Compromise and Toleration: Some Reflections
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(The following is not a finished paper but some preliminary reflections on the differences and similarities between compromise and toleration. The paragraph numbers are only working tools.)

Political compromise is akin to toleration, since both consist of an "agreement to disagree." Compromise and toleration also share a predicament of being regarded as ambiguous virtues that require of us to accept something we actually regard as wrong. However, we misunderstand the nature, justification, and limits of compromise if we see it merely as a matter of toleration. While toleration is mainly a matter of accepting citizens' equal right to co-existence as subjects to law, political compromise includes the parties in making law – it makes them co-authors of law. Toleration entails respecting the plurality of conceptions of the good in society, whereas political compromise embodies the disagreements in coercive laws. This difference between toleration and compromise has two important consequences. First, political compromise is justified in a different manner than is toleration. The justification of compromise goes beyond, even if it includes, respect for each individual's right to determine her own conception of the good to an idea of respect for citizens as co-legislators. Second, the limits of compromise are not the same as the limits of toleration. The conditions for being included in compromise are more stringent than those for being tolerated. Still, the limits of compromise cannot be drawn to narrowly if it is to remain its value as a form of agreement that respects and embodies the differences of opinion in society.

I. Introduction

1

How can people who disagree on fundamental issues of good and right nevertheless live together? This is one of the most important questions in modern, pluralistic societies. It is also one of the key concerns of modern political theory, which take the fact of pluralism as a given. Liberal political theory does not just take disagreement as an unfortunate fact, but sees pluralism as legitimate because it is the consequence of free institutions (Rawls 1993, 4). Thus, for the liberal, the solution to the challenge created by intractable disagreement cannot be to eliminate disagreement through force or to disregard it by arbitrary imposition of one particular view, since this would be to undermine the fundamental norm of a liberal society, the norm of equal freedom. So how can people who disagree on fundamental issues live together without violating the fundamental norm of equal freedom? Both toleration and compromise seem to be answers to this question. Both toleration and compromise can be seen as an "agreement to

disagree". And both toleration and compromise seem to be based on the norm of equal respect for the freedom to form one's own conception of the good and the right.

2
Toleration is the classical and time–honored liberal response to pluralism of worldviews. Disagreements about the true faith is often seen as the impetus to the rise of liberalism in general and of the liberal notion of toleration in particular. The notion of compromise plays a much less prominent place in the history of political thought and, I would say, in the self-understanding of modern liberal societies. No great thinker wrote "A Letter Concerning Compromise," and we don't praise our societies for being "compromise societies," as we praise them for being "tolerant societies." In political theory, the neglect of the topic of compromise in the tradition is increasingly being made good. The recent literature to a large extent sees compromise as a response to the same or a similar question as the liberal notion of toleration, that is, as a way for free and equal persons to live with disagreement [refs].

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This chapter argues that while toleration and compromise are answers to the same general question, they are not the same answer. When parties who cannot overcome their disagreements make a political compromise, they do something different than when they tolerate each other. While toleration is mainly a matter of accepting citizens' equal right to co-existence as subjects to law, political compromise includes the parties in making law – it makes them co-authors of law. Toleration entails respecting the plurality of conceptions of the good in society, whereas political compromise embodies citizens' disagreements in coercive laws. In other words, toleration is an answer to the question of what the law ought to be, while compromise is a response to disagreement on what the law ought to be. This difference between toleration and compromise has two important consequences. First, political compromise is justified in a different manner than is toleration. The justification of compromise goes beyond, even if it includes, respect for each individual's right to determine her own conception of the good to an idea of respect for citizens as co-legislators. Second, the limits of compromise are not the same as the limits of toleration. The conditions for being included in compromise are more stringent than those for being tolerated. Still, the limits of compromise cannot be drawn too narrowly if it is to remain its value as a form of agreement that respects the differences of opinion in society.

II. Toleration

4
The meaning of toleration is contested, and there are different conceptions of the concept of toleration (Forst). However, I want to take outset in a classical notion of toleration, which sees

toleration as a norm of acceptance or non-interference with certain practices and beliefs that one otherwise finds objectionable. This is how toleration is understood in the paradigmatic case of religion: One tolerates a religion that one does not share if one accepts that others believe in that religion and if one does not interfere with their religious practices. Toleration is a norm that can be applied to both the state and to other powerful actors, but we assume that toleration is a norm that applies only to persons or entities that have the capacity to interfere. Traditionally, toleration has been applied to determine the limits of state power and to the tyranny of the majority (Locke and Mill).[1]

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To be a bit more formal, we can say, following Rainer Forst (2004; 2012), that the concept of toleration is characterized by three components: 1. *Objection*: a belief or practice must be regarded as objectionable, or, as Mill puts it, "foolish, perverse, or wrong" [15?], before we can speak of tolerating it. We don't' say that we "tolerate" beliefs that we affirm or are indifferent to. 2. *Acceptance*: when we tolerate a practice, it is because there are certain moral reasons that trump the reasons for rejection. These reasons for acceptance require of us that we accept the practices without making us agree with them (Forst 2004, 315). 3. *Rejection*: any concept of toleration involves a specification of its limits [why exactly?]. According to Forst, these three components characterize the *concept*, but there are different *conceptions* of toleration that specifies the reasons for the three components in different ways, because of different normative theories or commitments. Thus, a conception of toleration is normatively dependent on a theory of justice (Forst 2004 315ff; 2012).[2]

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Toleration is in the standard cases something minorities demand when their beliefs and practices are rejected and suppressed by the majority. Religious and sexual minorities, for example, have demanded that their practices be allowed by the state and accepted by public opinion, even if the majority doesn't agree with them or find them foolish, perverse or wrong. Toleration does not require that the majority starts to like the practices of the minorities but only that it understands that there are other reasons, reasons of acceptance, that trump its reasons for rejection. For example, a Christian majority need not come to value Islam in order to accept that the norm of the equal liberty to determine one's own conception of the good trumps its reasons for rejecting the truth and value of Islam. Reasons of acceptance are based on a theory of justice or some substantive principles such as respect for autonomy. As such, a normative conception of toleration tells the parties what they can legitimately demand of each other, what the minority can demand and what the majority or the state must permit.

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[1] [But Jones: state does not have conception of the good and hence cannot tolerate…]

[2] [This is also emphasized by Rawls (1999, 188, 191, 193).]

Toleration, thus, is mainly concerned with the ability or right of minorities to live according to their own ideas of what constitutes a good and fulfilling life (Ceva and Zuolo 2013, 239-40, 242).

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Thus, on the standard account, toleration is about the permission to live as one sees fit, as long as this is compatible with some general principles of justice. However, it might be suggested that toleration can have a more dialogical and democratic meaning. Thus, Forst favored conception of toleration, the respect conception, entails that all parties regard each other as political equals and reciprocally participate in defining the three components of toleration (Forst 2004, 316; 2007, 225, 231). Still, Forst notes that toleration "generally refers to acceptance of or non-interference with beliefs, actions or practices that one considers to be wrong but still 'tolerable'" (2012). Even Forst's respect conception of toleration is about finding criteria for what citizens ought to agree on, that is, criteria for the substance of law or political outcomes [check Forst 2007, 230-1, and n32].

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To sum up, the classical notion of toleration is concerned with limits to the power of majorities and the state. A normative theory of toleration aims to find criteria to guide legislators in determining which political outcomes will allow citizens to live according to their own conceptions of the good without violating principles of justice. Toleration, then, is an answer to what the law ought to be when citizens have diverse worldviews. This is also the case in contemporary conceptions of toleration, such as Forst's, despite its more dialogical character. Here, too, the conception of toleration is supposed to guide citizens in identifying better and worse arguments for common political decisions (Forst 2007, 231 n32). It might be possible to come up with other conceptions of toleration that does not share this feature, but this is the understanding of the role of a conception of toleration that I wish to contrast to the notion of compromise.

III Compromise

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At least at the face of it, the sparse but increasing literature on compromise is concerned with the same question as the political theory of toleration, namely, how people who disagree on fundamental issues of good and right nevertheless can live together. Like toleration, compromise involves an acceptance of not being able to come to a consensus on certain issues and, therefore, of "agreeing to disagree," as we say. Most treatments of compromise are also based on the notion that disagreement is a product of free institutions and not something we can eliminate without violating a basic modern commitment to the individual right to form

one's own views of the good and the right. Thus, both toleration and compromise imply a commitment to the idea that disagreement is not something that we should seek to eliminate but, rather, is something that should be accommodated. However, these similarities between toleration and compromise might be seductive, and if we understand compromise merely as a form of toleration, we might fail to understand its nature, justification, and limits.

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I understand a political compromise as an agreement in which all sides make concessions in order to be able to reach a collective decision, and in which the concessions are motivated by the presence of disagreement.[3] The fact that everyone needs to make concessions means two things. First, no one gets their preferred outcome. Second, compromise involves an idea of mutuality, where everyone gives up something. The reason why the parties to compromise accept an option that from their own perspective is second-best is that the value of making a collective decision for some reason trump their ex ante preference, either the parties prefer getting something rather than nothing or they value collective action and compromise in itself.[4] When I emphasize that the concessions are motivated by the presence of disagreement, this is to distinguish a compromise from a coerced agreement. Thus, a compromise is here understood as a form of voluntary agreement (Bellamy 2012, 448-9).

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It is a crucial feature of a compromise that it is a form agreement that does not overcome or eradicate disagreement. As Gutmann and Thompson aptly put it, "the disagreements among the parties are embodied in the compromise itself."[5] When a compromise agreement has been reached, and all the parties freely accept that the decision reached is the right one to follow, they keep believing that their initial view was more just, wiser, or in some other sense better than the compromise solution. That is, there is still disagreement on what the right course of action is, but the parties accept the compromise decision as the best possible decision given their disagreements. If the parties had come to regard the agreed on option as better than their initial position, then they would not need to compromise – they would have reached a consensus. A consensus differs from a compromise exactly in that it is a form of agreement in which the parties have come to converge in their beliefs about the superior substantive merits of one and the same option. Thus, a consensus eradicates disagreements, while a compromise embodies them. Note that the disagreements we talk about here are disagreements about what is just and what the law ought to be. Of course, a political consensus does not eradicate all disagreements, only disagreements about what decision to make. Thus, there can be consensus on, say, the justice of religious freedom, without having consensus on the truth of religious

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[3] Rostbøll, forthcoming; Gutmann and Thompson 2012, 10; May 2011: 583; Margalit 2010: 20.
[4] Cf, the distinction between bare or shallow and deep compromise, Richardson 2002 and Bellamy 2012. See also below.
[5] Gutmann and Thompson 2012: 12.

issues. The disagreements embodied in a political compromise are disagreements about law and justice itself, and not merely the disagreements among the subjects of law that a consensually accepted law regulates or protects through individual rights.

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It confuses matters if we see compromise and toleration as two sides of the same coin or otherwise alike. Toleration does not necessarily require political compromise. I said that a conception of toleration depends on a theory of justice, and the theory of justice will tell us which beliefs and practices to accept and which to reject. Thus, a conception of toleration and the theory of justice that gives it content is something that is put forward for everyone to agree to. If we all agree on the conception of toleration and the theory of justice that supplies the reasons for acceptance and rejection, there is no need for a political compromise.[6] Thus, a conception of toleration aims to supply the grounds for a consensus. Political compromise, of course, comes into the picture when a consensus on a theory of justice cannot be reached, or when there is disagreement on what justice requires in particular circumstances. This does not change because the theory of justice is one that requires toleration of different viewpoints. The latter is a theory of what the law ought to be, and it is put forth as a candidate for something everyone, despite their disagreement, ought to accept as the best the law can be. A normative theory of compromise requires accepting that citizens in pluralistic societies cannot agree on justice or on what the law ought to be. Compromise is needed because there is no shared conception of toleration or justice – if there was one, no compromise would be needed.

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As I have presented the two concepts, toleration is about what the law ought to be (or what the law ought to allow), while compromise is about how to make law. I have also suggested that toleration depends on a theory of justice, while compromise is needed when there is disagreement on justice But this may be too simplistic. Thus, there might, for example, be tolerant and intolerant ways of making law. Toleration may be a regulative ideal for how to make law and for who should be included in making law. If that is the case – and if a conception of toleration depends on a theory of justice – a theory of justice is needed not just for determining what the law ought to be but also for how we ought to make law. Indeed, I do think (a theory or justification of) compromise depends on a theory of justice. Without the latter, we have no reasons for compromise, nor can we determine its limits. Thus, the difference between toleration and compromise is not that a conception of toleration depends on theory of justice, while compromise does not. However, they might depend on different types of theory of justice. Toleration depends on a theory of outcome justice, compromise on a

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[6] [Theories of neutrality and Rawls' political liberalism are also not put forth as compromises but as what justice requires, cf May 2005, 346, Jones 2009, 390].

theory of procedural justice. Proponents of compromise have seen their theories as less controversial or more in line with pluralism than consensus theories, but is that really adequate?

IV. The value and justification of toleration and compromise

14

Both toleration and compromise can be justified instrumentally, that is, as means to some desirable end such as peace or stability. However, I believe both have also intrinsic or non-instrumental value. In the liberal tradition, toleration of religious difference was, of course, an important means for overcoming religious war but toleration has also come to be seen as a norm we should value in itself. Compromise has a less established place in our tradition and could be seen as having merely pragmatic value, as the best means to avoid discord or as a way for citizens with divergent views to be able to act together politically. Recent contributions on compromise have debated whether compromise has merely pragmatic value (May 2005) or also non-instrumental value (Bellamy 2012, 444; Bird; Weinstock 2006; 2013). I have myself argued that compromise has non-instrumental value insofar as it expresses a form of democratic respect, which is a specific conception of respect that entails treating fellow citizens as co-rulers. When citizens or their representative make compromises, they respect each other not only as equal participants in the process of democratic legislation but as equally entitled to be represented in political outcomes (Rostbøll 2015; forthcoming).[7]

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Thus, in comparing the value and justification of toleration and compromise, I want to see both of them as being able to be justified non-instrumentally, as good in themselves. When something is good in itself, it is because it constitutes or expresses something of moral importance. My question is whether it is the same good or norm that is expressed or constituted by toleration and compromise. At the most abstract level, we might say that both toleration and compromise express respect for diversity or for the plurality of society. Richard Bellamy, for example, thinks the non-instrumental value of compromise lies in the fact that it shows "equal concern and respect" for each citizen (Bellamy 2012, 444; Bellamy, Kornprobst and Reh 2012, p. 280). However, while both toleration and compromise can be said to derive "from a norm of mutual respect" (Bird 1996, p. 92), it is not clear that it is the same norm of mutual respect that we are speaking of. At least, we must take into account an important difference between toleration and compromise and investigate what significance this difference has for the meaning of the norm of mutual respect. The difference that we must highlight is

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[7] This does not mean that there is a unconditional right to be part of any and all compromises. There are limits to compromise and compromise has non-instrumental value only under some conditions (Rostbøll, forthcoming; Weinstock 2013).

that toleration is a norm for regulating the relationships between citizens as subject to law, while compromise is a norm for how laws should be made or a way of making citizens co-authors of law.

16

A conception of toleration, on the standard view, is a norm for what we or the state should accept others do or not interfere with their doing. Different conceptions have different views of what moral good is expressed by toleration, but it is common to focus on respect for each person's right to have and pursue her own ends. In Rawls' famous formulation, we must respect citizens' "moral power to form, revise, and rationally pursue a conception of the good" (Rawls 1993, 30). In the present context, the crucial issue is not the details of a the theory of justice informing the conception of toleration. The important point is the moral good expressed by toleration. Conceptions of toleration tend to see the right to pursue one's own conception of the good as what is of moral importance and what gives toleration intrinsic value.

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I want to suggest that what is of moral importance in compromise is not (mainly) respect for each citizens' moral power to pursue her own conception of the good, as is the common idea in conceptions of toleration. Rather, compromise shows respect for each person's opinions' about what common, coercive laws ought to be. A conception of toleration tells us why and how everyone should be treated as subjects to law, while a normative theory of compromise tells us how and whom to include in making laws that apply to everyone. Thus, compromise does not merely respect diversity in the sense that everyone be allowed to follow their own legitimate conception of the good; it respects diversity as something that must be included in the way laws are made. A conception of toleration is a regulative ideal for what should be decided and for the limits of law, while a normative theory of compromise provides guidelines for how laws should be made and who should be included in decision-making.

18

Let me put the difference between a conception of toleration and a theory of compromise in different terms. Recall that, according to Forst, a conception of toleration supplies *reasons* for the three components of the concept of toleration. I want to suggest now that the reasons for toleration and the reasons for compromise are of somewhat different kinds. The reasons for toleration supplied by a conception of toleration, based on a theory of justice, are reasons that are aimed at convincing us of how we ought to relate to each other and of what the laws ought to be. A conception of toleration, then, might be aimed at making us change our opinions about what the law ought to be; they might aim at correction. The reasons supplied by a normative theory of compromise are of a different kind. They are not aimed at correcting our first-order policy preferences but are second-order reasons telling us when we should accept an

agreement given disagreement at the first-order level (May 2005, 318-19). The whole point of compromise is that we cannot convince each other at the first-order level of policy and must accept outcomes, which at the first-order level seems a mere second best.[8] At the second-order level, however, compromise must be seen as the best or the right solution; otherwise the reasons for compromise has failed in their objective [check Bellamy 2012, 457, 465]. Thus, reasons for compromise are reasons for correction but simply at a different level or with a different purpose.

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We are talking about two issues here: 1. What does a theory of toleration vs a theory of compromise seek to give reasons for? 2. What are the respective intrinsic values of toleration vs compromise? The two issues are interconnected insofar as the reasons are based on different types of values. Reasons for toleration are most commonly based on respect for citizens as agents in their own lives, while reasons for compromise implicates respect for citizens as democratic agents. It is also important to see that insofar as a conception of toleration supplies first-order reasons for which policies to adopt, a theory of compromise accepts – or might accept – that there are disagreement on what the theory of toleration regards as the right policies. If the basis of a theory of compromise is that citizens disagree on justice and if a theory of toleration is based on a theory of justice, then a theory of compromise must involve that we must compromise on toleration – on what toleration means and requires, not necessarily compromise on toleration for the sake of some other end.

Perhaps, however, we have separated toleration and compromise too sharply?

V. Connecting toleration and compromise

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I have indicated that despite responding to the same general question, theories of toleration and theories of compromise nevertheless are importantly different. In particular, I have suggested that the two concepts have different justifications and express somewhat different normative concerns. In this section, I further investigate the connections and differences between compromise and toleration. Perhaps I have exaggerated the differences, and compromise and toleration share a common normative core?

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[8] It might be that this sharp distinction, from May, does not fit the idea of deep compromise in Richardson and Bellamy, which does seem to involve some learning. See below.

One possible way to connect compromise and toleration is to say that compromise is the best means to a tolerant society. Thus, one might suggest that if people should be able to live according to their own conception of the good, public policy should not be dictated by one group but be determined by a compromise between different groups. If public policy is determined only by members of the majority culture, for example, it is likely that public policy will be biased toward and favor their way of life. By including members from different cultures in a compromise, it seems more likely that public policy will be more accommodating of diversity and hence more tolerant. Now there are two ways to understand this value of compromise in relation to toleration, depending on how we understand compromise. Following Henry Richardson (2002: 144-6), we might distinguish between bare and deep compromise.[9] In a bare compromise, the parties take their own and their opponents' preference for given and seek a compromise that "splits the difference" or make them able to "meet in the middle". In a deep compromise, by contrast, the parties do not regard ends as fixed, but seek a compromise in which ends are partly modified.

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Both bare and deep compromises *might* contribute to making laws that are more accommodating of difference, than in the case in which one group imposes its view unilaterally on the rest. There is no guarantee for this happening, of course. Especially in the case of bare compromise, which is animated solely by a desire to maximize fulfillment of one's own preferences and in which disagreeing others are seen merely as obstacles to one's own aims, one might doubt this leads to the most tolerant agreements. For this reason (or related ones), proponents of compromise tend to favor deep compromises (Richardson 2002, 144-61, Bellamy 2012). Deep compromise differs from bare compromise in that it involves an element of deliberation and learning. The parties do not just aim to maximize their own policy preferences but acknowledge that they can learn from others in the combination of arguing and bargaining, which characterizes deliberation aimed at deep compromise. It might be asked whether this does not collapse the distinction between compromise and consensus, which is essential for compromise theory. But it is possible to see a compromise, a deep compromise, as one in which the parties have learned from each other and changed their preferences, without the compromise agreement being one that everyone accepts as the optimal first-order policy. Thus, a deep compromise lies somewhere between a mere bargaining agreement, in which preferences are fixed and the agreement satisfies all preferences to some extent, and a consensus, in which there is convergence among first-order preferences.

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The possibility of connecting compromise and toleration described in the last two paragraphs might be said to be instrumental. If compromise is justified with reference to the fact that it

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[9] Bellamy (2012) makes a similar distinction between shallow and deep compromise.

promotes more tolerant policies, toleration is the more fundamental end and compromise is a mere means. I don't want to deny that this is a possible justification for compromise, but I also don't want to commit to the belief that this instrumental relationship in fact holds. As I mentioned above (beginning of sec IV), I want to investigate the possible different *non-instrumental* justifications of compromise and toleration. But in the argument just given, it is only toleration that is awarded the value of being and end itself, while compromise comes in as a mere means to that end. However, our labors has not been in vain for it seems that there is also a non-instrumental element to the idea of deep compromise (and perhaps even to bare compromise?). Thus, Richardson writes, "a participant in a deep compromise can regard the compromise policy as intrinsically supported, at least to some degree, by an end that he or she has actually adopted out of concern or respect for the other side either as an individual or as a fellow member of some valued identity or enterprise" (Richardson 2002, 147).

24

Aren't we now full circle and back to the norm of equal respect? Consider here another possibility of connecting compromise and toleration. Couldn't one say that in the very act of compromising with each other, the parties tolerate each others' differences? And couldn't a conception of toleration in this way also supply second-order reasons for compromise and not merely first-order policy reasons? Of course, the parties to a compromise do tolerate each other's views in the sense that they do not disallow them or interfere with them. But compromise entails something more. In a compromise, the parties do not simply allow different opinions to be expressed, nor does a compromise only allow each citizen's opinion to count in the process; in a compromise all parties' views are represented in policy. The latter distinguishes compromise from the right to vote, which is only a right to be counted and represented in the process (Rostbøll, forthcoming; Weinstock 2013). Richardson writes that the core idea of liberal democracy is "that each person's political views ought to count for something in a democracy" (Richardson 2002, 150), but this seems to explain only the right to vote and majority rule and not the more demanding idea of deep compromise. In a purely majoritarian conception of democracy, the views of each count for something and so do they in a bare compromise.

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I don't deny that toleration can supply reasons for compromise, but I think the notion of toleration is insufficient to explain the moral importance of compromise in politics. A conception of toleration can explain why and when we should accept others' beliefs and actions and refrain from interfering with them. But compromise is about more than just non-interference; it is about acting together and taking shared responsibility for common rules. A theory of toleration can help legislators in their reasoning about which laws and policies to adapt, but it cannot by itself supply a reason why legislators should seek compromise solutions. It might be thought that toleration depends on a shared normative commitment and

compromise does not, but that's a misunderstanding. Toleration and compromise depends on different types of shared commitments. Toleration depends on a shared commitment to some idea of that each person has a right to live according to her own conception of the good or the like. Compromise depends on the shared commitment to a democratic ideal of that the political views of all citizens should have some weight not merely in the political process but also be reflected in political outcomes. Thus, accepting compromise depends on consensus at another level, namely on democracy as non-instrumentally valuable (see also Bellamy 2012, 457; Richardson 158-9).

I said toleration and compromise both depends on commitments to accommodating the views of *everyone*, but this must be qualified. Both toleration and compromise have limits.

VI. The Limits of compromise and toleration

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On the standard, contemporary view, toleration gives citizens equal rights to pursue their individual conception of the good, while political compromise accommodates the opinions of the parties in rules or policies that apply, coercively, to all. This section explores whether and how this difference affects how we should understand the respective limits to toleration and compromise. There is, however, an inherent complexity of framing the question in this way. On the one hand, it seems intuitive that the limits of compromise must be narrower than the limits of toleration, since the preferences, beliefs, or opinions contained in a compromise are embodied in coercive laws, which all citizens must obey, while the beliefs and practices that are tolerated simply are some that one should accept others live by. On the other hand, insofar as law and policy are determined through compromise, the limits of toleration are determined by compromise. Insofar as participating in making compromise is a right to determine the extent of other rights, it is what has been called a "right of rights" and has a special role (Waldron 1999, 232). It is not immediately clear, however, what the special role of rights of participation should mean for the limits of compromise.

(…and this is as far as I got in my reflections on the limits of compromise and toleration.)