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articles

ON THE REASONABLES OF TOLERATION

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Abstract

Toleration and reason grew along an impressive literature though not always with a constant intensity and flow. An edge and favored subject at times, the combination of two have fallen into shadow or sheer oblivion some other times. Coming up in the early modernity and Enlightenment, with John Locke and Immanuel Kant or Voltaire, the concern for the combination of two, took a long two century pause up to the middle of the Twentieth and the beginning of the Twenty first. To look into the explanation and understanding of this quite venturous shift of fate is the purpose of the present essay. The main assumption underlying it is that complex and disjunctive historical contexts challenged both the content and the practice of tolerance and ratio in their conjuncture, having as a combined effect and result a critique followed by the decomposition of the concepts under the pressure of adverse practices. In turn newly restored understandings are emerging as embodiments of reason in current practices of toleration. In order to address the argument a comparison is drawn between the historical context of the seventeenth century through the examination of John Locke's evolutive design on toleration and the present historical context in which toleration has been constantly summoned up by the EU representatives, countries and institutions related to the migration/refugees Syrian crisis.

Locke has been famously known and perceived as the apostle of tolerance¹ and as the incipient but thorough and keen investigator and critique of the powers of the human reason. Interestingly enough is that in his works on both subjects the link in between is drawn by religion - belief together with morals - and institutions, lay or religious -state and church. Indeed that kind of path has marked along his intellectual differences and changes in

¹ Literature on John Locke's political and religious thought on tolerance is a vast domain with notorious contributors. Here we list only the probably most quoted ones: Kim Ian Parker, *The Biblical Politics of John Locke* (Waterloo, Ontario: Wilfrid Laurier Press, 2004); Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* (Cambridge: Cambridge University Press, 2002); John Marshal, *John Locke. Resistance, Religion and Responsibility* (Cambridge: Cambridge University Press, 1994); *John Locke: A Letter Concerning Toleration in Focus*, ed. Susan Mendus and John Horton (London: Routledge, 1991); John Dunn, *The Political Thought of John Locke* (Cambridge: Cambridge University Press 1982)

approaching and reasoning on toleration from a somewhat conservative standing point up to a more liberal one, out of the two the second being the support for the later fame, while the first being ignored and lately overpassed and neglected. It is not the present essays take to enquire into the entire history and course of the concept², but rather to highlight the switches of its turn in Locke's own time and life. To deal with this kind of task the present study gives a comparison between two works of John Locke that have not been rated among the most important ones even by the author himself and these are *Two Tracts Upon Government*, written in 1660 and *An Essay Concerning Toleration*, composed in 1667 both unpublished in his time. The relevance of revisiting one might say obscure and uninteresting³ early works of Locke's is thought to bring about the decomposition of the concept in the historical circumstances of the 17th century Europe. The argument of the present study is that *because* of "the fact that they are the work of...the young Locke who had not yet found his own word" (Strauss 1967, 47) their examination in the background of the contemporary religious and political narratives and ideologies are providing for the emergence for and framing of another understanding and practice of tolerance that are working when applied to the latest European politics on toleration.

Countenanced as the turmoil age of resistance, dissent and revolution in alternation with restoration - a string/progression that was to bring about modernity in social and political thought as well as in practices - England's Seventeenth Century has been the battle field between contradicting embodiments of reason such as the ones reflected in the magisterial authority over the church and/or the Interregnum clericalism, sectarianism and enthusiasm, in the conformity and/or non-conformity to government and church, in the upcoming of toleration against intolerance in the ecclesiastical and political realm. Locke's intellectual trajectory is bearing

² For seminal works on the history of tolerance see: *Toleration in Enlightenment Europe*, ed. Ole Peter Gray and Roy Porter (Cambridge: Cambridge University Press, 2000); *The Culture of Toleration in Diverse Societies: Reasonable Tolerance*, ed. Catriona McKinnon and Dario Castiglione (Manchester: Manchester University Press, 2003). Also for the "toleration debates" see: *Toleration and its Limits*, ed. Melissa S. Williams and Jeremy Waldron (New York : New York University Press, 2008); *Toleration: An Elusive Virtue*, ed. David Heyd (Princeton: Princeton University Press, 1996); *Justifying Toleration* , ed. Susan Mendus (Cambridge: Cambridge University Press, 1988);

³ See for instance Leo Strauss, *John Locke As "Authoritarian"* where he states that "The Two Tracts would not be of interest to anyone except for historians specializing in mid-century English theologico-political debates..." in *The Intercollegiate Review*, (November-December 1967), p. 47

the marks of those struggles, witnessed in his transformations from an orthodox complying set of views - in his early years - to a religious, political and epistemological heterodoxy. As John Marshall concisely describes it: "At the Restoration of Stuart monarchy and of the Church of England in 1660-62 John Locke supported almost none of the positions of the *Two Treatises* and the *Essay Concerning Human Understanding* that have made him the subject of continuing study...He was an unequivocal opponent of religious toleration and of rights of resistance and was instead a supporter of absolute and arbitrary government in all civil and ecclesiastical 'indifferent' matters - that is those matters that were not expressly commanded or forbidden in Scripture"(Marshall 1994, XV). But in between 1660 and 1690 Locke became the master theoretician in the English literature on religious toleration, limited government, rights of resistance and individual consent of governmental authority. Central to this mutation was the change in his creed and religious beliefs from a Trinitarian upheld with a stark view of the Fall and of original sin to a heterodox religious expression, "very probable in private an Unitarian heretic" (Marshall 1994, XV).

1. From Calvinism to Anglican Church: the reasoning and practice of intolerance

Two Tracts on Government - "I would be quiet and I would be safe."

Locke was "born and had finished his studies at a time when Calvinism was all the fashion in England", wrote Damaris Masham, daughter of the Cambridge Platonist Ralph Cudworth, in her comments to Jean Le Clerc after the death of John Locke. She continues "But these doctrines had come to little thought of before I came into world [1659] and Mr. Locke used to speak of the opinions I had been accustomed to at Cambridge, even among the clergy there, as something new and strange to him."(Marshall 1994, 6) In his education several turns and influences have been drawn some of them opposite: for instance his early education in Somerset has been under the influence of the Calvinist Presbyterianism while at Westminster School the steady classical study of Cicero, Livy and Erasmus rather than Luther or Calvin shifted his course towards the intellectual separation from his Calvinist upbringing; then later again in the years spent at Christ Church, Oxford in the Calvinist atmosphere, under the influence of the leading Calvinist theologian John Owen, he might have opened himself towards toleration and independent positions from the uniform national church, either Presbyterian or Anglican.

When examining the impact of ecclesiastical and lay policies on the education of the time it comes to forefront the establishment of Presbyterian classes throughout England involving the devolution of Anglican Church power to Presbyterian elders in the aftermath of the execution in 1649 of King Charles I and during Oliver Cromwell's Protectorate. It also highlights the effects of repeated and quick changes of leadership of the nation in the wake of Cromwell's death in 1658 on the political or literature expressions of tolerance within or outside religion and church. Disputes over religion generating political anxieties and ending up in Civil War dominated Locke's intellectual concerns and since war is the act of forcible violence, toleration was hardly a practicable prospect to advocate since resistance in the name of tolerance generated intolerance and radicalization. In historians accounts Locke had a wide and knowledgeable ground on the structure and purpose of the Civil War and Interregnum religious thought with respect to the significance of self-serving and restrictive nature of demands for liberty and conscience but also regarding his persistent suspicion that 'puritan' desires for intolerance and authority were generally cloaked under demands for liberty. (Worden 1984; Walzer 1965) It was an age when "most leaders of Protestant sects claimed the duty to institute a thorough reformation and the right of conscience to resist, and had either been opposed to religious 'toleration' in principle, or attempted to limit religious 'toleration' by arguing that liberty of conscience ought to extend no further than liberty of conscience as they define this." (Marshall 1994, 8) Protestant resistance and religious sectarianism generated what Locke saw as a "great 'Bedlam' England" when "deceitfull [men] as all religious pretenders are, nor tyrants such as are the promisers of liberty" that caused the political and religious turmoil of his lifetime storm as he describes it in his *Correspondence* and the *Two Tracts*.

Restoration of Kingship and Anglicanism were the prudential means to secure tranquility - *prudentia* and *tranquilitas* - against "the danger and destruction which are soe peremptorily asserted by a sort of men which would persuade us that the cause of God suffers when ever they are disappointed of their ambitious and covetous ends"(Locke 1978, I, 59,91) and when Locke in the "Anglican floodtide sentiment at Oxford" of the 1660-62 supported the reestablishment of the Anglican Church he did so by composing a manuscript that draw him a committed Anglican and conformable political man to the restored Kingship of Charles II Stuart. With peace and security attained the substance of debate could go on: the

hot subject giving way to civil war has been imposition versus opposition to imposition of “indifferent matters of worship” by the public magistrate. The topic of “indifferent matters” was one of utmost importance as well as complexity: of importance as it pertained to the doctrine, discipline and ceremonies of the publicly imposed Church of England that in turn regulated not only religious practices but were standing at the foundation of civil and political practices such as the extent and the nature of political obligation; and of complexity as it entailed a determinate understanding of the limits to liberty of religious belief that could practically be allowed given the frame of a national church and that could also allow for the largest practical liberty of conscience. Defending the magisterial power/authority on the imposition of indifferent matters in religious worship or ceremonial forms was the public position of the supporters of the national church a position completed by sequences of little to be imposed. Resistance to imposition of *adiaphora* (indifferent matters) was the position of the protestant church an opposition to authority raised on Scriptural grounded interpretations of liberty of conscience. On such an argument the infallibility of the sacred text was foundational for practical divine sources it could give no other ways of interpretation but the one revealed by them. In both cases the reading comes down to some kind of authority, in the first the magistrate, in the second the person. The difference between the two is that the former is a result of reason regulating worship while the second is the result of inspirational revelation and faith regulating civil life.

Locke defended the magistrate authority in imposing indifferent matters for security and life preserving reasons, his personal boundaries for tolerance and his construction of the limits for politics of toleration. He was not alone in the stream as most of his friends and generation fellows embarked on sustained criticism of puritan reasoning and practice of liberty of conscience as a wide door open to anarchy, mutiny, and social unrest by unconventional, arbitrary and emotional means of reading and acting of Christian faith and religion. James Tyrrell, Robert Boyle, Thomas Barlow, Samuel Tilly were in his company together with acknowledged literate figures of the time like William Chillingworth and Richard Hooker or Bishop R. Sanderson. One common ground of their argument was defense of natural law and public authority – ecclesiastical or civil – as the sole source of imposition of matters religious or civil accompanied at Sanderson by a strong vision of clerical re-establishment of the Anglican Church. Canons become laws only issued with the authority of the

supreme magistrate and no distinction between religious and indifferent acts were in fact conceived to be possible.

Locke deployed the argument supporting the Anglican church counter Reform in the unpublished *Two Tracts Upon Government* while entering in the debate against one of his colleagues at Christ Church, Edward Bagshawe the younger vindicating in his *The Great Question Concerning things Indifferent in religious Worship* that each men should be free to worship on 'their inward conscience' because the nature of Christian religion was 'free and unforced' and accordingly worship should be a matter of 'free will offering' with no compelling of uniformity coming from the power of magistrate to impose. Locke decomposed the argument in several tracks starting with the criticism of the hazardous concept of freedom in the puritan interpretation and its anarchical and violent historical effects in civil society and state and ending up with a severe criticism of clericalism with no regard to church. His emphasize was on civility and politics vested in religious coats that made civil unrest and wars to bear long lasting adversities and he strongly exposed and condemned puritan practices to use the power of religion nourished by passions and emotions turned into enthusiasm and zealous faith as means to get hold on political power. He remarks with bitterness and anxiety that "almost all the tragical revolutions in Christendom these many years had turned upon the hinge and worn the vizor of religion...to ruin the state but with the pretence to build a temple." (Locke 1969, 160-161).

The main characters to be held responsible for the continuous state of anarchy induced through religion were the 'religious pretenders' - preachers preaching and spreading everywhere a perverted Christian doctrine, "specious outside of reformation and the cause of God...those who know how to arm the rash folly of the ignorant and passionate multitude with the authority of conscience" concealing "a predatory lust under the guise of Christian liberty and religion." (Locke 1969, 120-121). Apart from the content of the sermons indicted by Locke and also coming against the ordered ceremonials of the Anglican Church were protestant ceremonial practices which were perceived no less menacing and dangerous to peace and security. "According to Locke, the claim of 'liberty for tender consciences' against the enforced ceremonial of the Church of England had been 'the first inlet' to all destructive opinions that had spread throughout England. Men who were generally discontented, ambitious and liable to 'zealous doctrines and religious furies had been 'inspired' with dangerous doctrines by 'crafty men'." (Marshall 1994, 13; Locke 1969, 211)

Ceremonials themselves are embodiments of worship and by taking up this common argument rationalities of protestants and Anglicans switched and opposed when coming to the authority that regulate the practices through enacted laws. A rationale of unified authorized ceremonial with less regard to individual formal liberty of expression but as well with no concern to regulate inward or private liberty of conscience confronted to one upholding each individual's will in practicing worship as an embodiment of its own freedom of conscience. 'Indifferent things of religious worship' in one case is the frame of what is tolerated and what is not, while in the other is the image of intolerance. In neither case though at the end of the day there is no real, practical match with 'indifferent things of religious worship' in the imaginary reasoning of the time. As Locke recognized in a letter to his father choosing one or the other was choosing between security and private freedom of thought and unsafety and public liberty of expression: "I would be quiet and I would be safe."(Locke 1978, I 91)

Since their first publishing in 1967 by Philip Abrahams *Two Tracts* have been famously risen controversies on Locke's well established historical standing as the illustrious founding father of modern liberal politics as this early work exposed a quite opposed concept of politics overall and particularly of religious politics. A legalist and voluntarist work that would allow no free agency to individuals neither in religious matters nor in lay ones, as long as law is all prevailing and the source of the law is the supreme the authority which is either God through revelation or reason by the way of natural law. On this argument "indifferent things" have the same nature in civil or religious life and the concept admitting no line of the distinction between matters of religion and civil society could be drawn and consequently "all things could become identified as religious with all government and order perishing". That particular outcome became the necessary reason for a magistrate or a government to have an "absolute and arbitrary power" regarding "indifferent religious things". With the power derived from God or from consent of the people the magistrate "concentrates in his person the authority and natural right of every individual by a general contract...all indifferent things, sacred no less than profane, could be entirely subjected to his legislative power and government." (Locke 1967, 122-6,153-5, 218-20, 23). The magistrate is ascribed with extended up to unlimited "absolute, arbitrary power over all the indifferent actions of his people...he alone is judge what is and what is not conducing to the good of the public" and even he might act unjustly by enacting laws that are coming against the law of God the subjects are

bound to passive obedience and will never resist by the force of arms (Locke 1967, 123, 150, 190) When it comes to politics of toleration - religious or civil - it follows then that it is the result of an institutional arrangement represented by the absolute will of the civil authority encoded in the positive laws prescribing thoroughly the limits of what is and what is not allowed which is tantamount to ground zero of toleration or - to say the same thing with other words - absolutism and toleration are one. "The sincere and tender hearted Christians" might be gently dealt with by the magistrate but for sure "toleration as their right" will be by no means conceded far more granted. (Locke 1967, 160) Absolute monarch is his reasonable solution for the "untamed beasts" that people are proving themselves to be (Locke 1967, p.158)

A position very close to if not identical with Thomas Hobbes' one on religious politics earlier extensively writing on the subject and arguing that if personal freedom/safety needed to be protected the task is to ensure a correspondence between religious beliefs and secular values through particular institutional arrangements in church - state policies. His particular solution, the absolute monarch, was the theoretical frame he created for political and ecclesiastical arrangements which embraced the extremes of both sets of arrangements. The critical variable in church politics is the substance of belief animating the society and the crux of the problem lies in the choice of the civil magistrate codified by the genius of Hobbes in a general framework regarding the relationship of liberal politics to religion: "Should the sovereign strictly control institutional religion in order to impose supportive Protestant beliefs or should he permit and even encourage spontaneity in a society intent upon embracing those beliefs?" (Eisenach 2002, 46). Taking up Hobbes' solution for toleration as the institutional arrangement in religious politics of the 1660, Locke's *Two Tracts* was a composed result of historical conjectures, personal intellectual development and the already structured meta narratives framework. By meta narratives dominant sets of valued ideas, understandings and meanings underlying practices are designated and amongst the most frequently addressed are God, revelation, predestination, salvation, human nature, natural and divine law, moral commandments. For the economy of the argument an examination of the human nature narratives is enlightening both for Hobbes' solution and for Locke's comprehension on toleration politics. The state of art in the imaginary of 17th English century human nature expression coming along a strong medieval tradition renewed and strengthened by the vigor of Renaissance perceptions is Hobbes' evaluative description of *Leviathan's* Chapter 13: "Nature has

made men so equall, in the faculties of body, and mind;...from this equality of ability ariseth equality of hope in the attaining of our Ends. And therefore if any two men desire the same thing, which neverthesse they cannot both enjoy, they become enemies; and in the way to their end, (which is principally their owne conservation, and sometimes their delectation only,) endeavor to destroy, or subdue one an other...And from this diffidence of one another, there is no way for any man to secure himselfe, so reasonable, as Anticipation; that is by force, or wiles, to master the persons of all men he can, so long, till he see no other power great enough to endanger him..." (Hobbes 1981, 183-4) The warrior nature on the man has its origins in the overarching Christian view and perception of human kind as corrupted, failing in retaining the Godly perfection by which it was endowed in the sacred creation, unworthy and incapable of holding the divine grace which was proved in the moment of the Fall. The natural condition of mankind is one of misery and the only possible way to redeem and salvation in faith and practice is serving God by serving the other and its symmetrical in civil life, by total and absolute obedience of law and magistrate. In the *Two Tracts* Locke's outset on tolerance is that because of the frailness of human nature, so easily corruptible and exposed to perversion both the imposition of the religious ceremonial and interpretation of the Scripture together with civil law will secure life and society while toleration is not. He even counter exemplifies with "Mahometanism" whose professors were 'quiet' because they sought thereby to commend themselves and their religion " by the strictness and sobriety of their lives". (Locke 1967, 169-71; Marshall 1994, 18). Advocating extensive service of others at one's own loss was in the end - be it in faith or religion through duty and charity and civil life through political obedience - the one and only way to secure life and in the last instance/for that matter freedom itself against the dominion of chaos and the "tyranny of religious rage". (Locke 1967, 120).

2. Restored toleration - In the search of politics of tolerance
An Essay Concerning Toleration - "Liberty to tender consciences"

Persisting up to the end of his life the utmost limit to all religious tolerance has been the opposition to Catholic Church for reasons that Locke expressed at an early stage of his intellectual development at Oxford in a reply to *Essay in Deffence of the Good Cause* written in 1659 by Henry Stubbe the younger, where he defended the religious toleration on the reason that there is no infallible interpretation or interpreter of the Scripture. Locke has

answered agreeing with Stubbe that men of different religious persuasions could be united “under the same government...and march to the same end of peace and mutual society though they take different ways towards heaven” except for the Catholics who could not be tolerated because they could not “obey two different authorities carrying on contrary interests...and did not keep faith with heretics.” (Locke 1967, 242-4) Throughout the Interregnum up to Restoration he resigned from toleration even regarding non Catholics as an ideal held to be impracticable and embarked upon a sustained defense of strong governmental authority, a position that he revisited and amended in *An Essay Concerning Toleration* written in 1667 or early 1668.

Evocative for the understanding of such an important shift of his position, approach and argument regarding toleration a brief account of the Restoration background and churchmanship policies is enlightening. It will be instructive to inquire then into the historical data related to religion and its demographics in the second part of 16th century in England and as well to the recorded debates related to the admitted/tolerated forms of religious ceremonials throughout the restoration. As historians have been showing the restoration of the Church of England in 1662 synchronic to the restoration of monarchy albeit much expected as the unifying project of a national religion did not bring about with its re-establishment peace or agreement but instead political and religious conflict majorly due to the wide spread perception of the Episcopalian regime as retaining much of the ceremonial forms and rigidity very much alike of Catholic Church regarded in the opinion of the time as “popish” superstition. The Episcopalian regime of the Church of England severely imposed its policies regarding as much the religious ceremonial in the form and in the content – a politics that somehow naturally followed to the previous protestant wave of free and unorthodox preaching that was perceived as the origin and root of social unrest, national disunity and civil war. The imposition went through with the dismissal or/and resignation of their parishes of over seventeen hundreds of the clergy but together with them entire congregations were leaving the national church as nonconformists – Presbyterians, Independents, Quakers and Baptists - estimated in the various census of the time from several hundred thousand up to one million, amounting at 20% of the population. An important number for a newly restored monarch in the search of support, stability and public tranquility/ social peace and one of the main reasons of the King’s policies regarding ecclesiastical concessions in order to unite his protestant subjects - a line of politics that ensured along the religious duty the political one,

allegiance, obedience and loyalty and bringing the back on the floor the rationale of toleration as ecclesiastical and civil politics.

“Liberty to tender consciences” was the word of the day in King Charles II tolerance program for loyal subjects with two current understandings of it: toleration within the church and toleration outside the church. Toleration within the church or comprehension entailed the broadening of the terms of communion in order to allow Protestants to join in – a line of argument that brought under discussion the form and content of the religious ceremonial, while toleration outside the church or indulgence left at large independence in the allegiance of religion and supported a devolved rather than a hierarchic church authority. The distinction between the two understandings is quite notable as the first is containing Saint Augustine vision of Christian tolerance stemming from Christian charity, a duty and a practice towards any soul by the way of inclusion to Christianity, a rationale of toleration within the boundaries of a religion whereas toleration as indulgence while still keeping a Catholic flavor sets the limits of toleration outside a church and a nominated religion.

One more thing before passing to Locke’s contribution would be of interest and this is referring to the meaning of the religious ceremonial as far as toleration is concerned in the making of its content. The astute debates over comprehension – or what “The horse with a comprehensive belly has been to the Trojans” in the Episcopalian view of their power politics within the church, was accompanied by a symmetrical opposition to it by protestants of various orientations – Latitudinarians, Arminians or strict Calvinists. At the core of the entire series of the pamphlets issued at the time stays the ceremonial form in which worship is edified up to as much it stands for worship itself. Worship entails beliefs, duties and practices that are seen closely tied up in it and here the practices/ceremonies are nothing less but the expression of the belief. Form is as important as the substance, the content is form and being as such it is identity building and hegemony related. Wearing or not a hat or a scarf in the church, kneeling down or not in the church, making or not the sign of cross are not only casual behavior or plain gestures but they are loaded with worship. Uniformity or liberty of worship was then a matter of politics and consequently two quite opposite streams were flowing at the time, one sustained by Charles II through his enactment in 1662 of a Declaration of Indulgence that suspended the penal laws against dissent, and the other defended by archbishop Gilbert Sheldon

and the Parliament in the re-enactment in 1664-5 of the Act of Uniformity that added further penal laws against dissent.

King Charles II toleration policies went towards the second understanding of tolerance as inclusive politics and he had in Lord Ashley, at the time a leading minister to the King, a consistent support opposing the Parliament's position on the issue. Lord Ashley, later first earl of Shaftesbury, one of the most important political figures of the late seventeenth century famous for his anticlerical and tolerationist views appointed Locke after having met him in 1666 "upon the study of the religious and civil affairs of the nation, with whatsoever related to the business of a Minister of State" (Marshall 1994, 48) It was in this new personal as well as political conjecture that the four drafts of *An Essay Concerning Toleration* or *Essay on Toleration* were conceived starting out from - as he says - the "question of liberty of conscience" a work that is assessing not only the King's and Lord Ashley's fundamentals for toleration politics but as well Locke's ideological and prudential contribution to policy making together with his own concern regarding the boundaries of human understanding, politics and religion. Locke sets out his argument after shortly defining the general background of the dispute regarding the understanding of freedom of conscience as divided between two dominant parties that disputed and defended with an increased animosity and equal zeal either absolute obedience towards authority, the first, or universal liberty in matters of conscience. (Locke 2016, 1)⁴. Looking at both parties' positions he soon goes on by taking down the discussion from an abstract or speculative level to a pragmatic one showing that absolute freedom is a not only an illusory state but also quite an undesirable one as far as human preservation is concerned. In a very Hobbesian skeptical spirit he assumes human nature as a warrior and violent one stressing that "For if men could live peaceably and quietly together without uniting under certain laws and growing into a commonwealth, there would be no need at all of magistrates or polities" but as long as life is concerned limits of freedom need to be drawn by the entrusted power and authority of the magistrate that is setting the boundaries of imposition and obedience. The premise of the government as the guard securing "the civil peace and properties of his subjects" gives then free way for the deployment of his favorite tract on *opinions and acts of men* with reference to toleration - that is freedom of conscience - which he

⁴ References are to *An Essay Concerning Toleration* are to the online version edited at <http://www.oxfordscholarlyeditions.com> accessed in March 2016

distinctly sees as being of three types: first, “opinions and actions as in themselves concern not government or society at all, and such are all purely speculative opinions and divine worship”; second, opinions and actions that in their nature “are neither good nor bad but yet concerne society and mens conversations with one another, and these are all praticall opinions and actions in matters of indifferency” and third, there are “such too as concerne society, but are also good or bad in their own nature and these are moral virtues or vices”. (Locke 2016, 2) Speculative opinions and divine worship - “such as believe of the trinity, purgatory, transsubstantion, Antipodes, Christs personal reigne on earth” - are those alone that “have an absolute and universal right to toleration... in these every man has his unlimited freedom.” The bottom of the argument lays in the definition of an individual as a person with its identity coming from the “experience and nature of understanding, which can noe more apprehend things otherwise then they appeare to it, then the eye see other colours then it doth in the rainbow whether those colours be really there or noe” . (Locke 2016, 3.) In his explanation of why absolute and universal freedom in divine worship can be tolerated Locke emphasizes the absolute private and sincere, truthfull character of belief and later even of worship as human action with no consequences of bias or disturbance regarding others and the magistrate a feature that is coming from one’s personal relation to God, for “men must in this necessarily follow what they themselves thought best, since nnoe consideration could be sufficient to force a man from or to that, which he was fully persuaded, was it the way to infinite happinesse or infinite misery” (Locke 2016, 4) The line of the argument related to tolerance and freedom of conscience goes here against anything he has been writing, believing and standing by the years before, when Locke’s religious tolerance viz. freedom of conscience was amounting to the minimal in the *Two Tracts*. The radical move from his earlier ideas is even more visible and manifest when worship practices or actions are discussed: “Religious worship being that homage which I pay to that god I adore in a way I judge acceptable to him, and soe being an action or commerce passeing only between god and myself, has in its own nature no reference at all to my governor or to my neighbor, and soe necessarily produces no action which disturbs the community. For kneeling or siting at the sacrament can in its self tend no more disturbance of the government, or injury of my neighbor, than sitting or standing at my own table; wearing a cope, or surplice in the church, can no more alarme, or threaten the peace of the state, than wearing a cloak, or coat in the market...if I observe the Friday with the Mahumetan, or the Saturday with the Jew, or the Sunday

with the Christian...I see nothing in any of these, *if they be donne sincerely and out of conscience*, that can of itself make me, either the worse subject to my prince, or worse neighbor to my fellow subject..." (Locke 2016, 4). Even more, he says, if worship is acted with ambition, pride, revenge, faction, as human nature is fallible, malicious and filled with guilt this is still not a matter of magistrate's judgment but of God's one at the day of judgment.

The second kind of opinions discussed under the heading of tolerance are the practical principles that are called as such due to their content regulating the canvas of social relations and actions of people towards one another in the civil society. Interestingly enough for somebody brought up in Calvinist spirit Locke enumerate among the opinions and activities flowing from practical principles those which are related to education, estates or property, family and next to it polygamy and divorce, work and loisir, all of them named under a general category as *things that are indifferent*. The limit of tolerance – or the title to tolerance – is set here by their capacity of producing disturbance, or inconvenience instead of advantages and benefits to the community and the state. "For all these opinions, except such of them, as are apparently destructive to humane society, being things either of indifferency or doubt and neither the magistrate, or subject being on either side infallible, he ought not to consider them." (Locke 2016, 5). Nevertheless if things of indifferency are turned into matters of conscience, "of sin and duty" and are threatening the rules of the society, the laws and the authority of the magistrate, it is the obligation of the magistrate to interpose his authority for the welfare and safety of his people. The final decision on the act of tolerance goes to the government and Locke's argument is "Because the conscience or the persuasion of the subject, cannot possibly be a measure by which the magistrate can, or ought to frame his laws, which ought to be suited to the good of all his subjects", and taking out of the magistrate's power the capacity of dictating which are and which are not indifferent things "will wholly take away the civil laws...and soe there will be noe law, nor government." The passages in the text are an accurate mirror of Locke's intellectual commitment to the liberty of conscience coming against his need for social peace and established authority and his personal success in the struggle lays in his explanation of what practical principles are and how they can turn out of indifferent tolerable things into disruptive and un-tolerable ones – a discussion that he is thoroughly committed to undertake from a different perspective and with a distinct outcome than the one produced in the Two Tracts. The oscillation when treating about the concept or the nature of the practical opinions as indifferent or within the toleration limits because of their nature or due to the magistrate's authority

takes an unexpected line of the argument when introducing *right* attached to the nature of opinions, a radical concept as much related to property, life, security. “Forever the magistrate be perswaded in him self of the reasonableness, or absurdity; necessity or unlawfulness of any of them and is possible in the right, yet whilst he acknowledges him self not infallible, he ought to regard them in making of his laws, noe other wise than as things indifferent, except only as that being enjoyned tolerated, or forbidden, they carry with them the civil good and welfare of the people.” (Locke 2016, 5) Further on working out on the substance of what liberty of conscience should be observed by the government and the magistrate’s duty, Locke draws on the ‘several degrees of imposition’ than can be or are used in matters of practical opinions that are also the margins of the legitimate power: the magistrate is entitled to prohibit the publishing or vent of any opinion, but no man should be forced to “renounce or abjure any opinion” or compelled “to declare an assent to the contrary opinion”. Of the three first one is pertaining to what we usually call since Sir Isaiah Berlin positive liberty or what cannot be tolerated, while the next two are introducing a negative understanding of it, or what is beyond toleration as politics.

The right to toleration is further argued with regard to morals and ethics contained by men’s opinions and actions and the position a magistrate most suitable take in his law making while considering the moral standard of the common wealth. Locke is from the start distinguishing moral customs and behaviors of a society from the encoded ethics of religion, ie, Christian religion taking it out from both from the philosophical and the theological sphere and instead he moves the entire argument to the positive human law realm as the codifier of moral customs of a commonwealth. He critically and ironically notices that morals of opinions and actions “...though they are very active part of religion, and that in where men’s consciences are very much concerned, yet I find that they make but a little part of the disputes of liberty of conscience ”(Locke 2016, 8). What is good or bad, virtue or vice, right and wrong are duties and practices of men in respect to each other “they are the advantages of man with man, and most of them the strong ties and bond of society” (Locke 2016, 8) and being as such they are beyond the power of imposition of the magistrate. The discussion that follows addresses rather the magistrate’s cautious retreat of his capacity of imposing or prohibiting as far as morals is concerned and as Machiavelli once did in *De Principatibus* he approaches the role of the governor as an analyst and a counsellor regarding the making of positive

laws that may affect social morals. What is good or bad is for the commonwealth to establish and practice, virtue or vice cannot be commanded by the magistrate as through his power he can only regulate limits of the power between men for life securing and not the kind of ethics laying beneath the magistrate's sword. He cannot punish "coviteousnesse, disobedience to parents, ingratitude, malice, revenge...when put in judicature" as much as he cannot defend a universal right to toleration of charity, that stays as a duty of men and Christian which is "if considered absolutely, a virtue...yet this is amongst us prohibited by a law and the rigor of penalty". Locke's comment on the 16th century English law on the degrees of felonious homicide and on the *Acte for the punishment of Rogues Vagabonds & sturdy Beggars* is indicative for the well known long lasting strength of the British customary law with provisions and penalties which although non - effective but still in force.

The other realm Locke is taking to his argument is community, culture, society inferring from experience by observing history that "the good of the common wealth is the standard of all human laws" and though "God laws forbids vice, the law of men often makes the measures of it" and even alter the obligation of some of his laws. If the standard of a society includes theft then the magistrate should encourage it for the wellbeing and prosperity of his society and here Locke is giving a famous example on Sparta's law. "There have been common wealth that have made theft lawful for such as were not caught in the fact, and perhaps 'twas as guiltless a thing to steal a horse at Sparta, as to win a horse race in England, for the magistrate having a power to appoint ways of transferring properties, from one man to another, may establish any, soe they be universal, equall and without violence, and suited to the interest and welfare of that society, as this was at Sparta, who being a war like people found this no ill way, to teach their citizens, vigilancy, boldness and activity" (Locke 2016, 9). The conclusion is that the magistrate politics towards moral opinions and actions should be as tolerant with vices as the society itself is and as observant of virtues as the bonds of the common wealth are testifying.

Out of the three types of opinions examined in the Essay the last category is the one that extends the largest horizon of toleration left out from the power of magistrate but the argument is not continued with regard to the meanings and boundaries of toleration as a social practice and its ratio. Locke's aim was to give on the reasonableness for the politics of toleration and its legitimacy and before the passage to prudential issues regarding tolerance he once more emphasizes the noxious of mixing religion and

speculative opinions in order to forge political power by creating partisans and later on factions of dissent and resistance to authority. He utterly recognizes the mobilizing strength of religion and faith, the unifying capacity of religious ritual in the symbolism of gestures, cloths, songs, places to develop and grow both practical and moral opinions and actions throughout society that might or come against the established authority. At the very end of the first part of the *Essay* the categories of opinions and actions organized under a criteria that takes into account various domains of human life such faith, society and morals that should be observed by the King - "what he is bound in conscience to doe" - due to "the power that Gods hath set to the magistrate and the obedience of the subject" are taking the form of an ideological program : "1 There are some opinions and actions that are wholly separate from the concern of the state ...and those are all the speculative opinions and religious worship and these have a clear title to universal toleration which the magistrate ought not to intrench on.2 There are some opinions and actions which are in their natural tendency absolutely destructive to humane society, as faith may be broken with heretics, that if the magistrate doth reform not religion the subjects may...propagate any opinion and in actions all manner of fraud and injustice...and these the magistrate ought not to tolerate at all. 3 There are a third sort of opinions and actions which in them selves do not inconvenience or advantage human society...conversant about matters of indifferency...and these have a right to toleration soe far only as they doe not interfere with the advantages of the public. " (Locke 2016, 13)

The menace of heresy/ atheism, enthusiasm and Catholic Church are the extremes Locke is taking his critical fabric to work at on prudential analysis and recommendations in the second part of the *Essay* in order to provide a policy triangulation on the practical effects that toleration produces through its influence in the society. Summed up in a policy form statement, two 'parties' are considered 'Papists and Fanatiques'. But while with the first the argument is that because the Pope is a perpetual adversary to the King by commanding the subject a unique allegiance both in matters of religion and politics, papists have no right to toleration in King's politics, the second party is closely and thoroughly countenanced as zealots, enthusiasts or fanatics though not to be tolerated can be turned into loyal subjects of the King through wise alliance and inclusion politics. What then is recommended is that although the "restraint of the Papists doe not lessen the number of our enemies in bringing any of them over to us yet it increases the number it strengthens the hands of our friends and knits all

the Protestant parties firmer to our assistance and defence. For the interest of the King of England as head of the Protestants will be much improved by the discountenancing of popery amongst us." (Locke 2016, 15) Making fanatics useful and assisting by the means of persuasion and not by oppression, punishment, persecution or violence is the right way to ensure security and peace against the lack of it and war. Instead of expending influence and severity to restore a unified church - that may leave him with no subjects "by the time it is done" - the King will better serve its power and jurisdiction through controlled and preventive politics of toleration towards the shattered religious factions.

An Essay Concerning Toleration concludes with a statement and a remark: the statement is containing his new vision on toleration politics of the King at the settlement of government "by making the terms of church of communion as large as may be, i.e. that your articles in speculative opinions be few and large and ceremonies in worship be few and easy, which is Latitudinisme ."; the remark is evaluating the effects of the expanded number of "the Doctors of...several churches" that "must needs make a great many atheists." (Locke 2016, 21) When compared to the initial position on the limits of toleration in the *Two Tracts* a few comments are coming up. One would be that, as it may appear, it is an opposite one, which is not exactly a fair understanding of Locke's intellectual evolution or his actions as a political advisor. For sure the approach used is quiet opposite because the context was different: the *Two Tracts* have been composed in the Interregnum and on Machiavelli's reasoning Locke proposed zero toleration as long as foundational politics are concerned while the *Essay* was written with observing Restoration - that is answering the question what needs to be done in order to give wide legitimacy and stability to the force of power. This is the reason here for discussing toleration both as a comprehensive ideology and a political program. A next comment comes up related to the much previously disputed "adiaphora" or the indifferent things a topic concentrating the current understanding of toleration in the two time sequences observed. In the *Two Tracts* indifferent matters are at the magistrate to be decided and their meaning and practice are described with parsimony, indifferent matters are few un tolerable ones are many, and as it goes we have an understanding of toleration as to what is allowed as an opinion and action. Law is executed in the wide spaced domain of what is not tolerated but as well in the quiet narrow field of what is to be tolerated. The *Essay* though generates another understanding of the term by making the law speak only about what is not to be tolerated and leaving everything else under the

floating signifier of indifferent matters. Locke's discourse here is much altered as he is accounting not only about politics and religion but also society, cultures and customs with their various and unexpected interferences that may happen very well to switch matters from indifferent ones to tolerable or non tolerable ones and bring about changes in the politics of toleration. Once again, therefore in the soft version of it, the assumption is the same: in the last instance the magistrate has the ultimate word in deciding upon indifferent matters.

The closing remark of *Atticus* is introducing another horizon of Locke's intellectual universe dedicated to theory of knowledge and particularly to epistemology of religious knowledge - philosophy of religion and Christian theology: "That the defining and undertaking to prove several doctrines which are confessed to be incomprehensible and to be no otherwise known but by revelation, and requiring men to assent to them in the terms proposed by the doctors of your several churches, must needs make a great many atheists" (Locke 2016, 21) A phrase that captures his long lastly concern and reflection in finding the answers at two main questions "(I) what is the scope of human knowledge? And (II) how ought we to govern our assent when we lack knowledge?" (Wolterstorff 1994, 172)

For now though what Locke has been gradually undertaking was quite challenging if we are to consider the dominance of the religious discourse, an important sphere of the metanarratives in the 17th century, that impacted all the other themes and spheres present in the public life. The recourse to Scripture and Christian faith was the last resort and ground of the argument as much as it was the most general cultural frame of everyday life in society. Toleration came up as a subject in the political sphere because it has been already there in the religious one. The substance of it was to be found at the heart of the Christian creed and practice of charity where is defined as a duty to love your kin, where the core meaning of love is entailing the sacrifice of the self for the other, a duty to suffer and endure and persist as a repentance for human depravity and a mean for personal redemption and salvation - as Locke puts it in the *Essay* "an action or a commerce passing only between god and myself." Tolerance is a consequence of charity, it is not meant to bring pleasure or satisfaction, but repentance and salvage, and if pain, affliction or grievance are accompanying charity, endurance that is toleration both physical and spiritual needs to be accepted as the duty of man. Charity is the encompassing duty that dominated and ruled Christian religion and practices since Middle Ages up to and together with Reformation and

Protestantism. The embodiment of the reason to tolerate is the duty to endure. But with the *Essay*, distinctive from the *Two Tracts*, Locke does two things: for one he is taking the understanding of toleration out of its Christian religious context and sacred space and plunge it in the profane world where it loses the original unconditioned character of duty and gains instead the liberty of the choice of what is to be endured or tolerated. The free agency comes in and all though freedom to choose is not pertaining to individual as a free agent but to the King/magistrate/public authority the basis for toleration is altered from the extensive service to others to the legitimation one's own interest, in the king's case the public one. With this turn the embodiment of the reason for toleration is represented by one's own win and ease or even pleasure that is showing here Locke's departure from the severe Calvinist or Anglican religious commitment to a more heterodox, and ethically hedonist one. And while with the *Two Tracts* his solution was the strict institutional control on society in the *Essay* the other way is prospected when regarding the dynamics of beliefs inspiring society namely the institutional arrangements that allow and encourage spontaneity in embracing unorthodox sets of ideas/opinions.

3. Body of tolerance - the virtue of justice and the demand of reason or how much pain virtue takes

The case of the migration crisis and refugee politics in EU

One might think that topics as adiaphora or indifferent things are obsolete subjects, outdated matters of political theology and toleration politics belonging to early Enlightenment that at best had their time of analysis in contemporary political thought when toleration and tolerance was "the need of the hour" a moment of interest that occurred in the second part of the 20th century. Very closely correlated to religious tolerance in the 17th century the concept of indifferent things lost its original meaning in the strongly secularized contemporary and post - modern politics and the discussion on the role, attributes and power of the magistrate/government in today's political terms regarding the right of imposition or abstain from imposition over what is going to be or not considered indifferent from a political position completely lost its pregnancy.

Much the same happened to the concept of toleration and reasoning on tolerance understood as religious toleration in state politics; toleration won widening spaces within the secular context and while originally absorbed its importance from its inclusion in the sphere of right - stemming from

natural right theory –contemporary field narratives are linking it to human rights practices in local and global politics.

Nevertheless Locke's treatment of toleration in *A Letter Concerning Toleration* grew in fame and has been repeatedly highly evaluated as the start point in both religious and secular modern state politics on toleration. Not the same happened though with *The Two Tracts on Government* and the solution appointed by him regarding the duty of the magistrate to decide over and impose the "indifferent things". But what is really interesting is to see in Locke's intellectual and life trajectory is his development of tolerance out of intolerance, of consensual government out of arbitrary rule, of his pursuit of happiness out of the duty to obey. It is quite a short interval between 1660 when he wrote *Two Tracts* and 1666 when he composed the four drafts of the *Essay on Tolerance*, an earlier version of his *Letter on Toleration* that was to be released in 1689. Within only six years narratives on religious toleration and politics shifted from the magistrates' lawful imposition of using indifferent things regarding religious worship to a flexible and somewhat opposite attitude government needed to gain. The present essay has aimed to show the genealogy of toleration and during the quest it came about the importance of "the indifferent matters" and the transformation they suffer when being judged as less indifferent with respect to the security of the commonwealth when their effects are examined. Locke's two early drafts are showing indeed how intolerance can be worked out in toleration policies, but also how and in under what circumstances toleration can turn into intolerance and particularly this high tide - low tide dynamics of toleration politics captured the interest on the issue when compared to U.E. toleration politics in the 2015-2016 migration and refugee crisis. For indeed just a few months and not years sufficed for the movement of high tide toleration politics in June 2015 to low tide one in December the same year. As so consistently Locke put it toleration can bring happiness as much as it can take it away, the practice of the virtue of toleration is hard to run when the embodiment of reason underlying performances and stories expresses suffering and pain.⁵ In Locke's thinking the major compass and measure of the embodied reason is private property. Already present in the four drafts of 1667's *Essay Concerning*

⁵ In *Toleration without Tolerance* Lars Tønder argument on the image of reason in the Enlightenment is ingeniously showing that "performances and stories, invoking the embodied circumstances under which reason arises, operate just as much in the register of affect as in the register of explicit consciousness. They connect, we might say the procedural nature of reason to the bodily dispositions that sustain that nature". (Tønder 2006, p.328).

Toleration, but then majorly with *A Letter on Tolerance* the argument against religious persecution is heavily drawing on his theory on private property and the economic benefits toleration is carrying with it. But on the same argument whatever is going beyond or less that benefit and inflicts damage and pain cannot be tolerated as no man would give up his wealth and health for poverty and misery. Locke rationalizes on fear of war, destruction, loss of life and property and legitimizes degrees of toleration politics regarding human suffering, human enduring, that is tolerance at pain.

The equation toleration happiness has the intermediate as well as its margin/limits contained in the private property or one self's life, body or estate as Locke will later define it in the famous Chapter 5 of the *Second Treatise on Government* and the government's duty is precisely the safeguard of all the possible meanings of property - the embodied reason of the standard practice. When rationalizing on toleration and human rights in the context of migration crisis European Union's leaders discourse is addressing Locke's argument in both instances (1) while judging the benefits resulting in the average of the commodities that toleration is bringing in human life, but as well - although perhaps not so out loud spoken - (2) while evaluating human sufferings and injuries resulting from the announced politics of toleration. Schengen Space is the embodied reason of E.U. security and justice policies and its closure or even disappearance in front of the migration and terrorist waves is showing the sneaky substance of toleration if deprived of its political content and turned into a cultural one.⁶ And here the visibility of the issue of the "magistrate's power on deciding over indifferent things" is coming back to the floor although not with respect to religious worship but with respect to culture which is in fact a more inclusive realm. The migration crisis event is showing how in the make/unmake of indifferent things the magistrate decides on the turning point respectively how it can retreat from toleration politics through the depoliticization of power and citizenship when substantive visions on justice are missed or on the contrary when in the need of power position reconfiguration the tendency to zero toleration is

⁶ Slavoj Žižek in *Tolerance as an Ideological Category* notices that "Political differences, differences conditioned by political inequality, economic exploitation, and so on, are naturalized into cultural differences, different ways of life, which are something given, something that cannot be overcome, but must be merely tolerated. To this, of course, one should answer in Benjaminian terms: from culturalization of politics to politization of culture. The cause of this culturalization is the retreat and failure of direct political solutions...Tolerance is their postpolitical ersatz". (Žižek 2008, 660)

reached. Wendy Brown remarkably encapsulates the paradox of this state of politics when saying that “The cultivation of tolerance as a political end implicitly constitutes a rejection of politics as a domain in which conflict can be productively articulated and addressed, a domain in which citizens can be transformed by their participation.” (Brown 2006, p. 89)

To sum up, the comparisons drawn in the present study aimed to uncover and display the genealogy and evolution of tolerance, reason and indifferent things as power politics with the use of theoretical and historical lenses and their approaches as concepts and practices in two particular moments of European history that overlapped with respect to a crisis situation. Toleration politics in the 17th century England in John Locke’s political and religious thought addressed religious toleration while E.U. toleration politics in 21st century is addressing toleration of refugees; the first site of the enquiry had the religious background, the later had the religious background encapsulated in the more inclusive cultural one. As a consequence while multiplying its meanings by reference to various but different spheres the concept of toleration has become as well an empty signifier with a great capacity of being used within a wide range and also even contradictory settings. But the thing that has been well preserved from Locke up to today reasoning on toleration is the limits of it with respect to pain that is tolerance to it. Here reference is narrowed down because pain means physical and psychological suffering and while constructing models of reasonable toleration can be an exercise of the pure reason, tolerance gives the tension between that what we know and accustomed to and that what we do not know and need to be confronted with. The rationale for toleration or the ontological imaginary of it is a variable that pertains to the historical contexts and discourses – Locke’s as well E.U.’s leaders are accounting for what is or not, or can be or not indifferent with respect not to toleration but to tolerance. The reasonableness of toleration is the extravagant expression for the acknowledged limits of tolerance.

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