependent concept at all

but an ideal in its own right. In response, I think that toleration *ought* to be a virtue of justice but not that it necessarily *is* (here, as above in the context of Bejan's critique, my normative and reconstructive arguments should not be confused). Furthermore, I do not think that Kukathas successfully defends the claim that toleration is an independent ideal, since he makes it completely *dependent* upon reason, arguing that for the right understanding of toleration 'a commitment to reason and reasoning is fundamental' (CK 60). So it is normatively dependent in his interpretation as well, since he refers to it as the 'moral stance which is most consistent with a respect for reason' (CK 63).

The main reason why Kukathas thinks that toleration has nothing (or very little) to do with justice and that we 'eviscerate toleration by subordinating it to justice' (CK 60), however, is an essential one, and it goes back to what I noted above, namely his scepticism concerning practical reason. He believes that if justice provides the grounds and limits of toleration, it implies that we need not and maybe must not tolerate what 'we define as unjust', which in his view is a 'pretty important class' (CK 64) of things we disagree about: 'Toleration cannot simply be a matter of justice because we actually disagree about what is justice.' And thus 'we should not seek to enforce our view of justice when we are powerful enough to do so' (CK 64). But here I beg to differ. First, I do not see how a political order of toleration could ever come about without at least a minimal agreement on fundamentals of justice. And in fact, Kukathas acknowledges this and admits that his view might not 'supply the foundation of any kind of political order' (CK 66). But if that is the case, I do not see how any order of toleration could come into existence in the first place, while arbitrariness and domination could arise and dominate the social order. Second, the fundamental agreement of justice that my view entails is an agreement to regard others as free and equal members of a community of justification to whom we owe reciprocally and generally acceptable reasons for the norms we live under. This rules out certain views that deny such equality, but that does not mean that such views are necessarily suppressed or penalised. They can still be tolerated for the sake of democratic inclusion; yet if they lead to violent

attacks on others or on the general order of justification, the limits of toleration need to be drawn by force if necessary. Third, within the realm of basic justice, lots of reasonable disagreements about justice remain as legitimate objects of debate and democratic decision-making.²⁰ And fourth, the differences about the right forms of religious or ethical life that remain relevant within the realm of reciprocal justice are far from 'trivial', as Kukathas assumes, for debates about religious symbols in public, religious educational practices, same-sex marriage and so on are not trivial. They are debates about what it means to respect others as equal citizens. And in order to decide such questions, we had better have public standards of justification and justice in place. Otherwise, arbitrariness reigns, since no one knows any longer what basic justice means. Tolerating others because that is what justice demands does not imply that one no longer thinks what they do is wrong, for example wearing a burqa; it only means accepting that a general ban would violate democratic respect. That is why justice is needed: it opposes the religious impulse to ban or dominate what you find wrong, although the way in which it does so leaves the judgement of wrongness in place.

This, I think, is the essential point of contention between us. I believe that history teaches us that most of the time toleration is a question of the fair and just treatment of minorities and that scepticism about justice that places justice claims on the same normative and epistemological level as religious claims, which is what Kukathas in effect does, is exactly what Bayle was fighting against with the weapons of reason. So eliding that difference puts us back where Bayle began – to a defence of the categorical difference between moral versus religious truths and to the argument for an order of justice that protects minorities and regards them as normative equals (which Bayle demanded in moral, although not political, terms). I also think that it is a conceptual truth that toleration cannot be limitless, since, for example, a toleration based on reason cannot imply that the destruction of reason ought to be tolerated, which is what Kukathas paradoxically advocates. Otherwise, the ideal of toleration would be empty. And so would the idea of reason, for if reason could never speak with sufficient justification until a de

facto 'complete agreement' (CK 66) exists, it would have no voice at all. It would cease to exist, just as would toleration and justice.²¹

III Toleration and the deontological difference (reply to John Horton)

It is especially gratifying to have John Horton comment on my reflections, since he is a true giant among toleration scholars. Without his work, stretching over decades, this field would be so much poorer and narrower.²² And my own work would not have been possible, because his lucid analysis of the paradoxes of toleration in particular helped me enormously to think through the conceptual issues of toleration.²³ Thus any praise of my work by him is a wonderful recognition²⁴ – and his critique especially worrisome. As far as I can see, there are a number of issues I need to address given Horton's analysis, but they all go back to one major worry, which is similar to those of Bejan and Kukathas – namely the deontological difference between a notion of justice as framing the realm of the tolerable conceptions of the good and as limiting that realm. Can such a difference be drawn in the first place, is it necessary, and is it helpful?

Contrary to Kukathas, Horton agrees with my analysis that toleration is a normatively dependent concept, but he raises serious doubts about my – again: normative, not descriptive – suggestion that we should take the principle of reciprocal and general justification to be the right one for determining the space and limits of toleration.²⁵ Before I go into the details of Horton's challenging arguments, let me preface my comments with the following remark. I do indeed believe that if the history of toleration entails some learning processes, the most important among them is a process of rationalisation leading to the realisation that the deontological difference between *moral-political* norms to which no one can reasonably object (though a lot of people do object to them) and *ethical* values that can guide one in one's

personal and communal life is the right response to the political wars and conflicts of religion. The main thought is quite simple: you can still regard a different religion or way of life as false while recognising that you do not have any reciprocal-general reasons to overpower or outlaw it. But you can still voice your criticism and objection. Yet to call this a learning process does not mean that I think that this insight has carried the day, that it is accepted by most people in democratic societies – or that it is always conclusive. So when Horton points out that my own approach needs to engage with substantive debates and that its conclusions will be contested and seen as partial, there is no disagreement. I know that they are, which is why my approach is one of critical theory. It goes against the grain of what many people think who advocate some version of the permission conception, sometimes in populist or ideological terms. But I think that philosophy should find ways to distinguish between more or less reasonable disagreements and contestations, and I do not see why the fact of contestation or resistance implies that those who disagree are right or that rightness cannot be ascertained. I think I am in agreement with Horton concerning this point, for such a radical sceptical realism would amount to giving up philosophy, and this is not his view. And I am willing to admit, as I will explain below, that the deontological difference might not always lead to one clear conclusion, although I will try to lend it sharper contours than Horton thinks it has.

Thus with respect to Horton's avowed scepticism concerning 'bright and optimistic stories' (JH 78), and in light of what I just said, I join him in that scepticism. My tale is not one of general progress; rather, it is a dialectical story which lists criteria of progress and historical achievements on the one hand and the rationalisation of power and domination on the other. But I make no general assessment concerning the victory of one or the other tale.²⁶ Taking up Kant's famous formulation, we still do not live in an enlightened society, maybe not even generally in an age of enlightenment, but at least in one in which some people fight for enlightenment. And their struggles are of interest to me as a critical theorist.

I also agree with Horton when he says that a view which focuses on ruling out religious reasons from the justificatory discourse about general norms does not get us very far. This is not only because, as he says, religious believers are 'sufficiently sophisticated' (JH 80) to rephrase their claims in a more general language, but also because I do not think that reified notions of 'public' versus 'private' or 'secular' versus 'religious' reasons help us when it comes to understanding and evaluating normative claims. That is why I focus on the reciprocity of claims and of reasons as criteria which are at the same time more concrete in evaluating competing claims and more general in reflecting on the moral quality of the reasons adduced to counter objections. But Horton is sceptical about these criteria and about my explanation of the work they can do in § 38 of *Toleration in Conflict* especially.

With regard to questions of blasphemy which so often lead to vicious and violent conflicts in Western and non-Western societies and which Horton discusses with reference to the so-called 'Rushdie affair', I recognise that those who want to ban works of art that they see as demeaning and intolerably insulting the founders of their religion often use a general language of civility, respect and toleration to ground their demands. And I also accept that some caricatures or other expressions of criticism are intended to insult certain religions and thus are expressions of intolerance.²⁷ This is an intolerance of which we can and should be critical in civil society, but it is not one that should be banned by law. So here is an important difference on which I should have placed greater stress in my work and about which Horton is right to enquire.²⁸ But contrary to Horton, I do not think that the call for a ban on blasphemous expressions can be 'entirely consistent with the requirement of reciprocity' (JH 80). For those who call for these bans do not want to leave the authority to determine what counts as 'blasphemy' with democratic law-makers or courts but want to reserve the definitional authority for themselves. Therefore it is not true that they are offering general and reciprocal reasons for their cause. If their views were to ground our common political and legal life, the door would be opened to a wild variety of arbitrary decisions about which kinds of

speech or art have to be banned, since Muslim, Christian, Hindu and many other groups would define the limits of what can be tolerated according to their own lights. We would then be back to what Bayle saw as the main problem, namely that religious definitions of what counts as intolerable would determine how we have to live in a society marked by religious difference and disputes.

Again, this does not mean that state authorities can never outlaw certain insulting expressions, but that the threshold for determining what is intolerably insulting must be set very high and not be defined in partial terms. It must be based on clear moral judgements, such as a ban on denying the Holocaust. My claim is not that such a ban must be upheld generally or under particular circumstances, like the German case, but I want to leave the possibility open for arguments of such a kind which need to be placed in the right political context. And I do not want to rule out that vicious condemnations of particular religious groups could exceed a threshold above which such expressions amount to an intolerable denial of equal citizenship and basic rights. But again, the threshold of justification must be set very high for this and above it must clearly lie the realm of strict moral intolerance. So, yes, there is a certain 'indeterminacy of reason' when it comes to the application of the principle of reciprocal and general justification, as the Holocaust example shows. But I do not consider this to be a reason for general doubts about the principle itself, which is meant to single out such special cases of intolerable intolerance. There are many other cases of intolerance – say, of an anti-Muslim or an anti-Semitic nature – of which we should be critical; but here the limits of the tolerable must be a subject of discussion and action within civil society, not primarily of the legal state. Thus, to answer one of Horton's questions (JH 88), there are examples of expressions of which the state might be wary but which it cannot justifiably ban, because the result would be a political situation in which infringements of free speech would be a constant danger (I will return to this point).

Where I am somewhat more sceptical than Horton is when it comes to the idea that in such cases the coexistence conception is of much

help, or that 'processes of negotiation and bargaining' (JH 85) will lead to practical conclusions which are more concrete and useful than applications of the respect and justification principle. For notoriously, both in the past and currently, such debates arise in the relation between majorities and minorities, so that the negotiation power is very unevenly distributed. Hence certain bans will most likely operate to the detriment and disadvantage of minorities rather than the other way around. I understand the relevance of discussion and deliberation, but we still need principled responses to such questions.

Horton also worries that my threshold of justification may be too high and restrictive for certain forms of normal, majoritarian law-making in various fields such as 'health (including sex) education, the built environment, which things should be taxed and at what levels, what should be subsidised and to what extent, public iconography and much else' (JH 88). One particular example he mentions is state policies that discourage people from excessive consumption of alcohol which, he believes, might fall under my rubric of the impermissible imposition of a certain notion of the good (JH 82). I understand these worries and agree that I need to say more about cases in which majority decisions are justifiable and cases in which they need to reach a higher threshold of strict reciprocity and generality.²⁹ In general, I believe that a democratic state has the task of educating young persons on health and issues relating to sexuality, but that it does not have the authority to impose a particular personal or sexual identity on them or to discriminate against their identities as they understand them. As I argue in *Toleration in Conflict*,³⁰ general citizenship education does not require students to be 'neutralized' in their dress but must take their religious identity into account and respect it; yet this does not mean that parents can take their children out of biology classes or prevent them from being taught about 'tolerance' in school, even though the school needs to reflect seriously on what that term means in pedagogical contexts. When it comes to issues of public aesthetics, I think majorities can decide, although they cannot ban mosques or minarets, even if a majority feels alienated by the sight of them. Here there is a clear line beyond which majority

decisions are not justified, because they would overpower minorities without good reasons. Again, the implications of equal citizenship are what count.

When it comes to welfare policies, a democratic state must make sure that its citizens (and people in general) are protected against various forms of legal, political or social and economic domination and exploitation, and there is nothing paternalistic about such policies. Paternalistic policies that place restrictions on alcohol consumption can be justified in the case of young people, but they are justified for adults only when the latter endanger others through their drinking (by driving when drunk, for example). No state agency can justifiably punish people for being dependent upon alcohol by, for example, restricting their access to health care or work. This, of course, is not what Horton advocates; but if one thought that laws discouraging excessive alcohol consumption could be legitimate to the extent that they were based on certain ideas of the good life, as I take Horton to argue, the door would be opened to all kinds of paternalistic policies. Refraining from such legal sanctions does not mean that we respect the ethical identity of people who drink too much as part of a 'hedonistic or sybaritic lifestyle' (JH 82), but that we respect them as legal and political equals whom we have no sufficient reasons to re-educate through legal measures. As friends, for example, we ought to offer help or criticism, as may seem fit, but as citizens we need to abide by the respect principle and adhere to policies of social solidarity.

Another important example is same-sex marriage. Horton asks why the institution of civil partnerships with almost equal legal standing to married couples does not count as a fair compromise if a majority is against extending the traditional institution, and he asks furthermore where the extensions should stop, citing polygamy or other relationships (JH 86). In response, I think that the first solution, i.e. civil partnerships, is better than having no institution or rights at all; but I cannot see any good reasons for not granting full equal rights, since the 'Christian heritage' (JH 86) is not a sufficient reason for restrictions in a democratic state which is committed to equal

citizenship. Consider how many restrictions of such rights could be justified on these grounds. Moreover, the extension argument, which generates slippery-slope concerns, must be taken seriously, but it cannot be used as an argument for restricting same-sex rights, an issue which needs to be addressed in its own right. If such arguments for extending the institution of marriage are taken seriously, one can reflect on the suggested justifications and the meaning of the institution. For example, one might raise concerns about the patriarchal implications of polygamy. I readily concede that this is a discussion in which the particular meanings of legal and cultural forms play a role.³¹ Still, we cannot remain bound by this cultural particularity and the associated stereotypes and must enquire, sometimes radically, into what equal citizenship means. And the limits of what majorities are actually willing to tolerate must not define the limits of what should be tolerated.

But at this point political realists might raise a fundamental objection. They – and I am not saying that this is Horton's view, because he is not generally sceptical about better or worse normative reasons (see JH 83 where he rules out 'anything goes')³² – might be of the opinion that toleration is essentially a *political* rather than a *moral* concept (a view which is closer to Glen Newey's).³³ And they might go on to infer that any justification of the realm and limits of toleration could depend so much on what (most) people are actually willing to tolerate that a principled approach like mine is doomed to remain a 'Kantian illusion' (JH 83). Underlying this objection, I take it, is essentially a disagreement over what political philosophy can and should do. The two extremes here are not useful, since the one fabricates a fantasy of beings who are nothing but perfectly programmed moral angels, while the other takes humans to be self-interested beings who can never be guided by normative reasons. Neither Horton nor I occupy either of these extremes, but we may be closer to one or the other end of the spectrum. I for one try to have my cake and eat it as well. For, as a sociological realist, I know where the limits of toleration lie for most people, but, as a normative theorist, I try to assess where they go wrong. A critical theorist needs to be both a sociological realist and a normative critic. But that

orientation is not illusory. If there could never be a devout Catholic who hates the sight of mosques, or a devout Muslim who hates the sight of Catholic churches, in his or her town but who nevertheless understands that it is a duty of justice to allow them to be built, then my theory is a mere illusion and of only theoretical interest. But I doubt that this is the case.

To return from these declarations of faith to Horton's challenges, he rightly asks whether on my view a state can ever disapprove of some practice and behaviour and still tolerate it legally. Unlike the drinking example, this is not a case in which the state condemns a practice on ethical grounds (which it should not) but instead on moral grounds, but nevertheless tolerates it. Before answering I would like to highlight what I argued for above, and emphasise once again that this is an important aspect of my view that I did not sufficiently explain. As citizens and members of *civil society*, we can morally *condemn* certain expressions or practices without *outlawing* them; so here, as I see it, the political community has an important task in forming normative judgements below the legal level. Examples of this are certain patriarchal pedagogical practices, but also certain insults directed against particular groups.

Still, Horton's point is well taken. For I think that the state – or better, the citizens as law-makers – can justifiably raise moral objections against certain views and practices, say, of a racist nature, and nevertheless tolerate such views by not outlawing them. The reasons for this are in part prudential but there could also be some moral ones, such as refraining from creating a social climate of bans and restrictions on freedom of speech. There will be hard cases, such as Nazi symbols and speeches and demonstrations – or political parties. Here a state has to act prudently and, as I argue in *Toleration in Conflict*,³⁴ this is a point at which the logic of the permission conception enters into the respect conception. The main imperative of equal citizenship remains valid and it calls for a limit of *social* toleration of such immoral and undemocratic groups; but there may be prudent reasons for *legal* toleration. So I agree with Horton that the permission logic might reappear even in

a democracy, but I would restrict this to cases such as these and do not think that it amounts to the classic authoritarian conception. Rather, it is based on equal respect.

In sum, I agree with Horton about the grey zones of justification and application but I do not think that this speaks against the use of and need for a principled, respect-based account. I also think that it can do much more work than Horton thinks it can. So I agree with him that all toleration answers must be ‘addressed *practically* and *politically*’ (JH 89); but unlike extreme realists I think that most of the time the factual political practice of toleration is wrong and leads either to open intolerance – as when majorities ban minarets by popular vote – or to intolerance veiled as tolerance, such as allowing same-sex marriage only if it is not called marriage. This is the sense in which my account is a critical realist one, and it implies the need for critical principles.

IV Toleration for earthlings (reply to Daniel Weinstock)

Among contemporary political philosophers, Daniel Weinstock is unrivalled when it comes to thinking through the theory as well as the practice of what constitutes a just, legitimate or practicable multi-ethnic or multi-national state.³⁵ As he makes clear, it matters whether it is justice that one is looking for, or legitimacy or stability; but whatever one is looking for, normative political theory must remain a theory for earthlings, to use a term of David Miller’s – that is, its normative grounds and shape must be fit for human beings as they are or, better, as they could be given what they are.³⁶ These are deep waters to navigate through, and I am grateful to Weinstock for pressing me to do so.

Weinstock is absolutely right to remind us that the very term toleration applies to ‘non-ideal political circumstances’ (DW 94)³⁷ in which there is not only deep disagreement but also the (initial) willingness to restrict the liberty of those with whom you disagree. He believes,

however, that I do not take sufficient account of the latter aspect and thus underestimate the importance of 'self-restraint as a constitutive ingredient of the structural account of toleration' (DW 96). I disagree with this as a critique, because I think that self-restraint is (conceptually) essential for any form of toleration. But Weinstock has a particular case in mind, namely that of reasons for tolerating what is immoral, and as I said above in the context of my exchange with John Horton, that is indeed a case I need to say more about.

Before going into this, let me say a word about the distinction between ideal and non-ideal theory and how I situate my reflections on toleration in relation to it. That Rawlsian distinction has come to mean many things to many people, and it is difficult to disentangle these many meanings.³⁸ In general, I try to avoid such reified distinctions and I do not work with idealised assumptions about persons or social circumstances. Rather, I try to combine sociological realism with principled normative argument, where the principles in question are for real people in real societies. I do not paint an ideal of a new society or any such thing; thus the respect conception that I normatively favour is not a mere ideal but rather a principled stance of all those who understand that they must not take their reasons for objecting as a basis for acting to the disadvantage of that to which they object if they do not have any good additional reasons for rejecting it. That holds as much for the French republican feminist who hates burqas but recognises that this is not a sufficient reason for banning them as it does for the devout Muslim who hates to see his daughter develop 'immoral' ideas about the good life but understands that he cannot stop her from following these ideas. This is just the stuff of normal, complicated life, no rationalist dream.

Why does Weinstock believe that my respect conception takes us beyond non-ideal circumstances of toleration? Because he believes that the toleration I normatively defend does not take sufficient account of the reality of social conflict and the 'inclination' (DW 96) of people in power to limit the freedom of those to whom they object. But I do not think that I make such a mistake. For before I distinguish the four

conceptions of toleration and the twenty-five justifications for it, I distinguish the three components of any concept or stance of toleration. And the very first component, that of objection, entails that you find the views and practices of others bad or wrong. This implies that you would prefer that these views and practices should not exist or at least that they should be restricted, for otherwise you would not need any further components of toleration which matter in practice and curb your preferences. So as soon as the acceptance component comes in, self-restraint is part of the very definition of the attitude of toleration, since the reasons for accepting do not eliminate the negative reasons for objecting but only counterbalance them and keep them in check. They restrain their practical consequences but leave them basically intact.

So, in my view, Weinstock's 'tolerant person' (DW 112) who has ceased to have 'intolerant' attitudes and as a result no longer thinks that other people's views and practices are something that should be constrained, is not really a tolerant person. She may indeed be 'beyond toleration', as Weinstock suggests, since her objections do not matter much to her. She is on the verge of indifference, and if she is tolerant at all, then at most in the sense of the esteem conception. But this is not my picture of the 'moral virtuosos' (DW 113) of the respect conception, for their virtue consists precisely in curbing their inclinations to act on their objections. That is why it is a *virtue* of justice on a Kantian understanding: it controls the desire to act on your notions of the good, as I explain in *Toleration in Conflict*, where I call it the virtue of resisting 'the impulse to turn ethical reasons for objecting into moral reasons for rejecting',³⁹ which I believe is what Weinstock means (in some parts of his argument at least). Thus it is not the case that I neglect self-restraint as a component of toleration; I even use the term 'a certain self-overcoming'⁴⁰ that he finds lacking in my account (DW 100). Moreover, I use this idea when discussing both the personal virtue of toleration and the political one, where it is most important for members of majorities who need to accept that being in a majority is not a sufficient reason for pushing through intolerant policies.

According to my theory, the self-restraint conceptually implied by the core notion of toleration means different things if we consider the multiplicity of our conceptions and justifications of toleration, some of which are both pragmatic and strategic. And even though I admire the way in which Weinstock summarises my view, I think that in common with some of my other critics he neglects my analysis of *four* conceptions of toleration and my argument that, depending on the context, the respect conception might not be realisable, even though we need to look closely at why that is so (a point I will come back to).

In the permission conception as well as in the political version of the respect conception, tolerance is an attitude of the powerful in virtue of which they refrain from curbing the liberties of those with whom they disagree in the knowledge that they have the power to do otherwise. But they do so for different reasons, depending on which conception you use – only in the respect conception it is done out of respect for others as normative equals. I think that toleration must be freely motivated; but contrary to Weinstock I do not think that part of the very definition of being tolerant is that one actually has the power to constrain others. Minorities who do not have any such power can also have an attitude of tolerance in thinking that intolerance is wrong. They do not really need to have, or think of themselves as having, the power to prove this; and thus I do not think that my argument to the effect that they would not use their power for intolerant purposes if they were in a position to do so proves Weinstock's point that having power is an essential precondition for *being* tolerant (DW 100f.). It is not even essential for *acting* tolerantly in general, only for acting tolerantly as a political authority. To think otherwise would be to inject the permission conception into the very concept of toleration, a move often made in the literature on toleration.⁴¹

But, similar to Horton, Weinstock obviously has a point when he asks whether my account of the respect conception allows for reasons for tolerating not just those with whom we *ethically* disagree but also those whom we find – with good reasons – *immoral*. In *Toleration in Conflict*, I discuss this question with respect to anti-democratic fascist groups

and parties, and it can be extended to racist groups generally.⁴² There I list similar reasons to the ones Weinstock mentions for pragmatic or strategic toleration of what is in principle intolerable, and I admit that here the respect and the permission conception form a certain alliance. Clearly there are such cases, especially when it comes to the question of a legal ban, which should only be a measure of last resort (for example, a ban on a political party). But as I said above, social ways of drawing the limits of toleration through clear expressions of rejection in speech and non-violent action are also a way of drawing the limits of toleration vis-à-vis what is immoral. Still, cases like these mean that it may be morally permissible and in some cases even advisable to tolerate what is intolerable. I accept Weinstock's and Horton's point in this regard. But it does not speak against the respect conception; it simply spells out its implications more clearly with regard to such cases.

Weinstock is also right to point out people's epistemic tendencies to regard what is essentially an ethical objection as a moral rejection, as his excellent example of feminist, republican and nationalist criticisms of Muslim veils shows (DW 106). But as long as he calls this failure 'to realise the degree to which their application of moral principles is shot through with unexamined assumptions drawn from their own ethical framework' a mistake and 'wrong' (DW 107), we are not in disagreement. We disagree neither about what are the right principles to apply in such cases nor about how to apply them correctly, and we also agree that there is a constant tendency (or propensity, as Kantians would say) to interpret what is morally right in the light of one's ethical views. This is why the virtue of toleration (according to the respect conception) is the virtue of overcoming that inclination and why I favour a reflexive justification of toleration, since it entails the duty to check our own views as to whether we made such a mistake. The criteria of reciprocity and generality help in this regard, since it is in applying them that one should try to notice how much one uses ethical, traditional stereotypes in judging others and overlooks how one privileges one's own views, for example in arguing for republican public 'neutrality' which favours some symbolic identities over others. Weinstock's work

is exemplary when analysing such deficiencies of even-handedness, as is Ayelet Shachar's.⁴³

What I do not quite see, however, is how one can analyse and criticise such mistakes (knowing that we ourselves might commit them) and then argue that imperatives of respect-based toleration 'may not be appropriate to the kinds of beings possessed with the finite epistemological capacities that are those of humans' (DW 109). As I said above, I do not deny, descriptively speaking, that the respect conception is demanding and that the permission conception is most often the default position; but I do not agree that it is *too* demanding. It takes some work to accept that you do not have any good reasons to push through intolerant policies even if you happen to be part of a majority or are acting towards your children, for example, and I also accept what Weinstock calls 'the human tendency to mis-apply moral principles' (DW 109); but a mis-application remains a mistake, and reasonable people need to avoid mistakes. The virtues never come naturally, as Aristotle reminds us, but that is not a reason to water down the standards of virtue. Furthermore, I think it is a sign of mutual respect to remind each other (and ourselves) of these standards and not reduce them by regarding 'normal' people as incapable of living up to them. Nobody is 'overtaxed' by being required to understand that someone who wears a Muslim dress is your normative equal.

In sum, I agree with Weinstock that a theory of toleration, especially if it is a historical theory, and hence is descriptive as well as normative, should take the full range of non-ideal social circumstances into account. It should avoid oversimplifying things and sacrificing complexity 'at the altar of theoretical elegance and simplicity' (DW 111). I think that, given the multiplicity of conceptions and justifications of toleration I analyse, I avoid such pitfalls. But I believe that the task of a critical theory of toleration is not to look at things primarily from the perspective of majorities who feel over-encumbered by the claims of minorities but from the perspective of those who are not respected as equals and are dominated in various ways. That is what justice requires, in theory as well as in practice.

V Respect without justification (reply to Melissa Williams)

This is a good moment to turn to Melissa Williams's chapter, since she continues and to some extent radicalises a line of argument pursued by Weinstock (and followed up on by Markell and Owen). Specifically, she enquires into the blind spots of the respect conception itself, or, more fundamentally, of the practice of justification – the practice of treating others as normative equals by respecting their right to justification – as the basic moral practice. Williams's work is in general an exemplar of dialectical reasoning,⁴⁴ and so too is her contribution to our debate.⁴⁵ While she upholds the perspective of moral egalitarianism, she reminds us through the historically informed and culturally situated form of thought that she has developed of alternative ways of practising mutual respect apart from, or even 'turning away from', justification. I welcome this as a great challenge to clarify my ideas, although I am not sure that I will be able to do so properly, since the issues Williams raises are complex and the examples she uses deal with contexts she knows much more about than I do.

Williams's basic critical claim is that my reconstruction of the practice of morality as a practice of justification is not false but one-sided, because it neglects other forms of moral practice that are not linguistically structured but expressive and performative in non-discursive ways. In what she calls 'prefigurative practices' (MW 123) that establish experiments of living as part of an attempt to resist and overcome forms of domination, communities cooperate in 'non-discursive practices of egalitarian reciprocity' (MW 133). In response, I recognise the importance of such prefigurative modes of action but am not quite convinced that they can or should be thought of apart from egalitarian forms of *discourse*, since I would like to consider these forms of cooperation as *democratic*, or as prefiguring egalitarian democracy, and in my view there can be no proper democracy without discourse. So I am not convinced by the strong distinction that Williams makes between

discursive and non-discursive forms of cooperation. Prefigurative practices might suggest a different mode of communication and social cooperation, but not one which is beyond justification – though surely beyond colonial and oppressive justificatory practices.

Williams notes that my approach has been the subject of several criticisms by esteemed colleagues such as Amy Allen⁴⁶ and Kevin Olson⁴⁷ or Lois McNay⁴⁸ (and to some extent Catherine Lu⁴⁹), who (rightly) point out that, from a critical perspective, normative orders as orders of justification have to be seen as orders of power and domination in which the terms and conditions of discourse imply a host of exclusions and power effects that disadvantage certain groups whose claims are either not heard or are silenced. I tried to reflect on this obvious truth in my theory of democracy in *Contexts of Justice* starting from feminist critiques of democracy.⁵⁰ Williams rightly points out that in my view a critical theory of justification has to critically assess the ‘conditions of justification’ within social orders in order to identify and overcome such power effects – with the help of discursive or non-discursive forms of criticism and protest, whereby the ‘non-discursive’ forms (like quiet protest or performances of resistance) also have to be seen in their discursive quality. We need not restrict the realm of justification in a society to explicit words. Furthermore, such critique can in principle never rest, since one can never be sure of the (e)quality of discourses that might falsely assume to have made progress. As I tried to show above, that is true of many advances in toleration.

Williams accepts my replies to such criticisms in general by affirming that ‘the cure for the ills of justification is more justification’ (MW 123), and yet she argues that this is only part of the story of emancipation, because sometimes the cure means turning away from justification. But what does ‘justification’ mean here? I think here her view is somewhat ambivalent, since there are several characteristics of the kind of order of justification that from her perspective rightly – shall I say: *justifiably*? – motivates a turn away from justification. I think I should indeed say justifiable, and thus argue (against Williams) that none of these moves

escapes the general social question of justifiability, even if some of these emancipatory practices were correctly analysed as non-discursive.

In Williams's discussion, I see three ideal type candidates for the order of justification that prefigurative practices try to avoid. The first and most prominent ones are colonial or neo-colonial orders in which the terms of discourse are themselves of a colonising and oppressive nature. The second, more general kind of candidate are practices of justification which reproduce status hierarchies by privileging those who have 'greater skill in reasoned argumentation' (MW 131). And the third, even more general, type are practices in which moral respect can be expressed only by explicit moral reason-giving and not by implicit moral action, possibly in an 'unreflexive' (MW 133) mode. I will discuss these three types in turn.

As examples for the prefigurative practices which create 'islands of just and moral relationship within larger contexts of social, political and economic domination' (MW 124) of colonial and neo-colonial rule, Williams cites Gandhi's *satyagraha* ('struggle for truth') movement and Indigenous movements in North America. As she explains, such movements entail a 'no' to dominating forms of rule and a 'yes' to alternative forms of social life (MW 126). In Gandhi's case, such forms of life included forms of sharing hard and dirty work that radically questioned established caste hierarchies and realised a new 'ethos of service' (MW 126). In Indigenous contexts, they entailed social and cultural forms which reconnected with past traditions and practices, including the 'relearning of Indigenous languages and ceremonies' (MW 127). Williams argues that in such forms of prefiguration practices of justification play no foundational role; rather, they are to be seen as 'non-discursive practices that are understood by agents as performances of (or, in Gandhi's terms, experiments in) reciprocity and respect' (MW 127).

To be sure, Williams does not deny the important justificatory dimensions of saying 'no' to dominating forms of discourse as a demand for better reasons, better institutions and as a reaction to the failures of dominators to heed that demand (MW 128). These resistance movements manifest justificatory agency by rejecting false forms

of discourse and justification. But in Williams's interpretation, these movements did not simply argue for other, new forms of justification. Rather, they tried to *substitute* them with non-discursive performances (MW 130). The reason for this brings us to the second interpretation of the dominating forces implicit in justificatory discourses that I mentioned above, namely the class-based character of according primacy to reason-giving and argumentation. Here, engaging in justification is no longer understood in terms of conformity to an imposed and alienating order; rather, it means conforming to some form of discursive rationalism which reproduces class structure. Such structures can be better overcome by 'displacing practices of justification with practices of service to community' (MW 131).

I recognise the importance of such radical forms of changing a caste social order through egalitarian practices; but I wonder whether they can really be interpreted as being non-discursive, not just in their 'no'-relation to the dominant orders of justification but also in their 'yes'-function in establishing new forms of egalitarian cooperation. For if the new forms of communal service and work were to realise and symbolise the equal worth of all as normative equals, the latter constitutes the general positive justification for these practices. And if this is so, how could work be *fairly* distributed beyond all traditional distinctions of caste in the absence of discursive forms of respectfully organising this work? Furthermore, as indicated above and as Aishwary Kumar⁵¹ shows in his reading of Gandhi and Ambedkar, if these new egalitarian forms of social life were to prefigure true (or truer) *democracy*, how could they not entail forms of democratic decision-making which must be discursive?

Of course, this is not to deny the hierarchical risks and implications of discursive decision-making, which often privilege those who can speak well, have some (unwarranted but assumed) authority and so on. But what are the alternatives to that? That is, how great are the dangers of rule by charisma, of religious tradition, of social pressure against those who are assumed to be 'privileged' and so on? If we take realistic stock of the problems of discursive decision-making, then we should

also be realistic and equally critical about other, less discursive modes of coordinating action.

Williams is the last of all scholars to overlook these dangers. As she remarks, revivals of older cultural forms often reproduce traditions 'structured by their own forms of domination, including gender-based domination' (MW 132), which is why discursive critique is required against the imposition of colonial as well as traditional forms of domination. Thus, I take it, turning away from justification can never be accepted uncritically, and *every* social form we turn to must be open to discursive criticism and cannot shield itself from criticism, whether by women, the young, the less educated, the non-religious or other groups.

It is here where the third candidate for an order of justification from which one might turn away becomes most relevant. According to Williams, 'when we treat our practices as objects of critical reason and argumentation, we are necessarily alienated from them; we are not wholly immersed in them' (MW 132). Thus 'full attention and care' in performing communal work is incompatible with discursive critique and argument. I am not sure I agree with this, but here we must first distinguish between argumentation as part of a practice and critical argument about a practice. As part of a practice of working together, communication and reasoning can never be excluded, for even work teams or sports teams that have cooperated for a long time need communication. So they are always discursively structured, I believe, and that is part of being immersed in them, not its antithesis.

If that is the case, the possibility of critically interrogating the practice is always present, and such critique can be situated on a spectrum ranging from small internal questions (is this the best way to do this?) to radical questioning (why do it this way, and who is to tell?). Some forms of critique belong to human practices, especially more complex ones. But some forms clearly have an alienating character, although quite often it is out of a spirit of commitment and care that such questions are asked. For any practice that is guided by a spirit of egalitarian reciprocity, as in Williams's examples, must open itself up to the question whether it is true to that *Geist*. Especially prefigurative practices, or so

it seems to me, which *explicitly* try to create new egalitarian forms of social life, must be open to this. For manifesting a new spirit is their *justification*. It would be at odds with that spirit if engaging in these practices excluded asking critical questions.

This does not mean, to address a final worry expressed by Williams, that an egalitarian practice cannot be successfully performed on the basis of reasons that remain implicit (MW 133) and that have become, so to speak, people's second nature. It is not that a moral form of relationship consists of constant moral argument and discourse; rather, it presupposes respectful ways of treating others as equal normative authorities. So I agree that moral practices are multiple and need not always involve explicit justification, but Williams and I also agree that 'moral reasons must underlie the practice' (MW 133), and that is why I conclude that any implicit set of reasons must remain open to the possibility of explicit justification and not restrict or seal off the space of reasons. Most of the time justifications remain implicit in what Habermas calls lifeworld knowledge and action, and since treating others morally always means treating them in a morally *justifiable* way, whether this is the case can at any time be turned into an explicit question. That is what is implied by respecting the other as an equal moral authority. Hence we should be suspicious of practices that fear such kinds of questioning as alienating.

VI Heresy and critique (reply to Patchen Markell)

Patchen Markell's is one of the most original and important voices in current critical theory, since he illuminates how the very concepts through which we think about politics (and society) shape our views in particular ways and harbour effects of power. The way in which he combines theories as different as Foucault's, Arendt's and critical race theories in the light of the classical tradition of political philosophy is unique and exemplary for what critical political theory can be.⁵²

Given that character of his work, I am especially grateful to him for subjecting my attempts to critical scrutiny. He focuses on the (possibly) different ways in which a critical theory needs to transcend conventional horizons of thought in order to determine what emancipation could mean.

Like my other critics, Markell worries about the narrowness of an approach centred on practices of justification. He fears that it remains bound up too closely with the limits of what can be thought and said in given orders of justification and thus loses the transcending power that critique must possess, such as the power of those who in the past were decried as heretics or as mad when they pushed the limits of the thinkable to make room for new ways of viewing the world. I believe that this understanding of what radical critique can do and ought to do is very much in line with my approach, which is one of the reasons why I differ from critics like Amy Allen or Seyla Benhabib in arguing for the possibility of radically questioning a *sittliche* form of social life, in a way that is not bound by 'immanent' standards of critique.⁵³ Yet Markell, if I understand him correctly, is nevertheless concerned that the rationalism of my approach underappreciates the world-disclosing aspects of a 'prior sense of what there *is* in the world to be reasoned *about*' (PM 140f.),⁵⁴ or what he calls a 'space of appearance' prior to and more basic than the space of reasons. Critical theory thus needs to understand and be able to intervene in that space, the space of what is socially thinkable – or unthinkable. I basically agree with Markell on this, although I have some hesitations about the (seemingly) strict dichotomy between these two realms that he suggests. And I have qualms about some possible implications concerning the standards of rationality that apply to 'ontological' forms of critique.

Before I go into this, however, allow me to preface my remarks with a brief biographical reminiscence. In the late 1980s in Frankfurt, a number of my friends and colleagues, inspired by Heidegger and Foucault especially, reflected on the 'world-disclosing' powers of language, as did Cristina Lafont, for example, in such illuminating ways.⁵⁵ Nick Kompridis later developed his own version of critical theory based

on this approach,⁵⁶ and I recall attending inspiring seminars by Jürgen Habermas and Karl-Otto Apel with Hubert Dreyfus as well as Richard Bernstein in which this issue was discussed at length. The main worries at that time, when the National Socialist character of Heidegger's writings was also the focus of intense debates, were of course how one could develop a non-authoritarian, emancipatory notion of opening up a 'world', which Heidegger had interpreted as the 'strife' between the world of possibilities for a *Volk* appropriating its mission given its 'earthly' historical character.⁵⁷ Foucault's notion of truth-regimes (*epistemes*) of power served as an antidote to Heidegger's political-poetic, nationalist historical existentialism, and Foucault's search for new forms of social and individual life was seen by many as a better way to think about the practical work of freedom.⁵⁸ Following Foucault and Nietzsche, genealogy was deemed to be the appropriate approach to the critical reconstruction and unmasking of these effects of power.⁵⁹

Markell is right to take up this point and remind me of this important dimension of language and of critique. He does so with the help of an intriguing reinterpretation of what Hannah Arendt means when she says that power 'survives or outlasts action' (PM 142) and that it 'keeps people together'.⁶⁰ In that paragraph, she refers to 'the foundation of cities' as creating the durable common public space for the appearance of words and deeds and as 'the most important material prerequisite of power',⁶¹ thus stressing, like Heidegger, the importance of political founding and its sustainable results – but, in contrast to Heidegger, in a republican way. Markell invests this with a more ontological meaning which is also very much in line with a Heideggerian reading. He describes how the lasting effects of powerful actions or events configure a space of power by 'charging' a situation, because these actions and events lend possible future actions and events a particular meaning and in that sense make a collective future possible. According to Markell, power thereby acquires an ontological and epistemic importance by structuring or constituting 'the field of objects with which the subjects of practical reason engage' (PM 144). Similar to Foucault's analysis of subject formation, Markell uses Arendt to point to processes of object

formation as grounding or configuring the space of appearance in certain ways. According to Markell, that space is prior to the space of reasons, because it determines what can appear as thinkable at all: 'It's not that we accept these features of the world because we have been socialised into a tacit belief in their justifiability, or because we think there is no alternative: we – all of us, or some of us – simply do not think much about them at all' (PM 144).

I believe that Markell is right to point to the limits of what is thinkable in any social realm, thereby delimiting the space of possible reasoning; but I think that the distinction he makes between the space of reasons and the space of appearance is too stark. For as he rightly notes, I analyse how the space of reasons is configured with the help of the concept of a 'justification narrative'.⁶² Such narratives develop over long periods of time and construct – or, if you prefer, configure – the social space of meanings and interpretations, though often in multiple and occasionally contradictory ways. As an example I cite Max Weber's narrative of the Protestant Ethic and its importance for a modern economy and, more than that, for modern ways of thinking about what constitutes a good, socially valuable and rewarding virtuous life. If such narratives gain a firm grip on subjects and their noumenal economies, so to speak, they limit the realm of the thinkable as much as they structure it. So they mediate precisely between the space of thought and the space of what is thinkable; in fact, they basically connect these two spaces into one. I do not see the point of making a strict separation between what justifications can be about and what appears to be justified, for the two realms are closely interconnected. What appears, always appears within a horizon of understanding as part of narratives and structures of justification. In other words, we would undervalue the space of reasons and reasoning and interpret it too narrowly if we left larger narratives of justification and how they constitute what is thinkable out of the picture (which I take to be an important insight of hermeneutics, as I argued above in response to Bejan). So I do not agree that I theorise this space too narrowly; on the contrary, I think that Markell's interpretation of my theory may be too narrow.

In my view, the space of what is thinkable and how it is configured would not be adequately explained if we conceived of these developments as anonymous *Ereignisse* of world disclosure (*Weltentbergung*) that did not admit of any further explanation, like ontological revolutions *ex nihilo* (which, to be sure, is not what Markell argues). Such an extreme separation of the spaces of appearance and of reasons would imply that the former could not be evaluated in accordance with rational standards, since the latter would only apply within a particular ontological paradigm which it could never transcend. But such transcendence is what Markell actually appeals to when he uses the example of the racist character of the US penal system. A radical critique of this system – in particular, of the false and racially biased justification narratives on which it rests – presupposes an equally radical view that it lacks any proper justification. Markell agrees with this when he says that the demand for justification is ‘an important part of the critique of these phenomena’ (PM 145); but he then goes on to claim that that demand ‘must be accompanied or even preceded by a struggle to reconfigure the space of appearance, to bring these phenomena to attention or to alter the terms of their public representation’ (PM 145). I agree, but I do not see how one could alter such terms of representation other than by pointing out the lack of justification of the system that is being criticised. Such a critique might imply acts of ‘disrupting ordinary life and sense’ (PM 145) and of transcending conventional ‘political common sense’ (PM 146); but such disruption would remain a mere disruption if it were not accompanied by rational criticism which employs epistemic and moral categories that reveal the *injustice* of the existing system. The point is that the required switch in perspective must be a response to real injustice and not bring about a complete *Gestaltwandel* such that no one knows how the new way of seeing things was motivated. In other words, criticism calls for a justification narrative about why an older such narrative had to be overcome, because it provided an ideological justification of injustice and cruelty as something good, useful or unavoidable. Overcoming such strong narratives by offering an alternative is a form of rational critique and it changes the game of justification while playing it, rather than by

somehow bringing about a whole different game. Transcending conventional limits of what can be thought and justified is part of the game of justification, not some *Ereignis* apart from it. Again, we would interpret the notion of the space of justifications too narrowly if we argued that such game changes could not be brought about *with reasons*. The space of reasons is infinite, and its (rational) revolution is part of that very space. In the example cited by Markell, moral reasons drive that revolution. If we could only recognise such reasons *after* the revolution in our *Weltbild*, then that revolution would have been unmotivated and groundless. But that is not how progress is made. (I will come back to this issue below in my response to David Owen.)

I agree with Markell that critical theory needs to reflect on its own supposed 'higher' wisdom and should enquire critically into its own institutional and noumenal conditions of possibility. That includes not just playing conventional games of justification but also reshaping our 'sense of what there is to be argued about' (PM 147). But in my view this is part of the practice of justification, including a historical-genealogical understanding of the narratives and discourses of power we might help in reproducing. One such discourse surely is the neo-Heideggerian one, and one needs to be aware of its authoritarian as well as its possible emancipatory implications, assuming it is redefined appropriately. The latter presuppose that we hold fast to principles of radical critique and moral equality, for being a heretic in itself is not a sign of higher insights into the limits of the thinkable that must be transcended. Markell might be right that Angela Davis is a Pierre Bayle of the twentieth century, but only because she relentlessly exposed the lack of social and moral justification for the existing, racially grounded penal system. For fascists also 'heretically' reject what they regard as 'conventionally' policed systems of justification and argue that they should be transcended radically by allowing for alternatives that democrats regard as 'unthinkable'. But then what are the standards for distinguishing emancipatory from regressive and oppressive forms of radical critique if not standards of moral justification? We need to examine these standards critically by asking how we apply them and

what they imply; but we also need to uphold them and defend the right to justification as a basic right to non-domination.

VII Moral Darwinism (reply to David Owen)

For many years, my thinking about critique especially has developed in dialogue with my dear friend David Owen, and I owe him many important insights. His readings of Nietzsche are an exemplar of radical interpretation for emancipatory purposes,⁶³ and his version of the method of genealogical critique is very illuminating and brings together many different strands of philosophy, from Wittgenstein to Foucault, in an original way.⁶⁴ Like Markell and other critics, he is worried that my rationalistic picture of thinking and acting is too narrow to comprehend the workings of social power and develop a proper conception of social progress. I welcome these challenges, since they provide me with an additional opportunity to offer a better interpretation of my own views.

The first issue on which Owen rightly presses me is how to understand the second-order practical insight, as I call it, that makes us 'see' or 'recognise' a human being as a moral person to be respected as an equal normative authority, independently of further considerations about our particular relation to the other or contingent specific qualities that he or she may have.⁶⁵ This is a complex view, because it combines on the one hand seeing a particular as well as a general 'aspect' of others as humans and not being blind to them as having a 'soul', as Wittgenstein argues, and on the other a rational insight into the moral justification this entails for recognising the other as an equal moral person with an unqualified right to justification. The justification for morally respecting the other is simply that he or she is a human being and an authority equal to me, and it implies that to ask for further reasons is to ask one question too many. We all share the status of being normative equals in the realm of justification. In my view, that is a moral insight of practical reason in Kant's sense of the term.

I agree with Owen and Cavell that racist slave-owners probably do not regard slaves as not human at all but only as a different kind of human being (DO 152).⁶⁶ So when I said that ‘soul-blindness’ (Cavell’s term) means having lost the capacity ‘to perceive humans as humans’⁶⁷ I meant (and should have stated more clearly) ‘as humans in the *full* moral sense’, not as humans in any sense of the term that might allow for (immoral) distinctions. To treat another subject as a slave presupposes, I assume, regarding him or her as a second-class human being who can be used, steered and abused. I also agree, as Owen argues following Cavell, that those who (mis)treat others in such ways not only fail to comprehend something essential about these others, namely that treating them in this way can never be justified, but also something about themselves, namely that they fail to regard themselves as equals to these others in the space of justifications. In a recent paper, I refer to this a form of ‘noumenal alienation’.⁶⁸ I also agree with Owen that someone who is morally blind to some groups of people can be selective in recognising other groups as equals; but I would not call that selectivity a partial morality (and I think Owen would not either). Rather, I would describe it as thoroughly immoral, since this selectivity destroys morality as a whole. And I did not mean to say that, empirically speaking, recognising some humans as equals means recognising all human beings as equals (DO 154). I only meant to say that this is what the second-order moral insight implies, normatively speaking.

Furthermore, I agree with Owen that there can be many ways in which a person comes to have such a second-order insight, and that contingent experiences play a major role in that process. There is no rational automatism that leads to this insight. Kantians like me emphasise the *capacity* for such insights and the importance of living up to this potential; but nowhere do they argue that the faculty of reason develops as an autonomous mechanism without proper cultivation. So it is indeed true that overcoming soul-blindness does not require ‘additional facts’ (DO 154), as Owen argues; but I think that it does respond to a normative reason, albeit one of a particular kind: in this insight, recognising the other as human means recognising the reason

for respecting him or her morally. He or she is the reason. So, as Owen says (DO 155), the slave-owner who comes to have that insight has a new 'range of reasons for acting'; but in my view this implies that he now properly understands what underlies these reasons, namely the status of the other as a normative equal. The insight is at the same time one of reason and perception, and the contingent *genealogy* through which one comes to have this insight does not change the general *validity* of its structure as a matter of recognising oneself and others as having a right and duty of justification. I will return to the distinction between genesis and validity in a moment, since it is at the core of further discussions between us.

But let me first comment briefly on Owen's second point, which concerns my notion of power. We share a pronounced interest in this topic, and in our analyses of ideology, for example, we think in similar terms (I believe). Like Owen, I believe that a 'moral conversion' that came about contingently and not by rational argument is something of relevance for noumenal power, because it marks a shift in the economy of reasons and justifications for a person. But if this change was brought about intentionally by others, then there has been an *exercise* of power; by contrast, if it simply 'happened' without anyone intending it, I call it a case of 'influence' or merely an 'occurrence' within the space of justifications. A lot here depends on the word 'exercise', since I want to distinguish these cases.⁶⁹ I do not think there is any contradiction between this use of 'influence' and my formulation of the exercise of power based on the ability 'to influence' the space of reasons for others, for the latter is an intentional form of influence, whereas the former is not. If you like, you can also call the former cases of influence forms of 'power', because they reflect constellations in the realm of justification; but that would make the concept of power very broad, since lots of factors, such as the weather, influence how we think and act. I think we need more focused definitions. Thus I of course accept that how the space of justifications within a society is constituted in general finds expression in social and noumenal structures that shape individual or group actions (based on certain justification narratives), and that

structural power ‘works through an order of continuous aspect perception’ (DO 156). But I disagree with Owen’s conclusion that such kinds of structural power (which I call influence) are ‘not different in kind to exercises of power by individuals’ (DO 156). They both refer to changes in the noumenal realm for a person; but the ways in which these changes come about are different, and that is relevant for our analysis of power.

The third, and final, very important issue that Owen brings up is the question of general aspect changes that we look at and evaluate from a historical perspective. What role does justification play here? As far as I can see, there are two issues involved: what role does justification play in actual processes of development and progress, and what role does justification play from the perspective of *ex post* evaluation?

With regard to the first question, I agree with Owen and Bernard Williams that we cannot reduce complex historical changes to a discursive process of ‘winning’ an argument (DO 157f.). A large number of factors and causes play a role here, and social struggles are not like seminar situations in which we deliberate about the right argument and, if things go well, submit to the force of the better reasons. But it would be equally reductive to say that justifications and arguments play no role in these processes, since the parties to the struggle produce lots of justifications for their aims and their strategies, as the Cambridge School reminds us.⁷⁰ These justifications are usually highly specific, but they often transcend the realm of validity of their time and place, as I argued above in my discussion with Bejan. For example, revolutionary claims based on what were called ‘natural rights’ raise such a validity claim. So every social struggle is a struggle over justifications; but it would be wrong to infer that how social struggles unfold follows the force of better arguments or, even worse, that the better arguments always carry the day. In that respect, Williams is right.

But Williams, and Owen following him, make a much stronger point, and that brings up the issue of historical evaluation. For both subscribe to the idea that, *historically* speaking, a moral-political change, perhaps even a revolution – such as ‘liberalism’s historical victory’

(DO 157) – did not just not come about by winning an argument against the old regime (which is true). Rather, also with respect to the *justification* of the claims raised by liberals in non-liberal societies, for example, they claim that it is only *after* the change (and the victory) that the arguments can be seen as having deserved that victory. In a sense the positions in question *produce* the normative platform from which they are regarded as valid and justified; they create their own justification through their historical triumph. But since this is not the proper meaning of the term justification, Owen suggests that we call it vindication, which, although it does not derive from *vincere* but instead from *vindicare*, carries with it the idea of justification by winning, but winning not in the sense of winning an argument but of being successful in factually overcoming and defeating the opposition. Vindication, according to Owen, means that ‘justificatory reasons cannot be given independently and in advance of the action or outlook in question’ (DO 158). In other words, as the Gauguin example shows, the historical winner determines what does and does not count as vindicated.

As one might expect, I have some qualms about this view. For it entails the danger of a form of relativism that I would like to avoid, a form of what I call moral Darwinism.⁷¹ If historical victory vindicates historical change by establishing new criteria of justification that were not normatively valid before the change, then a slave revolt was *not justified* before slavery had actually been overcome. And after it was not properly justified either, but only vindicated. That seems wrong to me, and it seems to contradict some of Owen’s own earlier statements about the immorality of slavery. More than that, it does not allow us to take a proper stance with respect to historical struggles and it is Darwinist in giving priority to ‘winners.’ Furthermore, it leads to a self-congratulatory historical narrative in which liberalism, democracy, respect toleration or what have you presumably were victorious. But I think that these struggles to overcome domination in its various forms, including the domination inherent in some forms of one-sided liberalism, are ongoing, and it is not helpful to think of us as justifiably being democrats because democracy was vindicated by winning its historical battles.

The major issue, however, is that this idea of vindication combines genesis and validity in a particularly troublesome way. It says that in a radical historical struggle, we do not know which side has the better justifications for its claims, for only the winning team will be vindicated and then produces a new platform of justification. The latter, however, does not allow for judgements of moral validity concerning the past, and thus not concerning the future either, because there again historical victories will decide which justifications are plausible by vindicating some changes rather than others. This view not only paralyses the exercise of historical, but also that of future judgements. In fact, it negates the very possibility of agents fighting for their claims in the belief that they have good reasons for regarding them as morally justified and justifiable.

Do we really want to say that for us 'heirs of victorious liberalism', so to speak, the values connected with it are justified because of that victory? That the opposition to feudal orders by democrats was not justified given the oppression within these orders? That the French Revolution was not justified until it became successful? That Bayle's arguments were not more justified than those of Bossuet because the Bayleans first had to defeat the Bossuetians historically? Do we want to say that Marx was wrong when he argued that communists were fighting against '*Unrecht schlechthin*',⁷² injustice *as such*, because what they were really fighting for was to make their conception of justice dominant without any general yardstick of what justice means, so there was no *schlechthin*? Was the struggle for gender justice or for racial justice only justified once it was achieved – and, again, has it been?

I fear that moral Darwinism is self-defeating if one wants to uphold a meaningful view of historical struggles that can lead to emancipation, properly understood. That of course does not mean that we cannot *explain* in historical terms why and how many people in earlier societies held very different views of morality or society, and that there existed very different narratives and standards of justification. But when these were *morally* questioned, we cannot stand aloof and say that the questioners (say, the slaves) did not have any justification on

their side, even though we can understand from a historical perspective why they were seen as not being justified. And, again, to say that their claims were justified because they were successful would presuppose that we are simply repeating the standards of the victorious and that the losers were never justified since they were not vindicated. I think that we need to be careful to ensure that our judgements about historical progress are well reflected and do not produce victorious stereotypes, and in that regard Owen's reminder concerning relativity is important. But it is contradictory to warn against self-congratulatory historical assessments and at the same time recommend their very logic.

My view, however, carries a heavy burden of normative argument. For by what criteria are we supposed to judge whether slaves had a justifiable moral claim in a society in which they were not fully recognised as claim-makers in the first place? Are we not simply projecting 'our' views on them and their societies? This is something we should avoid, while accepting that there are major historical differences in the spaces of justifications. But I am committed to the idea that the radical question and demand for reciprocal and general justification is always *pro tanto* justified, because it uses the principle of justification itself to radicalise the standards that determine what is seen as justifiable. 'Radicalise' here means that those who were subject to certain normative orders that were meant to be *generally* justifiable with respect to, say, God's will, the common good or human nature, questioned and rejected that general justifiability by pointing out its particularity and exclusions. And they also did not accept the positive defence of such particularity – in, say, a Rortyan move – as a justification, since the general order had to rest on a justification that was general in nature. This is what Williams's notion of basic legitimation demands, and is itself radicalised by his critical theory principle that a justification does not count if it is produced by the very asymmetrical order that is supposedly being justified.⁷³ Thus I hold that there is a universal moral grammar built into any normative order that claims to be justifiable, as every order must, and this moral grammar allows for critique of any justification that fails to measure up to standards of reciprocity

and generality. So when the dominated, in whatever historical period, asked for justifications they could accept, they may have stopped at some particular stage of justification. But they used a grammar that can always be further radicalised, in contemporary as well as future societies. We do not use 'our' allegedly vindicated standards of justification to assess past claims and developments; rather, we use the standards that those who were engaged in emancipatory movements used to establish themselves as agents of justification. And we should also use them to overcome our own exclusions and ideological normative orders of justification.

Despite my concerns about the notion of vindication, Owen is right to bring up a particularly complex issue connected with this to which I do not have a good reply. That is the question of which norms of justification can justify the means and strategies by which political movements fight for and construct new structures of justification. Could it be that the use of violence can be vindicated even though it is not justified in such conflicts and struggles? Owen calls this 'the Machiavelli question', i.e. the question of whether 'the performance of morally unjustified actions may be necessary for the establishment of good ends' (DO 160). And he suggests that some actions (although not all) that appear unjustifiable may still be vindicated by the good they bring about. Note that the notion of vindication at work here is different from the one discussed above, for in this case the point is not that historical change brings about a new platform of justification from which the results look justified because they have been vindicated; rather, here the question is whether the means required to achieve an end that is already seen as justified are themselves justified. So the question, I take it, is really still one about justification, although now about justifications of a particular kind, namely of those actions that lead to a new and superior structure of justification. And I admit that Kantians, as much as any other view of political morality, should have a response to this. But I do not have a well worked-out view of what has been called 'revolutionary ethics' or the ethics of effective social change through certain means including violence. I have some principles in

terms of which I would think about this, such as the Kantian idea that our actions should not belie our moral aims or make future cooperation impossible, or some notion of proportionality, but not much more. However, I think that these questions still call for *justifications* and that retrospective vindication does not constitute an alternative to this. For otherwise we would open the door to all kinds of actions which we could see as vindicated in the end although they were not justified. And that could seriously damage the relevance and primacy of moral justification, whose acceptance we must insist on for social agents, including past ones. Maybe what they did ultimately brought about something good, as Gauguin also did; but that neither justifies nor vindicates their deeds if they carry the scar of immorality. I would prefer to separate the question of the justifiability of their actions from assessments of the good they brought about and not to use a notion of vindication that is situated uncomfortably between these two dimensions of evaluation.

In sum, I would like to combine issues of *dynasteia* and *politeia* in my view (DO 161), since my notion of political order is not static. Rather, I consider a normative order as always being in flux, as involving a constant struggle between conflicting forces. Democratic justice, if things go well, is a virtue of recuperation, because it transforms relations and structures of domination into relations and structures of justification. Justification is essential when playing the game of politics, since this game is a game of noumenal power. But it is also a game about justice, which is why I try to develop a descriptive, social-analytic language of justification *and* a normative one at the same time. Only in this way can we avoid positivism, i.e. the idea that we can provide a neutral description of social dynamics without evaluating it. And when we evaluate, we had better have standards of justification to hold onto. We are always observers as well as participants in these games when we engage in political philosophy in a critical mode. I believe that Owen and I agree here.

If I ever make any progress in that practice, it is due to great minds from whom I learn. And if such minds focus on my work to help me make it better, it is the greatest privilege one can enjoy in our profession.

So I thank my critics again from the bottom of my heart in the hope that I have learned something from their great comments, although probably not as much as I should have.

Notes

- 1 T.M. Bejan, *Mere Civility: Disagreement and the Limits of Toleration* (Cambridge, MA: Harvard University Press, 2017).
- 2 Compare TiC, p. 13.
- 3 T.M. Bejan, 'What's the Use? Rainer Forst and the History of Toleration' (ch. 2 in this volume). All the following numbers in brackets refer to the pages of this volume, referencing the respective comments of my critics with their initials.
- 4 K.O. Apel, 'The "Erklären/Verstehen"-Controversy in the Philosophy of the Human and Natural Sciences', in G. Fløistadt (ed.), *Contemporary Philosophy: A New Survey* (Chronicles of the International Institute for Philosophy II) (The Hague, Boston and London: Martinus Nijhof, 1982), pp. 19–50, and *Die Erklären: Verstehen-Kontroverse in transzendentalpragmatischer Sicht* (Frankfurt/M: Suhrkamp, 1979).
- 5 See the Rawls Papers, 'Essay and Notes on Toleration', 1950–1955, HUM 48, Box 7, Folder 16. Rawls here quotes Bayle in French, referring to Jean Delvolve, *Religion, Critique et Philosophie Positive chez Pierre Bayle* from 1906. Teresa Bejan thinks that the notes have been dated wrongly.
- 6 TiC, p. 151; J. Rawls, 'On My Religion', in Rawls, *A Brief Inquiry into the Meaning of Sin and Faith* (Cambridge, MA: Harvard University Press, 2009), p. 266.
- 7 See for example P. Balint, 'The Respect Conception of Toleration' in Balint, *Respecting Toleration: Traditional Liberalism and Contemporary Diversity* (Oxford: Oxford University Press, 2017), pp. 48f.
- 8 Bejan, *Mere Civility*, p. 160.
- 9 T.M. Bejan, 'Review Essay: Recent Work on Toleration', *The Review of Politics*, 80 (2018), 703f.
- 10 B. Williams, 'Persons, Character, and Morality', in Williams, *Moral Luck: Philosophical Papers 1973–1980* (Cambridge: Cambridge University Press, 1981), p. 18.

- 11 Bejan, *Mere Civility*, p. 160.
- 12 C. Kukathas, 'Let's Get Radical: Extending the Reach of Baylean (and Forstian) Toleration' (ch. 3 in this volume).
- 13 I wish a video existed of Chandran's great performance of that footnote in York, surpassing the Monty Python 'Dead Parrot' sketch this is drawn from by far.
- 14 Apart from his own writings on Bayle, Kukathas edited Bayle's main treatise on toleration including all four parts of the book – P. Bayle, *A Philosophical Commentary on These Words of the Gospel, Luke 14:23*, ed. J. Kilcullen and C. Kukathas (Indianapolis: Liberty Fund, 2005).
- 15 See *TiC*, p. 69.
- 16 See *ibid.*, pp. 253f.
- 17 P. Bayle, *Philosophical Commentary on These Words of Jesus Christ, Compel Them to Come In*, ed. and trans. A. Godman Tannenbaum (New York: Peter Lang, 1987), II.7, p. 147. See *TiC*, p. 255 on Bayle's discussion of the limits of toleration. As I explain there, it is true, as Horton (JH 70) remarks in 'Tales of Toleration', that Bayle had the Catholic Church in mind there, but only as a persecutionist institution (which it was when he wrote this, pursuing him and throwing his brother in jail instead), not as a ban on Catholics generally. He likewise criticises intolerant Protestants. Thus I do not see his reflections on the limits of toleration as being on a par with Locke's more sweeping considerations. That also holds with respect to atheists (or those who were regarded as such at the time).
- 18 Bayle, *Philosophical Commentary*, I.1, p. 30; *TiC*, p. 248.
- 19 Bayle, *Philosophical Commentary*, I.10, pp. 84–5; *TiC*, p. 251.
- 20 See my 'Two Pictures of Justice', in *JDRJ*, pp. 3–25.
- 21 I am tempted to say that the hope to find a conception of toleration in that approach is as futile as the attempt to buy any cheese in the well-kept 'National Cheese Emporium'.
- 22 See, for example, J. Horton and S. Mendus (eds), *Aspects of Toleration* (London and New York: Routledge, 1985) and Horton and Mendus (eds), *Toleration, Identity and Difference* (Basingstoke: Macmillan, 1999); J. Horton and P. Nicholson, *Toleration: Philosophy and Practice* (Aldershot: Brookfield, 1992).
- 23 J. Horton, 'Three (Apparent) Paradoxes of Toleration', *Synthesis Philosophica*, 9:1 (1994), 7–20 – and my discussion of it in my 'Toleration and its Paradoxes:

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