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## FREEDOM AND FAITH—FOUNDATIONS OF FREEDOM OF RELIGION

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Human religiosity has taken many forms in history, and there is no less variety in contemporary culture. There are many contentious issues in the religious systems that exist—for example, the number and nature of divine forces, their relationship to the world, the proper path to redemption and the justification of human lives and deeds. There is, however, a common thread in all these debates: religion is not an ornamental side issue of human life; religion forms a central existential concern.

Human religiosity has manifold consequences: It still inspires today impressive moral deeds and is at the root of some of the greatest achievements of humankind's aesthetic creativity. Religion can also lead to great human tragedies, as people are prepared to give their lives for religious matters and also to sacrifice the lives of others in the pursuit of some religious idea.

Not only religion accompanies human civilization since its existence. The critique of religion is as old as human reflection itself and forms another thread of human culture. The most powerful challenge to the foundations of religions was and still is formulated in modern times by the rise of natural sciences with their new explanations about the structure and origin of the world and the place human beings enjoy in it. Of course, there are many attempts to reconcile religion and science. But there are other sources of doubt as well: The historical interpretation and analysis of holy texts put their literal authority in question. The religious philosophy of the Enlightenment formulated critiques of Christianity and of religion in general, establishing with some self-confidence the epistemological priority of reason over belief. These developments had important political dimensions. They were not only a theoretical chapter in the history of ideas. They nourished major secular political movements on whose agenda the overcoming of the

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spiritual and social power of the religious associations ranked high. Some, like Marxism-Leninism even led to militant atheism with many tragic effects. The intellectual critique of religion developed so much force that for some observers the time of religion seemed to have come; a *Götterdämmerung*, a twilight of the gods in the most radical sense appeared to be the distinguishing mark of unfolding modernity.

This perception was doubtful from the beginning, and it has, unsurprisingly, become quite clear through recent events that religion has not lost its importance at all. The questions for which religions try to formulate answers are as relevant as they ever have been. Human beings have many attributes—one of the most distinguishing is that they want to see their own existence in the comforting light of understandable meaning; they want their lives to make sense. For many, religion is the only path to a meaning of life. Secular rationalism, in contrast, seems to lead to a dry existence, oriented to imminent banal modes of life devoid of supreme goods, and ultimately to an uncanny existence under the threat and presence of metaphysical despair.

The comfortableness of modern life has not changed this state of affairs. The questions of meaning are not asked with less urgency when the most basic needs are satisfied. It is not by accident that important parts of modern literature and art in general are dealing with loss and not because of the deplorable quality of refrigerators or SUVs, but because of a spiritual emptiness, an absence of non-material perspectives that give meaning to it all. If this is true for the more affluent people of the modern world, it is even truer for the many less-fortunate, for whom some kind of religious vision is the only path to a self-understanding not completely devoid of dignity.

Moral questions have traditionally been one of the major concerns of religions, because they are not only about the meaning of an individual life, but about the relationship to other human beings as well. Not surprisingly, religion, in the eyes of many people, also serves as an indispensable source of moral orientation.

These observations indicate that there is no reason to assume that the problem of the co-existence of different religions will disappear because of a progressing process of secularization. To the contrary, we witness that religions reach out with new force from the private sphere to public life in some countries with decisive influence. And one can observe the rise of a new militant religious fanaticism with deadly consequences. The situation is thus clearly quite difficult. One central contribution to the very pressing task of dealing with the challenges is a convincing account of the *foundations, the content and the limits of freedom of religion* as a basic human right. This is in consequence the topic of the following remarks.

Freedom of religion has found many positive forms in various constitutions, supranational legal instruments and covenants of public international law. These norms differ and these differences matter of course. But there are some common problems underlying these positive legal norms establishing freedom of religion. Two of these problems call for special attention. The first concerns the *telos* of freedom of religion. To understand the point, the aim of freedom of religion is not only interesting from the point of view of the history of ideas. It is not only interesting for the moral domain of religious tolerance. It is decisively important to guide the interpretation of any given guarantee of religious freedom as part of the national, supranational or international law given its abstract and open-textured nature.<sup>1</sup>

The second concrete problem is the so-called paradox of tolerance, that any kind of tolerance has to have some limits, and that any concept of tolerance in consequence appears to become intolerant at some stage. If formulated a bit more unpretentiously, this paradox is nothing but the problem of the proper limits of religious freedom. This problem also cannot be solved if we are not aware of the point and *telos* of freedom of faith.

These statements imply a methodological vote for a point of view that could be called *hermeneutical universalism*. It implies that legal regimes of various forms are not hermetic entities only understandable from the perspective of a participant, but are concrete answers to quite universal questions. These universal perspectives should not be forgotten while engaging in work of constructing a convincing answer to interpretative problems of a given legal norm.<sup>2</sup> This emphasis on the *telos* of the freedom of religion implies as well that legal science and practical philosophy should not become unaware of their mutual intimate bond. The understanding of the sense of any norm will not be achieved without the systematic reflection of ethical principles.<sup>3</sup>

To answer these two core problems, the following remarks will start with some impressions from the historical debate—admittedly culturally and religiously highly selective examples that have, however, the merit to illustrate core contents of ideas of religious tolerance and, equally important, religious intolerance. The perspective will be changed then to look systematically at the problems at stake. Eight

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<sup>1</sup> For some general remarks on the theoretical framework of the legal conceptualization of human rights, see MATTHIAS MAHLMANN, *ELEMENTE EINER ETHISCHEN GRUNDRECHTSTHEORIE* (2008).

<sup>2</sup> This view is therefore not convinced that the study of solutions to some quite universal problems in other normative contexts and legal systems means to “impose foreign moods, fads, or fashions.” *Lawrence v. Texas*, 539 U.S. 558, 598 (2003) (Scalia, J., dissenting) (quoting *Foster v. Florida*, 537 U.S. 990, 990 n.\* (2002) (Thomas, J., concurring), *denying cert. to* 810 So. 2d 910 (Fla.)).

<sup>3</sup> See MAHLMANN, *supra* note 1, at 13.

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central arguments will be derived from the historical discourse to assess their merits. As a next step, some aspects of the current debate will be the focus of attention. Finally, an attempt to bring the critical and constructive findings together and argue for a concept of freedom of religion that is based on a secular and humanist understanding of human dignity as the foundation on which any conceptualization of the freedom of religion, its scope and limits, should rest.

A last note on language usage. There is some debate whether religious tolerance is a useful term if one discusses the issue of respect for other faiths (and non-faiths). It is sometimes argued that the term carries negative connotations and that one has to move beyond it to substitute tolerance by recognition.<sup>4</sup> The following remarks are skeptical about the importance of this question. Religious tolerance has had many connotations in history and is still used in contemporary discourse in various ways. Some of this language use is quite clearly inspired by respect and recognition. The term will therefore be used here in a broad sense, encompassing any attitude that is not hostile to other religions but accepts their existence and is prepared to protect their liberty to unfold their spiritual life whatever the motivational, emotional and cognitive mode of this attitude may be. It will be assumed in addition that the subjective right of freedom of religion spells out religious tolerance in legal terms. Arguments for religious tolerance are taken in consequence as foundational arguments for freedom of religion as a human right.

#### I. ANTIQUITY AND CHRISTIAN AMBIVALENCE

The discussion about religious tolerance is long-winded and—as always in the history of ideas—it is far from obvious where to start. The treatment of religions in antiquity is an interesting topic—for example the syncretistic tolerance of Greek world or the Roman prosecution of the Christians. For the modern world, however, Augustine was perhaps the first author with immediate persisting influence. Augustine formulated a very important argument for religious tolerance—the impossibility to influence belief by force: “One can enter a church unwillingly, one can approach the altar unwillingly, one can accept the sacrament unwillingly, but one cannot believe but

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<sup>4</sup> A standard reference in this respect is Johann Wolfgang von Goethe, *Maximen und Reflexionen*, in 12 WERKE, HAMBURGER AUSGABE No. 151 (Beck 1982) (“Toleranz sollte eigentlich nur eine vorübergehende Gesinnung sein: sie muß zur Anerkennung führen. Dulden heißt beleidigen.” [Tolerance should be nothing but a transient set of mind. It has to lead to recognition. Forbearing means insulting.]).

willingly.”<sup>5</sup> He added some thoughts on social outsiders, like prostitutes, who should be tolerated on prudential reasons.<sup>6</sup> Augustine rethought his position, however, after Christianity had become the state religion of the Roman Empire and faced the challenge of schisms. In the dispute with the Donatists and Pelagius, Augustine justified the forced suppression of these beliefs.<sup>7</sup> He relied on two arguments: First he pointed out that, in his perception, experience shows one can, in fact, forcefully change opinions by removing the obstacles to the clear perception of the truth that are found in the mind of a person with false beliefs. Second, he argued that the use of force was not decisive for moral evaluation, but rather the aim this force was used for was,<sup>8</sup> basing this on the parable of the great supper that framed the discussion in Europe for centuries to come.<sup>9</sup>

Augustine differentiates between a *civitas dei*—the spiritual Christian community—and the *civitas terrena*—the community of selfish sin. Political orders create a “Babylonian peace” enabling the believers to follow the commands of God.<sup>10</sup> This mediating role of the political orders does not, however—given the arguments for legitimate force in matters of belief—lead him to the prohibition of force in religious matters by public authorities—a result to be remembered when the argument for the separation of religion and state is considered.

Thomas Aquinas formulated a differentiated doctrine of tolerance. He argued in the case of Jews and other non-Christians against the compulsion to believe and against mandatory baptisms.<sup>11</sup> The presence of Jews would strengthen the Christian belief, he thought, because of its

<sup>5</sup> Augustinus, *In Joannis Evangelium Tractatus CXXIV*, in 35 JACQUES-PAUL MIGNE, PATROLOGIAE CURSUS COMPLETUS, SERIES LATINA, 1379, 1607 (Migne 1845) (“Intrare quisquam ecclesiam potest nolens, accedere ad altare potest nolens, accipere Sacramentum potest nolens: credere non potest nisi volens.”).

<sup>6</sup> See Augustinus, *De Ordine*, in 32 JACQUES-PAUL MIGNE, PATROLOGIAE CURSUS COMPLETUS, SERIES LATINA 977, 1000 (Garnier, Migne 1877) (“Aufer meretrices de rebus humanis, turbaveris omnia libidinibus . . .”).

<sup>7</sup> See, e.g., Augustinus, *Epistola ad Vincentium*, in 33 JACQUES-PAUL MIGNE, PATROLOGIAE CURSUS COMPLETUS, SERIES LATINA 329 (Migne 1865).

<sup>8</sup> Augustinus, *De Correctione Donatistarum Liber*, in 33 JACQUES-PAUL MIGNE, PATROLOGIAE CURSUS COMPLETUS, SERIES LATINA 329, 804 (Migne 1865) (“Quapropter, si potestate quam per religionem ac fidem regum, tempore quo debuit, divino munere accepit Ecclesia, hi qui inveniuntur in viis et in sepibus, id est in haeresibus et schismatibus, coguntur intrare; non quia coguntur reprehendant, sed quo cogantur, attendant.”).

<sup>9</sup> See *Luke* 14:15-24. At the heart of this passage is the “compelle intrare,” the “compel them to come” of those that did not join the supper though they were invited. Augustine interpreted this as legitimating the use of force in religious matters.

<sup>10</sup> See Augustinus, *De Civitate Dei*, in 40 CORPUS SCRIPTORUM ECCLESIASTICORUM LATINORUM, SANCTI AURELI AUGUSTINI OPERA Pars I, Pars II, XIX, 13, 17, 26 (Tempsky 1899 & 1900) (“quoniam, quamdiu permixta sunt ambae civitates, utimur et nos pace Babylonis”).

<sup>11</sup> See THOMAS AQUINAS, 15 SUMMA THEOLOGICA pt. II-II, question 10, 8; pt. II-II, question 10, 12 (Kerle, Styria 1950).

indirect testimony to the rightness and superiority of Christianity.<sup>12</sup> Aquinas saw the point of prudential tolerance as well. Tolerance was preferable if it led to less evils than intolerance,<sup>13</sup> e.g., because the number of heretics was just too great to be suppressed. In the case of Christian heretics, he was, however, stricter and defended expulsion from the church and the death penalty.<sup>14</sup> These views are connected with his (impressive) treatment of the erring conscience. He admitted the possibility of such an erring conscience and the potential relevance of its commands, but he excluded from it Christians who acted against the doctrines of their faith because, in this case—due to the baptism—they could know better.

Another interesting example of the Protestant tradition is Luther who—like his important theological inspiration Augustine—defended religious tolerance at first in strong terms, invoking also the insight that you cannot force people to believe.<sup>15</sup> Force only nourishes hypocrisy and lies in religious matters. Luther's doctrine of the separation of religion and political organization is of less relevance in this context than sometimes assumed because it leads—with the exception of extreme cases—mainly to the demand of a rather passive obedience of the subjects to public authorities. Later in his life, again not unlike Augustine, he shifted towards a rather illiberal position when he faced the developing Protestant schisms and not the suppression of the Catholic Church against the Reformation. He defended in this new context the prosecution of heretics including the death penalty.<sup>16</sup> Calvin's impact on the burning of Miguel Servet is a well-known example from a different Protestant tradition.

## II. HUMANISM AND CONTRACTUALISM

With the dawn of Humanism the discussion about tolerance gained new strength. The idea of a uniting universal religion was developed that opened important doors to a dialogue between the religions.<sup>17</sup> The idea implied, however, the danger to identify the universal religion implicitly with a majority religion, in particular, given the European context, with Christianity, at the expense of minority religions of a given community. Not surprisingly then, some members of such

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<sup>12</sup> *Id.* pt. II-II, question 10, 11.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* pt. II-II, question 10, 8. Regarding the death penalty, see *id.* pt. II-II, question 11, 3.

<sup>15</sup> Martin Luther, *Von weltlicher Obrigkeit* (1523), in 11 WEIMARER AUSGABE 262, 264 (Böhlau 1900).

<sup>16</sup> Martin Luther, *Der 82. Psalm ausgelegt* (1530), in 31 WEIMARER AUSGABE 208 (Böhlau 1913).

<sup>17</sup> See ERNST CASSIRER, *DIE PHILOSOPHIE DER AUFKLÄRUNG* 182 (1932).

minority religions were quite skeptical about the idea of the unification of all religious beliefs.<sup>18</sup>

The developing thoughts of social contract theory offer a differentiated picture. Hobbes invested the ruler with the absolute power to determine the content of the religious cult though the *forum internum*, and the inner faith was left free.<sup>19</sup> A central contribution to the modern debate was Locke's letter on toleration. Locke legitimized public power in the framework of a social contract theory through the interest of the citizens in peace and in an institutionalized organization of society.<sup>20</sup> This is, of course, an important thought. The aim of the state and the spiritual order of salvation are separated, and more radically, so than in the doctrines of Augustine or Luther because in these latter accounts the order of the state kept its place in the overarching spiritual order of salvation. Locke's more radical separation forms an important step in the history of reflection on tolerance because religion ceases to be an issue to be regulated by public authorities.

Locke discusses at some length the paradox of tolerance that concerns the question of its limits and how they can be justified without rendering the concept of tolerance contradictory. In Locke's view tolerance was not justified in the case of Catholics as he regarded them to be subjects of a different power, the Pope, and emphatically not in the case of atheists because atheism makes morality impossible<sup>21</sup>—a position shared by many thinkers before and after Locke.

### III. ENLIGHTENMENT

Another important contribution was formulated by Pierre Bayle, who went so far as to include atheists within the range of tolerance.<sup>22</sup> With Bayle, the age is reached in which freedom of religion becomes part of concrete human rights law, spearheaded by the American Revolution marking the slow dawn of modern constitutionalism.

Voltaire wrote a flamboyant treaty after the breaking on the wheel

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<sup>18</sup> See, e.g., Moses Mendelssohn, *Jerusalem oder über religiöse Macht und Judentum* (1783), in *SCHRIFTEN ÜBER RELIGION UND AUFKLÄRUNG* (Martina Thom ed., 1989).

<sup>19</sup> THOMAS HOBBS, *LEVIATHAN: THE MATTER, FORM AND POWER OF A COMMONWEALTH ECCLESIASTICAL AND CIVIL* (1651), available at <http://publicliterature.org/pdf/lvthn10.pdf>.

<sup>20</sup> JOHN LOCKE, *A LETTER CONCERNING TOLERATION* (James H. Tully ed., Hackett Publishing Co. 1983) (1689).

<sup>21</sup> *Id.* at 51 (“Lastly, [t]hose are not at all to be tolerated who deny the [b]eing of a God. Promises, [c]ovenants, and [o]aths, which are the bonds of [h]uman[] [s]ociety, can have no hold upon an [a]theist. The taking away of God, tho[ugh] but even in thought, dissolves all.”).

<sup>22</sup> Pierre Bayle, *Commentaire philosophique sur ces paroles de Jesus-Christ: Contrain-les d'entrer* (1686), in *OEUVRES DIVERSES DE MR PIERRE BAYLE* (The Hague, Compagnie des Libraires 1727).

of Jean Calas, who was wrongly accused of having killed his son to prevent his imminent conversion to Catholicism.<sup>23</sup> An interesting contribution to the discussion of tolerance is that of Moses Mendelssohn. This is so not only because of his arguments but also because of the tone in which he writes. His careful language and his visible attempt to build bridges of understanding and respect testify to the existential calamity of the Jewish minority at this time in the German states. For Mendelssohn freedom of religion is the “edelste Kleinod der menschlichen Glückseligkeit,” the “most precious treasure of human happiness.”<sup>24</sup> It is therefore not surprising that he draws a clear line: If the acceptance of the Jews can only be obtained for the price of giving up core tenets of their faith, the idea of a common life of the different religions has to be abandoned because this price cannot be paid.<sup>25</sup>

Kant praised Mendelssohn in a letter for his ideas on the relations of the religions:

I regard this book as the proclamation of a great reform that is slowly impending, a reform that is in store not only for your own people but for other nations as well. You have managed to unite with your religion a degree of freedom of conscience that one would hardly have thought possible and of which no other religion can boast. You have at the same time thoroughly and clearly shown it necessary that every religion have unrestricted freedom of conscience, so that finally even the Church will have to consider how to rid itself of everything that burdens and oppresses conscience, and mankind will finally be united with regard to the essential point of religion.<sup>26</sup>

A remarkable passage, though Kant made some remarks on Judaism in other works that are not matching the standards of this great letter.<sup>27</sup>

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<sup>23</sup> See Voltaire, *Traité sur la Tolérance à l'occasion de la mort de Jean Calas* (1763), in 56c LES OEUVRES COMPLETES DE VOLTAIRE 159, 219 (2000).

<sup>24</sup> Mendelssohn, *supra* note 18, at 353.

<sup>25</sup> *Id.* at 453.

<sup>26</sup> Immanuel Kant, *Brief an Mendelssohn* [Letter to Mendelssohn] (Aug. 16, 1783), in 10 AKADEMIE AUSGABE 347 (Königlich-Preussische Akademie der Wissenschaften ed., 1902) (“Ich halte dieses Buch vor die Verkündigung einer großen, obzwar langsam bevorstehenden und fortrückenden Reform, die nicht allein Ihre Nation, sondern auch andere treffen wird. Sie haben Ihre Religion mit einem solchen Grade von Gewissensfreyheit zu vereinigen gewußt, die man ihr gar nicht zu getrauet hätte und dergleichen sich keine andere rühmen kan. Sie haben zugleich die Nothwendigkeit einer unbeschränkten Gewissensfreyheit zu jeder Religion so gründlich und so hell vorgetragen, daß auch endlich die Kirche unserer Seits darauf wird denken müssen, wie sie alles, was das Gewissen belästigen und drücken kan, von der ihrigen absondere, welches endlich die Menschen in Ansehung der wesentlichen Religionspuncte vereinigen muß”), translated in THE CAMBRIDGE EDITION OF THE WORKS OF IMMANUEL KANT: CORRESPONDENCE 204 (Arnulf Zweig trans., 1999).

<sup>27</sup> See, e.g., Immanuel Kant, *Die Religion innerhalb der Grenzen der blossen Vernunft* (1793), in 6 AKADEMIE AUSGABE 184 (Königlich-Preussische Akademie der Wissenschaften ed., 1902) [hereinafter Kant, *Die Religion*]; Immanuel Kant, *Der Streit der Fakultäten* (1798), in 7

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#### IV. CENTRAL ARGUMENTS FOR RELIGIOUS TOLERANCE

The historical discourse until the enlightenment has formulated many arguments for religious tolerance. With some simplification there are eight central arguments for religious tolerance prominent in the discussion that have constructive substance great enough to merit closer scrutiny.

##### A. *Exemplary Cultures and Religious Virtues*

The first two are derived from the paradigm of exemplary cultures of the past or present and the particular content of concrete religions. Voltaire argued in his treaty on toleration accordingly that the religious pluralism of antiquity and the value of charity and love in Christianity make religious intolerance unconvincing.<sup>28</sup> The problem with this line of argumentation is that it has only limited force, even if one grants that the pictures of the respective cultures and religions are correct, because it presupposes that a particular cultural or religious point of view is shared or at least accepted as relevant. In consequence, it cannot be universalized across cultural and religious borders—something particularly important in the case of freedom of religion given the plurality of creeds.

##### B. *The Separation of State and Religion*

A third argument points to the separation of State and religion, a separation ambivalently formulated in Augustine's or Luther's thought, and rather clear cut in Locke's work.<sup>29</sup> Religions become a private matter of no concern for the public authority. This argument presupposes, however, what is to be legitimized—that the State has to refrain from backing any particular religion because of its respect for religious freedom. The separation of State and religion is therefore a consequence of religious tolerance that is to be based on other grounds, not a legitimation of religious tolerance itself.

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AKADEMIE AUSGABE 52-53 (Königlich-Preussische Akademie der Wissenschaften ed., 1902).

<sup>28</sup> See, e.g., Voltaire, *supra* note 23.

<sup>29</sup> See *supra* notes 10, 15, 20.

C. *The Argument from Religious Epistemology*

A fourth argument leads to a central aspect of the problem. One can call this the argument from religious epistemology. It bases tolerance on the specific uncertainty of religious beliefs. This argument has a long tradition. Locke, for example, emphasized the doubtfulness of religious convictions that cannot be overcome by recourse to some secular or religious authority because they, themselves, have different opinions about religious questions.<sup>30</sup> Another classic example comes from Voltaire, who formulated: “The knowledge of the secrets of God is not part of this life. Thrown here in profound shadows, we fight one against the other and we hit each other accidentally in the middle of this night without exactly knowing why we fight.”<sup>31</sup> Moses Mendelssohn reports:

With my best friend, whom I believed to be ever so much in accord with me, I very often failed to come to terms about certain truths of philosophy and religion. . . . And yet neither of us was unpracticed in thinking; we were both used to dealing with abstract ideas, and it seemed to both of us that we were earnestly seeking the truth for its own sake rather than for the sake of scoring a point. Nevertheless, our ideas had to rub against each other for a long time before they could be made to fit themselves to one another, and before we could say with an assurance: Here we agree! Oh! I should not like to have for a friend anyone who has had this experience in his lifetime, and can still be intolerant, and can still hate his neighbour because he does not think or express himself on religious matters in the same way as he does; for he has divested himself of all humanity.<sup>32</sup>

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<sup>30</sup> Locke writes:

To conclude, it is the same thing whether a king that prescribes laws to another man's religion pretend to do it by his own judgement, or by the ecclesiastical authority and advice of others. The decisions of churchmen, whose differences and disputes are sufficiently known, cannot be any sounder or safer than his: nor can all their suffrages joined together add any new strength unto the civil power.

LOCKE, *supra* note 20, at 32.

<sup>31</sup> Voltaire, *supra* note 23, at 216 (“La connaissance des secrets de Dieu n'est pas le partage de cette vie. Plongés ici dans des ténèbres profondes, nous nous battons les uns contre les autres, et nous frappons au hasard au milieu de cette nuit, sans savoir précisément pourquoi nous combattons.”).

<sup>32</sup> Mendelssohn, *supra* note 18, at 386 (“Mit meinem besten Freunde, mit dem ich noch so einhellig zu denken glaubte, konnte ich mich sehr oft über Wahrheiten der Philosophie und Religion nicht vereinigen. . . . Gleichwohl waren wir beiderseits im Denken nicht ungeübt, gewohnt, mit abgesonderten Begriffen umzugehen, und beiden schien es um die Wahrheit in Ernst, mehr um sie als ums Rechthaben zu tun zu sein. Demohngeachtet mußten sich unsere Begriffe lange Zeit aneinander reiben, bevor sie ineinander sich wollten fügen lassen, bevor wir mit einiger Zuverlässigkeit sagen konnten: Hierin kommen wir überein! Oh! Wer diese Erfahrung in seinem Leben gehabt hat und noch intolerant sein, noch seinen Nächsten hassen kann, weil dieser in Religionsachen nicht denkt oder sich nicht so ausdrückt wie er, den möchte

The reflection on the specific uncertainty of religious beliefs and the distinction between this uncertainty and the general limits of human understanding found its culmination in Kant's reflection on the possible proofs of the existence of God in the *Kritik der Reinen Vernunft* [*Critique of Pure Reason*].

The argument is developed in the framework of the transcendental dialectic aiming at protecting the use of reason against speculative fallacies reason is prone to commit and that lead it astray. In Kant's view, there are only three proofs of God: the ontological, the cosmological and the physico-theological. The ontological proof of God concluded, from the perfection or greatest reality that are necessary elements of the concept of God, the necessary existence of God, as existence is part of this perfection or highest reality.<sup>33</sup> In Kant's view, both the cosmological and the physico-theological proof lead back to this ontological proof that is, in consequence, at the core of the matter. The cosmological proof of God concludes from the necessity of a final cause of every existing thing and the actual existence of the world that God must be the final cause of this world as to his highest reality.<sup>34</sup> For Kant, the necessity of existence and the highest reality can, in consequence, be reversed. If this is so, the highest reality implies the necessity of existence. This assertion, however, forms the core of the ontological proof of God.<sup>35</sup>

The physico-theological proof of God concludes from the admirable perfection of the world that this world presupposes a reasonable and perfect creator.<sup>36</sup> The physico-teleological proof of God deserves respect. According to Kant, "It is the oldest, clearest and the most appropriate to common human reason."<sup>37</sup> This proof, however, fails too. It is impossible to draw conclusions from the appearance of the world as to the nature of the creator, as the appearance of the world and its evaluation is relative to the observer.<sup>38</sup> What appears to be perfection for human beings may not be perfection at all. In addition, the physico-teleological proof leads back to the cosmological proof of

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ich nie zum Freunde haben; denn er hat alle Menschheit ausgezogen."), translated in MOSES MENDELSSOHN, JERUSALEM OR ON RELIGIOUS POWER AND JUDAISM 67 (Alan Arkush trans., 1983). The perception of the specific insecurity of religious beliefs is at the core of the famous parable of the ring, found in Boccaccio and adapted in Lessing's play about a Jewish character, *Nathan der Weise*. There are three rings—a blessed one and two identical copies—and the only way to find the blessed one is to look at the deeds of its bearer; if those deeds are beneficent for humanity, the bearer holds the blessed ring.

<sup>33</sup> See Immanuel Kant, *Kritik der reinen Vernunft* [*Critique of Pure Reason*] (1781), in 3 AKADEMIE AUSGABE 397 (Königlich-Preussische Akademie der Wissenschaften ed., 1902).

<sup>34</sup> *Id.* at 403.

<sup>35</sup> *Id.* at 405.

<sup>36</sup> *Id.* at 413.

<sup>37</sup> *Id.* at 415, translated in THE CAMBRIDGE EDITION OF THE WORKS OF IMMANUEL KANT: CRITIQUE OF PURE REASON 579 (Paul Guyer & Allen W. Wood trans., 1998).

<sup>38</sup> Kant, *supra* note 33, at 418.

God. It concludes from the existence of the world and the premise that everything has a cause that God is the necessary cause of the world. As the cosmological proof of God, however, restates the ontological proof, this latter proof is the core of the problem.<sup>39</sup>

Kant criticizes the ontological proof of God in arguments that have been much discussed. His point is that one cannot deduce, from the content of the concept of an entity, the existence of that entity. Propositions about the existence of an entity are in his terminology synthetic, not analytic statements. The question of the existence or non-existence of an entity is not decided by a conceptual analysis but by reference to experience.<sup>40</sup> With this argument a core aspect of Kant's theoretical philosophy of religion is reached. Positive, propositional knowledge of God and his attributes is beyond the limits of human understanding. Despite this result, Kant is not a theoretical atheist. He underlines that positive knowledge of the non-existence of God is also beyond our reach.<sup>41</sup> In addition, he provides further arguments for postulating the existence of God for practical purposes.

The attempt to prove the existence of God has a long tradition. In addition to Anselm of Canterbury, Descartes and Leibniz have devised such proofs, and there are similar contemporary arguments too.<sup>42</sup> One can say, however, that from a theoretical point of view, Kant has put an end to the attempts to gain secure knowledge of the existence and nature of supreme beings by clarifying where the epistemological problems of this attempts are located. This is an important achievement that should not be forgotten quite irrespective of one's other opinions about Kant's

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<sup>39</sup> *Id.*

<sup>40</sup> Kant writes:

Wenn ich das Prädicat in einem identischen Urtheile aufhebe und behalte das Subject, so entspringt ein Widerspruch, und daher sage ich: jenes kommt diesem nothwendiger Weise zu. Hebe ich aber das Subject zusammt dem Prädicate auf, so entspringt kein Widerspruch; denn es ist nichts mehr, welchem widersprochen werden könnte. Einen Triangel setzen und doch die drei Winkel desselben aufheben, ist widersprechend, aber den Triangel sammt seinen drei Winkeln aufheben, ist kein Widerspruch.

[If I cancel the predicate in an identical judgment and keep the subject, then a contradiction arises; hence I say that the former necessarily pertains to the latter. But if I cancel the subject together with the predicate, then no contradiction arises; for there is no longer anything that could be contradicted. To posit a triangle and cancel its three angles is contradictory; but to cancel the triangle together with its three angles is not a contradiction.]

*Id.* at 398, translated in THE CAMBRIDGE EDITION OF THE WORKS OF IMMANUEL KANT: CRITIQUE OF PURE REASON 565 (Paul Guyer & Allen W. Wood trans., 1998).

<sup>41</sup> Kant, *supra* note 33, at 425.

<sup>42</sup> For Anselm of Canterbury's attempt to prove the existence of God, see ANSELM OF CANTERBURY, PROSLOGION, LATEINISCH-DEUTSCH chs. 2-4 (Fromman Holzboog 1962); for Descartes's formulation of the same, see René Descartes, *Principia Philosophiae*, in 8/1 CHARLES ADAM & PAUL TANNERY, ŒUVRES DE DESCARTES pars prima, § 14, at 10 (Vrin 1964) (1644); and for the current debate, see for example, OTFRIED HÖFFE, KANTS KRITIK DER REINEN VERNUNFT 265 (2003).

project of transcendental philosophy in general, the content of his religious philosophy or one's general epistemological outlook.<sup>43</sup>

At this crossroad, a thinking human being looking for orientation can choose different directions. One can draw the conclusion that with this critique the question of the existence of God is answered. This was the consequence of one of Germany's greatest poets, Heinrich Heine. In his review in the 19th century of the then-recent German philosophy, Heine stated that the French had dethroned the monarchs but Kant dethroned God himself—to paraphrase his more drastic language.<sup>44</sup> This kind of view might draw inspiration from the intellectual maxim to assume the non-existence of an entity if there are no positive indications of the existence of that entity. This maxim is an element of scientific economy. Without it, there seems to be no principled reason against the assumption of the existence of any entity whose existence and non-existence cannot be proved, of which there are many. One may, however, draw quite different conclusions as well. One can admit the force of the argument but maintain one's religious convictions because the belief in God's existence is drawn from other sources, *e.g.* feeling or mere faith.

It is quite important which direction one takes at this point for the personal life—for the kind of hopes one entertains, whether they are world immanent, end with death or transcend this life; and for the role of reason in our existence. The decision of this matter is, however, not relevant for the question of the foundations of religious tolerance and freedom of religion. Whatever direction one chooses at this existential crossroad, it should not be disputed that there is no certain knowledge about the existence of divine forces and their attributes attainable for human beings in the way it was hoped for by some of the greatest thinkers of the past. This conclusion is obvious for the first skeptical and secular perspective. It is equally plausible for the second religious perspective, if this outlook remains conscious of the difference between faith and knowledge, however limited and insecure the latter might be in the light of the skeptical findings of modern epistemology.<sup>45</sup> Because of this uncertainty, no religious belief can demand priority over others, perhaps even including the license to extinguish other creeds because of its superior truth in comparison to those others. To the contrary:

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<sup>43</sup> See, *e.g.*, ERNST CASSIRER, *KANTS LEBEN UND LEHRE* 407 (1918); *KANT'S PHILOSOPHY OF RELIGION RECONSIDERED* (Philip J. Rossi & Michael J. Wreen eds., 1991); GORDON E. MICHALSON, *FALLEN FREEDOM* (1990); JOHN RAWLS, *LECTURES ON THE HISTORY OF MORAL PHILOSOPHY* 309 (2000); ALLEN WOOD, *KANT'S MORAL RELIGION* (1970); ALLEN WOOD, *KANT'S RATIONAL THEOLOGY* (1978).

<sup>44</sup> HEINRICH HEINE, *ZUR GESCHICHTE DER RELIGION UND PHILOSOPHIE IN DEUTSCHLAND* (Jürgen Ferner ed., Reclam 1997) (1832).

<sup>45</sup> This is not an obvious point. See the epistemological concessions in JÜRGEN HABERMAS, *ZWISCHEN NATURALISMUS UND RELIGION* 118, 137 (2005).

Equally insecure religious doctrines have a *prima facie* duty to tolerate each other.

D. *Conscience, Faith, Volition and the Victims of Intolerance*

The fifth argument points at the duty to obey one's own conscience. Intolerance leads to a breach of this duty. Aquinas argued in this way, as did Locke.<sup>46</sup> A sixth line of thought argues that one cannot change one's faith voluntarily, so no one should be obliged to do so.<sup>47</sup>

A seventh argument directs the attention to the victims of intolerance. This argument can be found in two versions. First, as a strategy of the prudent use of power. In this version, the motivation is not an attempt to avoid human sacrifice, but rather a desire to exercise social control efficiently. This control can sometimes be achieved best if a minority is allowed to pursue its own path as long as it stays within the limits set by the majority. One finds these kinds of considerations in Aquinas,<sup>48</sup> Machiavelli and Locke.<sup>49</sup> It is analyzed as repressive tolerance in Critical Theory.<sup>50</sup> This argument is of course not convincing. It should, however, not be forgotten to avoid perspectives that are too naïve as to the discourse of tolerance and its motives.

The core of the discussion of tolerance is nevertheless reached by this argument if it is understood normatively. It is then nothing but the demand to take every individual and her pursuit of happiness as a categorically protected value and good. This perception of the individual as a supreme value is embodied in the concept of human dignity. Human dignity means that every human being is an end in itself, that no other collective or cultural value surpasses the value of the individual human being irrespective of her concrete properties—natural, like sex or skin color, or acquired, like the level of education, income or scientific merit.<sup>51</sup> In consequence, no human being can be used as a mere means to reach the purposes of others.<sup>52</sup> This is a central step in the debate. In the battles of religious strife the vulnerable, hoping and suffering individual human being becomes a decisive concern.

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<sup>46</sup> See LOCKE, *supra* note 20.

<sup>47</sup> For the classic formulation of this argument by Augustine, see Augustinus, *supra* note 5.

<sup>48</sup> See, e.g., AQUINAS, *supra* note 11, at 10-11.

<sup>49</sup> See, e.g., LOCKE, *supra* note 20.

<sup>50</sup> Herbert Marcuse, *Repressive Tolerance*, in ROBERT PAUL WOLFF ET AL., A CRITIQUE OF PURE TOLERANCE 95 (1969).

<sup>51</sup> For an account of human dignity as a normative, moral and legal concept, see MAHLMANN, *supra* note 1, at 282.

<sup>52</sup> See Immanuel Kant, *Grundlegung zur Metaphysik der Sitten* (1785), in 4 AKADEMIE AUSGABE 385, 429, 462 (Königlich-Preussische Akademie der Wissenschaften ed., 1902).

This argument is also the core of the argument five and six. The duty to follow one's conscience is only to be respected if the individual conscience counts. Only if it counts is it also clear why one may not force somebody to believe something, even if one could.

### E. *Common Grounds*

The eighth and last argument tries to build bridges between the religions. It underlines some common concerns of all religions, which is not the same as formulating a universal religion. The common concern is historically closely identified with some kind of human morality. This argument is made by Bayle and Mendelssohn.<sup>53</sup>

A particularly emphatic version of this view is found in Kant's *Die Religion innerhalb der Grenzen der blossen Vernunft* (Religion within the boundaries of mere reason).<sup>54</sup> Kant's starting point is a theory of evil. According to Kant, evil consists in the superiority of self-love to the moral-law. The origin of this phenomenon is, in Kant's view, unexplainable. However, something can be said about the remedies. To overcome this evil, a revolution of the modes of thought is necessary—ein "neues Herz," a "new heart," as Kant formulates—a religion of moral conduct instead of a religion of a submissive chase of grace.<sup>55</sup>

Human beings have to find an ethical community to be thought of as a people under the moral law.<sup>56</sup> The positive doctrines of religion have to be transformed into the commands of the morality of reason.<sup>57</sup> Morality is thus for Kant the true worship of God, not the observance of religious duties, rites and observances. The abiding by traditional religious rules as such does not deserve to be called religion. In Kant's view, it is nothing but statutory ecclesiastical faith.<sup>58</sup> All religious doctrines can be wrong; all of these duties are in consequence to be interpreted according to morality.<sup>59</sup> There are therefore many kinds of faiths but only one religion: the religion of the living categorical imperative that creates a new humanity as the true temple of God.<sup>60</sup>

One might doubt whether this identification of religion and morality does indeed exhaust the phenomenon of religion because there are aspects of religions that clearly transcend the moral relations

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<sup>53</sup> See Bayle, *supra* note 22; Mendelssohn, *supra* note 18, at 420.

<sup>54</sup> Kant, *Die Religion*, *supra* note 27.

<sup>55</sup> *Id.* at 51.

<sup>56</sup> *Id.* at 96.

<sup>57</sup> *Id.* at 103.

<sup>58</sup> *Id.* at 108.

<sup>59</sup> *Id.* at 187.

<sup>60</sup> *Id.* at 198.

towards other human beings, for example the religious conception of the meaning of death. Even if one admits that these other dimensions exist, the emphasis on the importance of moral conduct should be acceptable for any religious system, as it seems unclear why the behavior towards others should be less important than abiding by the many other religious observances from dress codes to nutritional choices.

The analysis of the common features of religions implies the critique of the importance of the separating properties of religions. Here Kant argues that the religious laws might have the effect to clarify the content of a true religion. But the laws might have other effects as well. This can lead to religious strife that so often spattered the world with blood, as Kant observes.<sup>61</sup> In any case, everything done with the purpose to worship God beyond a moral life is a mere religious illusion and a pseudo-service to God.<sup>62</sup> The idea to influence God by the obedience of religious laws concerning outward comportment is a fanatical religious illusion that is the moral death of reason.<sup>63</sup> Kant continues:

Between a *shaman* of the Tunguses and the European prelate who rules over both church and state, or (if, instead of the heads and leaders, we only want to look at the faithful and their ways of representation) between the wholly sensuous *Wogulite*, who in the morning lays the paw of a bear skin over his head with the short prayer, "Strike me not dead" and the sublimated *Puritan* and Independent in Connecticut, there certainly is a tremendous distance in the *style* of faith, but not in *principle*; for, as regards the latter, they all equally belong to one and the same class, namely those who place their service of God in something (faith in certain statutory articles, or the observance of certain arbitrary practices) which cannot by itself constitute a better human being.<sup>64</sup>

Enlightenment consists in the critique of this perception. Only if one overcomes the adherence to such laws, does the worship of God become

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<sup>61</sup> *Id.* at 108.

<sup>62</sup> *Id.* at 170.

<sup>63</sup> *Id.* at 175.

<sup>64</sup> *Id.* at 176 ("Von einem tungusischen *Schaman* bis zu dem Kirche und Staat zugleich regierenden europäischen Prälaten, oder (wollen wir statt der Häupter und Anführer nur auf die Glaubensanhänger nach ihrer eignen Vorstellungsart sehen) zwischen dem ganz sinnlichen *Wogulitzen*, der die Tatze von einem Bärenfell sich des Morgens auf sein Haupt legt mit dem kurzen Gebet: 'Schlag mich nicht tod!' bis zum sublimierten *Puritaner* und Independenten in *Connecticut* ist zwar ein mächtiger Abstand in der *Manier*, aber nicht im *Princip* zu glauben; denn das was dieses betrifft, so gehören sie insgesamt zu einer und derselben Klasse, derer nämlich, die in dem, was an sich keinen besseren Menschen ausmacht, (im Glauben gewisser statutarischer Sätze, oder Begehen gewisser willkürlicher Observanzen) ihren Gottesdienst setzen" (emphasis in the original)), translated in THE CAMBRIDGE EDITION OF THE WORKS OF IMMANUEL KANT: RELIGION AND RATIONAL THEOLOGY 195 (Allen W. Wood ed., George di Giovanni trans., 2001).

a free and moral service.<sup>65</sup>

This critique of the relevance of the obedience of religious laws that have nothing to do with a well-conceived morality is not only—as it may appear—a reason to rethink the importance of such laws in religions. This critique is very important as a theory of religious tolerance in general, as it underlines that the outward appearance of a religion is not decisive for normative evaluations. Rather, its substantive normative content is. This is even more evident for the normative questions concerning the comportment of a concrete adherent of a faith. For moral questions, only the moral orientation of the individual can be relevant, and not—for example—his dressing habits and food preferences. For the law, which is not concerned with the moral attitudes of citizens but their external actions, socially relevant behavior can be the only concern.

#### V. REFLECTIVE AND TOLERANT THEORIES OF TOLERANCE—THE MODERN DEBATE

Against this background it is now possible to consider the question of whether the modern debate of toleration has brought any new insight. The focus will be on two examples that seem to be representative for certain widespread modes of thought.

The first is Rawls' political liberalism.<sup>66</sup> Rawls assumes that under the condition of modern pluralist societies, various comprehensive doctrines of the good life are developed that are equally reasonable. Rawls thinks that only a political liberalism not based on any single comprehensive doctrine but on an overlapping consensus of different comprehensive doctrines can accommodate this reasonable pluralism.<sup>67</sup> This overlapping consensus is at the end derived from the will of the citizens to found a democratic society as the form of cooperation of human beings who are conceptualized as being free and equal. Rawls admits that this precondition excludes some comprehensive doctrines. But he rightly argues that this is unavoidable for any conception of society not devoid of any content. Only the theory of an overlapping consensus has, in Rawls view, a central and essential quality: To apply the principle of tolerance to the doctrine of tolerance itself, as different modes of justification are accepted that on different paths lead to the content of the overlapping consensus. A tolerant theory of tolerance is thus the consequence of his thought.

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<sup>65</sup> Kant, *Die Religion*, *supra* note 27, at 179.

<sup>66</sup> JOHN RAWLS, *POLITICAL LIBERALISM* (1993). For a discussion focusing on collective identities and their reconciliation, see MICHAEL WALZER, *ON TOLERATION* (1997).

<sup>67</sup> RAWLS, *supra* note 66, at 135.

There is one central argument against this conception that is of relevance in this context. If one embarks on the project of finding foundations of tolerance, it quickly becomes clear that it is impossible to justify tolerance in a form that is normatively neutral. Rawls' own theory illustrates this. The premise of Rawls' argument, the will to associate as free and equal beings, is not at all normatively innocent. It is in fact a contentious normative statement, expressing that freedom is a value for human beings and that every individual counts equally. Without such normative principles (and their perhaps deeper ethical foundation), no argument for tolerance will have any perspective to succeed. It is insufficient to rely on the contingent social fact that various mutually exclusive comprehensive theories will yield a stable overlapping consensus. This is quite evident today, where the premise of Rawls' argument—the acceptance of human beings as free and equal—is far from self-evident in various political and cultural contexts, including western democracies marked by years of attacks on civil liberties and rising social inequality. In consequence, one has to defend, buttress and, in many places in the world, convince people of the human attractiveness of the normative visions behind freedom and equality. This theoretical, and quite practically political, task necessarily transcends an overlapping consensus because it concerns the preconditions that make this consensus possible in the first place. In addition, it is highly doubtful that—given the urgent need of a trans-cultural and trans-religious foundation of religious tolerance—political Kantian constructivism forms a suitable ethical theory to shoulder this task, given its foundational recourse to particular political traditions.<sup>68</sup>

A recent important study on religious tolerance develops a procedural concept of tolerance that is inspired by, though not identical to, discourse ethics.<sup>69</sup> In this account, tolerance is based (as is ethics in general) on the right to reciprocal and universal justification. A reciprocal justification of a norm is reached if nobody imposes duties on others that she is not prepared to impose on herself. It is universally justified if all interests at stake are considered. This principle is understood as primordial for reasonable persons. This right to justification leads to tolerance and determines its limits. If something cannot be reciprocally and universally justified, the limits of tolerance are reached, if it can, it has to be tolerated.<sup>70</sup>

The problem of this theory is that it draws its plausibility from a

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<sup>68</sup> See, e.g., John Rawls, *Kantian Constructivism in Moral Theory and Justice as Fairness: Political not Metaphysical*, in COLLECTED PAPERS 303, 388 (Samuel Freeman ed., 2001). For the truth of Hegelian *Sittlichkeit* bound to a concrete community, see, for example, JOHN RAWLS, LECTURES ON THE HISTORY OF MORAL PHILOSOPHY 365 (Barbara Herman ed., 2000).

<sup>69</sup> RAINER FORST, *TOLERANZ IM KONFLIKT* (2003).

<sup>70</sup> *Id.* at 591, 594, 742.

hidden normative premise. Norms have to be justified reciprocally and universally only if every human being counts in ethical matters, if it is invested with human dignity and thus understood as an end in itself. Reciprocity and universality are heuristic tools to discover whether or not something can be justified in a community, by making sure that all points of view are considered and a neutral standpoint has been taking evaluating them. They are therefore rightly taken as being useful in many theories of the past and present. They are, however, not the normative heart of the matter. The core is human dignity, which is the true normative source of the right to justification (and other normative positions) and a decisive argument for tolerance itself.

#### VI. THE FUNDAMENTS OF TOLERANCE AND FREEDOM OF RELIGION

Given the historical and modern discourse, religious tolerance and its legal manifestation, the subjective right to freedom of religion can be best justified by the following considerations:

*First*, by the specific insecurity of questions of faith. As no religion has an epistemologically legitimate claim to the only religious truth, various faiths have a duty to respect each other's particular outlook. *Second*, religious tolerance and freedom of religion can be justified by consciousness of human dignity. Religious liberty is not guaranteed to promote certain creeds or to reap the positive consequences of religion as such for society or the state. It is guaranteed because of the concern for the concrete individuals who believe and the categorical respect for their personalities, expressed among others and most intimately in their faith. Given this argument from personal dignity, religious tolerance is—by the way—justified as well, even if one assumes—contrary to the view presented here—that religious beliefs are particularly certain. Human dignity demands not only respect for insights, but also respect for a person's errors.

*Third*, religious tolerance is buttressed by the perception of what is a common concern to different religions, most importantly a moral vision of human life.

Some yardsticks for measuring the limits of tolerance also can be derived from this discussion. The limitations are in general best determined by the concern for the protection of human dignity which constitutes the reason why religious tolerance is justified in the first place. If a religious practice violates this right, the limitation of this practice is certainly justified. Other limits have to be derived from familiar weighing and balancing exercises that determine the scope of freedom of religion in comparison with potentially competing rights. If one takes the lessons of the philosophy of religion of the enlightenment

seriously, an additional consideration is of importance: The concrete individual and her comportment, not the outward appearance of a religion, is decisive in this respect.

These results have concrete consequences for the interpretation of positive norms of freedom of religion, different as they are in the various national, supranational, and international orders and legal regimes. Any concretization of positive guarantees of freedom of religion that overlooks these points—the connection to human dignity and the importance of individual conduct, not appearance—does not draw the right conclusion from the long history of reflection on the freedom of belief. This is not an academic point. A good example is the wearing of visible symbols of a religion, *e.g.* a head scarf, that troubles various jurisdictions. There are important decisions in which it has been argued by courts that the individual conduct of the person concerned and the meaning it gives to the symbol is not important. If the developed thoughts point in the right direction, this is not convincing.<sup>71</sup> The focus on visible symbols overlooks the rights of the person as an individual and the irrelevance of the appearance in comparison with the comportment the person actually shows. Humanity (and its opposite) can be discovered not only in business suits or casual street wear but under kippas, turbans, or head scarves, or under the habit of a nun or monk.<sup>72</sup> If the symbol, however, implies the

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<sup>71</sup> According to the Federal Constitutional Court of Germany, for example, the prohibition of wearing headscarves in schools irrespective of the behaviour of the teacher is allowed, though states may choose an alternative course. See Bundesverfassungsgericht [BVerfG] Sept. 24, 2003, 108 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 282 (F.R.G.). For comments on this decision, which has generated an extensive debate, see for example with further references, Matthias Mahlmann, *Religious Tolerance, Pluralist Society and the Neutrality of the State: The Federal Constitutional Court's Decision in the Headscarf Case*, 4 GERMAN L.J. 1100 (2003); see also Matthias Mahlmann, *Dienstrechtliche Konkretisierung staatlicher Neutralität*, 37 ZEITSCHRIFT FÜR RECHTSPOLITIK 123 (2004); Matthias Mahlmann, *Differenzierung und Neutralität im Religionsverfassungsrecht*, MYOPS, Jan. 2007, at 39; Matthias Mahlmann, *Laizismus in Berlin?*, NEUE JUSTIZ, Sept. 2007, at 394. In *Dahlab v. Switzerland*, App. No. 42393/98, 2001-V Eur. Ct. H.R. 447, the European Court of Human Rights (ECHR) did not consider the fact that the dismissed teacher had taught for three years without any problems with school authorities or parents. See, *e.g.*, *Sahin v. Turkey*, App. No. 44774/98, 41 Eur. H.R. Rep. 8 (2005). For an overview of the ECHR's recent case law on freedom of religion, see L. Garlicki, *Collective Aspects of Freedom of Religion: Recent Developments in the Case Law of the European Court of Human Rights*, in CENSORIAL SENSITIVITIES 217 (A. Sajó ed., 2007). For an example of the British, American and French jurisprudence and politics on this matter, see Maleiha Malik, *A Mirror for Liberalism: Europe's New Wars of Religion*, in EIN NEUER KAMPF DER RELIGIONEN? STAAT, RECHT UND RELIGIÖSE TOLERANZ 241 (Matthias Mahlmann & Hubert Rottleuthner eds., 2006); John Mikhail, *The Free Exercise of Religion: An American Perspective*, in EIN NEUER KAMPF DER RELIGIONEN?, *supra*, at 271; P. Weil, *The Problem of Religious Symbols in French History, Politics, and Law*, in EIN NEUER KAMPF DER RELIGIONEN?, *supra*, at 289.

<sup>72</sup> Another possible doctrinal consequence of these findings concerns religious speech. See, *e.g.*, Matthias Mahlmann, *Free Speech and the Rights of Religion*, in CENSORIAL SENSITIVITIES, *supra* note 71, at 41.

denial of the rights to an individual personality (for example, a burqa that makes the individuality invisible), it can be justified to restrict its use—for example, by a teacher—because of the outlined importance of human dignity.

#### CONCLUSION

Human beings are forced to find their way under often difficult, sometimes even tragic, historical circumstance. They are uplifted by the desire and possibility to enjoy the meaning and sense of their existence, and burdened by the arduousness to find this precious good. Given this particular condition, one should learn to be patient with the attempts of human beings to cope with what it demands, particularly those of a religious nature. Religious tolerance and freedom of religion are central normative expressions of the necessary patience of humankind, with its own existential predicament. Humankind travelled a long way to get where we are, precarious and ambivalent as the situation is. It seems that—given the spectre of new religious wars, the death toll that is rising in many parts in the world, and the prospect of further bloodshed—it is not useless to try to stay aware of the foundations of religious tolerance; to make them, where possible, a relevant part of effective legal orders; and to do what one can to protect this central perspective of a civilized humanism.