

SAME-SEX MARRIAGE: ZERO TOLERANCE

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This article offers a feminist analysis of Rainer Forst's position on same-sex marriage and tolerance. Moreover, it is an attempt to forge philosophical bridges between Forst and the work of Luce Irigaray. I am sympathetic to Forst's argument that same-sex marriage is owed to lesbian, gay, bisexual, and transgender men and women (LGBT) as a matter of right. However, I take issue with Forst's characterisation of same-sex marriage as something to be tolerated by non-supporters. This is because tolerance does not require, let alone encourage, a perspectival change in the agent; and yet, there is no rational basis on which to oppose same-sex marriage. The maintenance of prejudicial attitudes is likely to contribute to the ongoing social discrimination that LGBT people face, even if legal equality is achieved for LGBT people.

Forst's substantial text on tolerance, *Toleranz im Konflikt: Geschichte, Gehalt und Gegenwart eines umstrittenen Begriffs* (2003), was recently translated into English as *Toleration in Conflict: Past and Present* (2013). In this work Forst does not set out to justify same-sex marriage for its own sake; rather, same-sex marriage is an example employed to demonstrate the 'respect conception' of tolerance—a conception he endorses. According to this conception, same-sex marriage ought to be tolerated by those who oppose the practice, since there are no reciprocally and generally sharable reasons that could count against this right to equal treatment.¹

There are multiple formulations of tolerance—the permission conception, the esteem conception, and the aforementioned respect conception²—yet, I maintain that none are suitable responses to same-sex marriage. As an alternative, I propose that genuine equality for LGBT people requires an attitude of either *indifference*, or (preferably) *Respect*. I employ insights from Irigaray's philosophy of sexual difference to argue this point. Note that 'Respect' differs from the 'respect conception' of tolerance. The term 'Respect', as I use it, is more robust than in Forst's own usage. Respect entails a positive appreciation of LGBT identities and practices, regardless of how they similarly or dissimilarly relate to heterosexuality. This amounts to the proper acknowledgement of LGBT people's dignity. In other words, where there is Respect for LGBT dignity, there is the positive acknowledgement of difference-amongst-ourselves. Respect thus demands this revised understanding

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of, and encounter with, difference.

Attitudes toward LGBT lifestyle choices are crucially relevant at a time when many Western states are arguing over the merits of legalising same-sex marriage, and at a time when several Western states have legalised same-sex marriage but have an ongoing problem with homophobia.³ Thus, the distinctions between tolerance, indifference, and Respect are by no means trivial. Tolerance is frequently lauded as the appropriate response to socio-political tensions,⁴ and indeed, tolerance can be appropriate for some issues. It is therefore necessary to identify when tolerance is an *inappropriate* response and why.

I argue that tolerance of same-sex marriage is likely to sustain the social inequalities faced by LGBT people. The combined reading I present articulates a demand for recognition in difference, whilst simultaneously making claims for equivalent political and legal recognition. Tolerance will perpetuate the sociocultural stigma LGBT people face, whereas Respect is likely to facilitate an ethical, equivalent co-existence between heterosexual and queer subjects. As such, there is a *duty* to repudiate tolerance of same-sex marriage and tolerance of LGBT people.

This article progresses in eight sections. First, I outline Forst's distinction between the moral and the ethical, as well as his philosophical approach to human rights. Second, I elaborate on the three conceptions of tolerance and the objection component. I also make some terminological distinctions. Third, I present Forst's argument in favour of the respect conception of tolerance. Fourth, I discuss the paradox of the tolerant racist in order to examine why prejudiced beliefs cannot be tolerated. Fifth, I introduce some insights from sexual difference feminism in support of my claim that opposition to LGBT people and same-sex marriage are inherently prejudiced. Sixth, I introduce Luce Irigaray's philosophy of *sexuate difference*.⁵ This facilitates the production of strategies and methods for encountering Others without hierarchy and with respect—a desired alternative to tolerance. Seventh, I justify reading Irigaray and Forst together by emphasizing the similarities in their commitments. Finally, I argue that a 'combined approach' should be adopted when considering the rights claims of Others, such as LGBTs. This approach offers the best chance to facilitate an ethical and equivalent social co-existence between subjects.

1. HUMAN RIGHTS AND CONDITIONS FOR TOLERANCE

A distinction between the moral and ethical realms is central in understanding Forst's arguments on human rights and tolerance. Basic human rights stem from moral, rather than ethical, norms. Ethical norms represent standards for what is to count towards one's conception of the good, and are only valid reasons *for me* or *for some* to act. Moral norms, on the other hand, are universally compelling action-justifying reasons. Moral norms are discovered through a process of discursive constructivism. Thus, the 'objectivity' of moral norms does not lie in some form of objective moral realism, but in the very action of being intersubjectively justified. As such, moral norms act as the basis for more specific rights—the rights to secure equal social status, personal liberties, and bodily security.⁶

The criteria that determine a moral norm's legitimacy, and can therefore establish a human right, are *reciprocity* and *generality*. For the purposes of this article, it is sufficient to give a basic definition of these criteria. Generality holds that the only reasons which can ground universal normative validity must be sharable by all people who have reciprocally legitimate interests or claims, and that no one with such an interest should be arbitrarily excluded.⁷ Reciprocity has two aspects. The first is that no one can make a claim that they would deny to others (reciprocity of content). The second aspect is that no one can impose upon another person his or her own "perspective, evaluations, convictions, interests, or needs" (reciprocity of reasons).⁸

The criteria of reciprocity and generality demand that a person's particular ethical convictions are not held as generally legitimate justifications for all relevant others. Importantly, "moral norms do not replace ethical values or political norms; rather, they enter into competition with them only where these ethical values or political

norms become morally questionable, that is to say, where they deny persons basic recognition.”⁹ This means that for citizens to be properly regarded as equals, their society must not absolutise any particular ethical-cultural tradition. This does *not* mean that ethical norms are altogether without value. Ethical values simply do not have categorical force, whereas moral norms do. Although ethical values can answer questions about what is right or good *for me or for us* within a shared ethical community, moral norms prevent people from imposing their beliefs and values upon others who do not share them. The moral therefore ‘trumps’ the ethical.

Having made this distinction, Forst shows that there is a right to same-sex marriage via the basic right to justification. Behind every human rights claim lies an appeal to the basic right to justification, which is the primary right of all to give and receive justifications for the norms that they are to live by. Since the main function of human rights is to guarantee each person’s status as an equal, a violation of dignity occurs when someone refuses to acknowledge another agent’s basic right to justification. In Forst’s opinion, “[t]he insult of not even being seen as someone others owe reasons to is worst of all,”¹⁰ because it is insulting to people’s self-understanding and self-respect. Such is the effect when people refuse to acknowledge LGBT people’s calls for same-sex marriage.

First and foremost, LGBT people are to be acknowledged as agents deserving of and able to give justifying reasons. If LGBT people demand equal access to marriage, it is required that those who would continue to deny this access *justify* why LGBT people have to withstand such exclusions. Given the criteria of reciprocity and generality, Forst believes there is no possible justification for denying same-sex marriage. Arguments *for* same-sex marriage are based on reciprocity, while counterarguments rely on, for example, religious or ethical views, which *violate* the demand of reciprocity.¹¹ Furthermore, Forst supposes that there are no empirical reasons to deny same-sex marriage either—such as a threat to the safety of children, for example.¹² Therefore, LGBT people have a right to marry someone of the same sex.

I am going to assume that this argument holds. It is not my project to critically assess the notion of a basic right to justification, nor the criteria of reciprocity and generality, nor Forst’s distinction between the moral and the ethical realms.¹³ The point that I want to make is that, if we grant this argument, and we also grant that the respect conception of tolerance is the appropriate response to same-sex marriage, hierarchies of inequality between LGBT people and heterosexual people will be maintained.

2.THREE CONCEPTIONS OF TOLERANCE AND THE OBJECTIVE COMPONENT

In order to critically assess the claim that the respect conception of tolerance is the appropriate response to same-sex marriage, I will give a brief overview of the aforementioned conceptions of tolerance. First, the permission conception: this is characterized by a majority population deciding to tolerate a minority group within their society, although the majority retains the power to revoke this tolerance. In other words, the majority allows qualified permission for a minority group to live according to their beliefs, ideals, and so forth. The qualification is that this expression of difference remains a private matter. Furthermore, when this tolerance is granted it is *not* the case that the minority is able to claim an equal social and political status to that of the majority.¹⁴ This is a unilateral form of tolerance; the majority endures a conviction or practice which is “regarded as neither worthy nor deserving of equal treatment.”¹⁵

Next, the respect conception: this is characterized by a community who respect (or acknowledge) individuals as *morally* autonomous and as having equal rights *prima facie*.¹⁶ Specific *ethical* beliefs are viewed as private matters. This lines up with Forst’s argument for human rights and the basic right to justification. Tolerance is owed, given that all citizens should be entitled to live by norms that all can reasonably accept and which do not favour one particular ethical party. One can judge another’s beliefs and practices as ethically wrong in one’s own opinion, but not in a more broad sense as generally wrong, since that interferes with the shared norms the society generally agrees to live by.¹⁷

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Finally, the esteem conception: tolerance is characterized by a positive esteem of another, rather than a simple acknowledgement of his or her equal moral autonomy. This is a more demanding form of mutual recognition; the other's moral autonomy is acknowledged, and their ethical practices and convictions are esteemed. However, the convictions and practices of the other are not perceived to be equivalent to one's own practices and convictions. While these alternative practices and convictions are estimable, they are not as estimable as one's own. This is a hierarchical value system.¹⁸

Additionally, an *objection component* and an *acceptance component* are common to each form of tolerance. It is essential that the tolerated beliefs or practices are considered to be objectionable and in an important sense wrong or bad by those doing the tolerating. Forst argues, "If this *objection component* were missing, we would not speak of 'toleration' but of 'indifference' or 'affirmation'."¹⁹ The objection component is then balanced by the acceptance component. The acceptance component does not remove the negative judgments but gives certain positive reasons which trump the negative reasons in the relevant context. In other words, the objection retains its force, but the positive reasons nonetheless demand tolerance.²⁰

There is more to be said about what constitutes a legitimate objection component. The practice or conviction can only be deemed objectionable according to *reasons that are sufficiently defensible*. While the reasons for objection need not be universally sharable, they must nonetheless be intelligible to those people who do not share the same system of beliefs and practices. In other words, I must be able to reasonably accept your reasons for objection, even if I do not believe or endorse them personally. What is grossly irrational or an immoral prejudice *cannot* be grounds for objection.²¹ This is important; if prejudices are removed then the need for tolerance will also be removed, resulting in 'indifference' or 'affirmation', as mentioned above. The same does not follow for legitimate objection components.

One may claim that the esteem conception of tolerance, unlike the others, appears dangerously close to losing its objection component: If I esteem your practices, can I really be said to object to them? Forst insists that the objection component does remain. Esteem involves the comparison of our own worth with that of others. Insofar as one believes that one's own convictions and practices are *better* than those of the other, the objection lies in the belief that the other's convictions and practices are not as ideal as they could be.²²

At this point it is important to pause and discuss the terminology in use. Forst has used the term 'respect' to describe the version of tolerance that he advocates; however, this account is misleadingly named. For, if an appropriate response to a person or their practices is *tolerance*, this means that something is genuinely objectionable about them or their practices (this, from the legitimacy of the objection component). Here, 'genuinely objectionable' refers to having reasons for objecting which are "in a basic sense intersubjectively defensible."²³ If one holds this perspective—that something about this person or their practices is legitimately objectionable—then it seems inappropriate to call such an attitude of tolerance 'respectful'.

Although Forst seemingly intends for the word 'respect' to refer to 'respect for one's moral autonomy', that is, treating the other as a morally autonomous end in him- or herself, the terminology nonetheless remains inconsistent. What it is to be respected or respectable according to common linguistic usage is to be seen as good, correct, or acceptable, as well as to be treated as an end in oneself. Simply put, there is nothing about oneself or one's practices to be ashamed of. This understanding of respect goes beyond the minimal recognition of moral autonomy that Forst implies in the respect conception of tolerance, and encompasses affirmation of one's identity and practices. Thus, even if it is right to endorse the respect conception of tolerance—which will be explored in the next section—it is wrong to call this attitude 'respect', for it only encompasses the recognition of moral autonomy and does not involve affirmation in any sense. Surely it is this more robust understanding of 'respect' that LGBT people demand.

3. THE ARGUMENT FOR THE RESPECT CONCEPTION OF TOLERANCE

The question, then, is whether the respect conception of tolerance should be endorsed. Forst notes that when the German government granted civil unions to same-sex couples, the change was met with opposition which claimed that the legal recognition of LGBT relationships had gone beyond what the requirements of tolerance demand. According to this opposition, the limits of tolerance had been reached when the elements of traditional marriage were put into question. It was argued that tolerance does not require legal equality; indeed, it only requires legally *permitting* homosexual relationships to exist.²⁴ This is an example of the permission conception of tolerance. The majority in opposition to same-sex marriage felt that the limits of tolerance had already been met by allowing same-sex relationships to exist in private. LGBT people were visibly overstepping their bounds in attempting to claim an equal social, legal, and political status.

Forst finds this reaction to the introduction of civil unions and to the possibility of same-sex marriage to be unjustified. He argues:

[A] 'mere toleration' of same-sex partnerships in accordance with the permission conception without equalization of legal status draws the limits of toleration too narrowly, for it enshrines an ethical objection in law that is not reciprocally and generally sustainable ... This toleration not only enshrines ethical values in law; it also condemns the corresponding minorities to a condition of sociocultural, stigmatizing 'deviance'.²⁵

In contrast, the respect conception of tolerance promotes the idea that people with different ethical-cultural identities are entitled to equal rights *qua* morally autonomous agents. This is fitting with what human rights demands, in accordance with the basic right to justification. Equal rights can call for a new or more comprehensive interpretation of existing social institutions, and marriage is an example of such an institution.

We may ask Forst, why not take one step further and endorse the esteem conception of tolerance? His answer is that the limits of tolerance need only be drawn in accordance with the principles of justice, and the respect conception of tolerance already meets these conditions.²⁶ Indeed, Forst argues: "[t]o tolerate them out of respect is *not* to appreciate them or to have some kind of esteem for them. All that is required is the understanding that such a kind of ethical critique is not sufficient to draw the limits of toleration."²⁷ 'Respect' in this context means recognizing the other person as being entitled to equal rights simply as an active member of the socio-political community and *qua* human; it does not mean respecting their personal identities or practices as such.

To summarize: Forst must believe that there is a legitimate objection component to same-sex marriage. This explains why he describes tolerance, specifically the respect conception of tolerance, as an appropriate response to LGBT rights claims. But it is indeed questionable whether 'good' (i.e. 'non-prejudiced') reasons exist as grounds for people to oppose same-sex marriage. I reject the legitimacy of the objection component in the case of same-sex marriage, and propose that opposition to LGBT identities and practices is either implicitly or explicitly prejudiced. As stated previously, prejudice does not constitute a legitimate objection component on Forst's account. Insofar as the objection component is illegitimate, tolerance is *not* an appropriate response to LGBT rights claims at all; indifference or affirmation (or, rather, Respect) is the appropriate response. To advance this argument I will discuss the paradox of the tolerant racist.

4. THE PARADOX OF THE TOLERANT RACIST

According to the paradox of the tolerant racist, "someone with extreme racist antipathies would be described as tolerant (in the sense of a virtue) providing that he showed restraint in his actions (without changing his way of thinking)."²⁸ However, as Forst acknowledges, to be tolerant in this scenario is not a virtue because objections to that person and his or her actions are based on prejudicial assumptions about his or her race. For Forst, this outcome is unacceptable. The racist *should* change his or her way of thinking, and there is a duty upon others

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to promote this shift. Forst argues:

To call on a racist to be tolerant, therefore, is a mistake; what is required is instead that one should repudiate this prejudice and attempt to convince him [or her] of its groundlessness. Otherwise the demand for toleration would be in danger of exerting repressive effects by perpetuating social discrimination and baseless condemnations.²⁹

In this paradox the tolerant racist is not directly committing any hate crime. He is described as tolerant because he shows restraint in his actions. Nonetheless, Forst supposes that this racist attitude will perpetuate social discrimination. But why does Forst think someone with extreme racist antipathies should have to change his or her way of thinking, and not someone with extreme antipathies toward same-sex marriage? If the demand for tolerance would be in danger of exerting repressive effects by perpetuating social discrimination and baseless condemnations in the case of race, is this not also true for LGBT people?

To state the issue bluntly: LGBT people have historically (in the West) been discriminated against due to the sex acts they engage in, and for the subversion of traditional sex/gender norms supposedly resulting from this behaviour.³⁰ However, the stigma attached to LGBT identities and the shame attached to their sex acts can only be justified by a comparison to 'normal' heterosexual identities and sex acts. This is problematic, since these standards can only be considered normal by reference to a past history in which they have been construed as normal. Such a tautological move is invalid.³¹ It therefore seems overwhelmingly likely that opposition to same-sex marriage is based on its potential disruption of an institution which is a primary site for the reproduction of normative sex/gender roles and heterosexuality. Thus, opposing same-sex marriage is prejudicial, not legitimately partial. Here, insights from sexual difference feminism will help to solidify my argument.

5. INSIGHTS FROM SEXUAL DIFFERENCE FEMINISM

What LGBTs struggle for, when articulating rights claims, is both first and second order appreciation. First order appreciation refers to the positive opinion LGBT people hold of themselves *as queer*, while second order appreciation refers to positive appreciation and acceptance of LGBT people by others.³² There is, in the West, reasonably strong first order appreciation among LGBT people, as testified by numerous grass-roots and international organizations which press for LGBT non-discrimination in all forms.³³ However, there remains room for improvement. Statistics from the EU LGBT Survey (2013) reveal that approximately 65% of respondents reported disguising or hiding their sexuality during their schooling (before the age of 18), an unsurprising statistic, considering that approximately 85% of respondents reported hearing negative comments or seeing negative conduct because a schoolmate was perceived to be a LGBT person.³⁴ Bullying and issues of mental health are significant problems in the LGBT community.

Additionally, second-order appreciation remains lacking. In the same survey approximately 26% of respondents said they had been attacked or threatened with violence in the past five years based on their sexual orientation. A further 50% of the respondents claimed to have felt personally discriminated against in the year before the survey based on their sexual orientation.³⁵ Importantly, where there *is* acceptance of LGBT people, it is usually predicated upon their ability to present themselves as 'normal citizens'; the same as normative heterosexuals.

This insight is not new. It has been well documented that "citizenship is constituted through heterosexual norms and practices."³⁶ It has therefore been the tendency of dominant LGBT rights movements to demonstrate how otherwise alike LGBT people are to normative heterosexuals in order for them to be seen as legitimate, equal, normal citizens. But it is not simply any version of heterosexual interaction that counts in this context. Rather, "[i]t is heterosexuality *as marriage and the traditional, middle-class nuclear family* which is commonly held up as a model of good citizenship, necessary for ensuring national security and a stable social order."³⁷ Some feminists have argued that this approach from 'sameness' is problematic, since it cannot fully accomplish the goal of second order appreciation.

For example, Irigaray points out that patriarchal societies are organized on a phallogocentric symbolic system of the singular Subject. Indeed, the typical Subject of philosophical, political, legal, and psychoanalytical discourses remains a highly specified Subject: male, singular, White, Western, Capitalist, heterosexual, Eurocentric, and so forth. All else is consigned to the category of 'Other'. Irigaray argues:

Others were nothing but copies of the idea of man, a potentially perfect idea which all the more or less imperfect copies had to try to equal. These copies, moreover, were not defined in their own terms, in other words, according to a different subjectivity, but in those of an ideal subjectivity and as a function of their deficiencies with respect to it: age, race, culture, sex, etc. The model of the subject thus remained singular, and the 'others' represented more or less good examples within the hierarchy established in relation to the singular subject.³⁸

Since the fundamental model of the human Subject remains unchanged, even as it has increased in importance to recognize diversity, Others have only been able to gain piecemeal recognition through the strategy of emphasising sameness, insofar as they more or less match up to certain unspoken principles of social organization and personal identity.³⁹

Importantly, there is a connection between Others' statuses in Western thought and their statuses in Western society, given that the two domains share the same dominant imaginary. This blurs the difference between the metaphorical realm and social reality.⁴⁰ In other words, an Other's divergence from the standards of the Subject reflexively affects how they are *treated*, as well as how they are imagined and perceived. This observation echoes Forst's unease with calling the racist tolerant in a virtuous sense.

While LGBT people can list many aspects of their identities and practices which are comparable to normative heterosexuality, notice that such a strategy does not actively challenge the shaming of homo-sex, nor of gender deviance. It implicitly concedes that heterosexual normative practice is the most valuable way of structuring intimate life. Homosexuals who choose to structure their intimate lives outside these dominant social norms are therefore likely to continue to face discrimination, even if laws change to allow for the formally equal treatment of LGBT people. This is why second order appreciation cannot be fully attained.

If discrimination against LGBT people is based on the sex that they have and the sex/gender norms they might disrupt along the way, then an attitude of tolerance will not effectively eliminate discrimination against them, whether or not they choose to marry. A minimum of indifference to LGBT people and their lifestyles would be acceptable. Indifference would be characterized by neither positive nor negative evaluations of LGBT people's convictions and practices. Ideally, though, people ought to be encouraged to recognise, accept, and value LGBT identities for what they involve. Prejudice should be repudiated, perhaps even reproached.⁴¹ But how might we encounter each other without hierarchy and encourage encounters of Respect? This is a loftier goal, and it is clear that a perspectival shift is required.

6. IRIGARAY AND THE PHILOSOPHY OF SEXUATE DIFFERENCE

In order to attempt this perspectival shift, I will elaborate Irigaray's philosophy of sexuate difference. The insights elucidated therein can, I propose, be interlaced with Forst's own arguments for human rights and tolerance, producing a new perspective on how to respectfully encounter difference. Such attitudinal shifts ought, in time, to reduce the social stigma LGBT people face.

Irigaray's thesis is that the relationship *between two* can combat the frequent appeal to 'sameness' and produce respectful encounters which acknowledge difference. She argues that humanity must be recognized as (at least) two, male and female, who are not reducible to the other, but who are recognized as truly different.⁴² Here, the focus is on the respectful recognition of difference *per se*, specifically via the medium of the two of sexuate difference. It is important to explicitly point out that, "difference does not have to remain always eternal in

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exactly the same form in which we first encounter it.”⁴³ Such an understanding of difference crucially allows for an ongoing becoming of the self; this is not an essentialist understanding of difference.

While Irigaray’s focus has remained on the two of sexuate difference, her insights can extend beyond this specific scope.⁴⁴ This does not mean that Irigaray disavows the importance of other differences; in fact, the opposite is true. Genuine cultural and symbolic change cannot occur without first *thinking (through) two*. It is necessary to abandon the neutral universal Subject altogether if one is to attempt the transformation of the dominant symbolic order of an entire culture.⁴⁵ That is, we need to re-cognize and re-imagine the two of sexuate difference, and other differences *through* it.

Why begin with sexuate difference when thinking about LGBT non-discrimination? Western societies are historically and culturally situated societies that divide and organise themselves in terms of sex.⁴⁶ It is the very prevalence of phallogocentric perceptions of ‘real’ manhood and womanhood—defined as heterosexual, according to masculine parameters—as well as the assumed normative connections between sex, gender, and sexual orientation, that warrant a starting point at the two of sexuate difference. Sex- and orientation-based discrimination can only be properly understood when the dominant normative connections between sex, gender, and sexual orientation are taken into account. This point can be taken further, since one “cannot fully understand heterosexist bigotry, or the heterosexual norm, without (re)theorizing the connection between heteronormativity and *male* supremacy.”⁴⁷ Thus, reconceiving the two of sexuate difference is significant for adequately recognizing Others. It provides an avenue for separating out and articulating more clearly instances of discrimination from within Othered groups.

By coming to acknowledge the sexually different person as radically other to oneself, and by exposing phallogocentrism’s requirement of heterosexuality, it becomes possible to more adequately understand how and why discrimination against LGBTs has taken various forms and varies depending on one’s sex. Indeed, “sexuality, though said to be private, cannot possibly escape from social norms.”⁴⁸ These insights allow one to ascertain the potential that this model of ‘thinking (through) two’ has for promoting justice for Others more broadly, as well as for reflecting upon whether tolerance is an appropriate response to certain socio-political tensions. It takes a critical eye to the norms that Others threaten.

What Irigaray is looking to achieve in her promotion of respect for (the potential for) difference(s), then, is co-existence in difference.⁴⁹ Perception of the other and of the potential for otherness is crucial for sexed subjects’ coming into their own specific civil identity, as well as for promoting relationships of respect *between* others.⁵⁰ This cultivation of the space between us encourages a new approach to the encounter with difference altogether. It is to approach difference with wonder and generosity, which are attitudes we can cultivate within ourselves. According to La Caze, wonder involves recognizing others as different from ourselves.⁵¹ I interpret generosity as a regard for the Other as equivalent, rather than more or less equal.⁵² This ultimately allows for the recognition of and respect for our *shared* humanity. While we need not *ignore* the similarities that exist between us, we also need not predicate worthiness of respect wholly upon such similarities.

7. SIMILARITIES IN OBJECTIVES: DIFFERENCE, DISCOURSE, AND DIGNITY

I have chosen Irigaray as a figure whose work can be read together with Forst’s work on human rights and tolerance because her work attempts to re-cognize difference in the dominant Western imaginary and in concrete socio-political contexts. Furthermore, Irigaray’s and Forst’s overall objectives are compatible. Irigaray strongly advocates that difference must inform the rights owed to all people; that is, difference is not something to be ignored or forgotten in favour of universal similarities. Thus, the philosophy of sexuate difference can help decipher how to go about promoting the legitimacy and importance of difference itself. Through the philosophy of sexuate difference a new way to imagine humanity emerges, creating an alternative reference point which allows people to have their (potential for) difference(s) positively recognized. Each sex is perceived as autonomous and self-defined.

The new reference point is humanity built from (at least) two, male and female, who are truly autonomous, different, and irreducible to each other. This is in lieu of understanding humanity as consisting of duplicate 'ones', that is, as greater or lesser copies of the phallogocentric Subject.⁵³ Irigaray deems a retraining in civility necessary to achieve this goal, which means people must re-learn how to be citizens as well as how to be civil *between* themselves. Specifically, "[c]ivil society, in our time, requires public relationships to be places of reciprocity between individuals."⁵⁴ This re-education requires recognizing that others have needs which may not be synonymous with one's own. It requires acknowledging the limit to one's own subjectivity.⁵⁵

In a similar vein, at the core of Forst's basic right to justification rests the grounding assumption that all people ought to be regarded as equals without rejection of their specific identity traits. Given that real issues of social justice emerge among particular, situated people with various identities, the basic right to justification is of vast importance among those who have, until now, not been seen to count. A person's individual and/or shared experiences will inform his or her claim to specific rights. Thus, a claim to equal recognition avoids reliance upon a falsely neutral and singular Subject position. This is a necessity, since the dominant shared perception of the Subject has been proved time and again in much feminist theory to be problematically biased. Difference, then, is not something to be abstracted away from until mutual commonalities are found among all citizens; rather, differences should inform the needs of citizens and of various political communities, who then build the shared norms that all are to live by—these include norms of love, intimacy, and sexuality. All of this, as well as the historical context in which rights claims are raised, informs what rights will be owed to a State's citizens and how they are to be encountered.

Furthermore, Irigaray and Forst share a focus on communication. This is most obvious for Forst, as he proposes discursive constructivism as the appropriate model for determining the laws and norms which all must agree upon and live by. This is achieved via a process of reason-giving. Thus, the norms and laws a society is to live by are ultimately constructed by its citizens. Of course, each person is born into a situated context where norms governing behaviour and the primacy of certain social institutions already exist, but thanks to the process of discursive constructivism, those norms and institutions are always able to be questioned and revised beginning with one's exercise of the basic right to justification. The standards that one's society lives by are not fixed or immutable; they ought to change when its citizens justifiably demand it. This requirement places emphasis on the importance of *communication*, as well as the necessity of creating and living within *shared systems of meaning* that have been informed by a diversity of voices and perspectives.

Irigaray's focus is on the development of certain values, specifically "values of communication, not only in the sense of transmission of information but as communication-between,"⁵⁶ where 'communication-between' means among subjects fundamentally diverse between themselves. This would contribute to a re-education in civility. Thus, both Forst and Irigaray have a clear commitment to the idea that communication between people is not only desirable, but is necessary in order to ensure the fairest social context for all. This insight stems from Irigaray's own acknowledgement that even the private sphere is not free from normative pressures (as above). By developing a commitment to ongoing communication over norms that are to be discovered and established—an always ongoing process—it becomes possible to encounter each other without hierarchy and encourage encounters of respect. Thus, respect for difference in the building of shared norms and a retraining in civility, via a focus on *communication-between* that encourages respect for the other, appear to go hand in hand.

Finally, Forst and Irigaray have compatible views on what it means to treat a person with dignity. Dignity, for Forst, is a status all human beings hold in their capacity as agents who give, ask for, and can receive justifications. All human beings, therefore, are equally owed the right to build the shared norms of their community.⁵⁷ On Irigaray's part, dignity means the recognition of the other as irreducibly different to oneself, and requires respect for the limitations of one's own subjectivity in the encounter with that other. Thus, the protection of dignity requires laws which valorise difference.⁵⁸ The combination of these conceptions of dignity is compatible with the understanding of LGBT identities that I am trying to promote: they are identities that are owed *respect* regardless of sameness or difference to the phallogocentric Subject. It is respect in their own right. This gives

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LGBTs symbolic presence and visibility, endignifying representations, and the ability to cultivate difference(s).

8. READING SAME-SEX MARRIAGE THROUGH FORST AND IRIGARAY

To return now to the demand for tolerance of same-sex marriage: by reading Irigaray's and Forst's philosophies together, I do not seek to argue that all things which are tolerated ought instead to be Respected. Rather, I seek to argue that the objection component to LGBT identities and to same-sex marriage is invalid; a claim that is underscored by an Irigarayan account of difference. Assessing the matter of LGBT non-discrimination and access to marriage through the lens of Irigaray's *two* renders the objection component illegitimate and creates a duty to repudiate prejudice toward LGBTs, as toward all who are Othered by implicitly shared notions of the phallogentric Subject. Both Forst's example of the 'tolerant racist' and the case of same-sex marriage are, in fact, instances of prejudice on this account, since the racial Other and the queer Other become marked by the same process of comparison to the phallogentric Subject. This is not to say that their struggles are the same, but that they share a common point of reference which places them in positions of systematic disadvantage. Thus, the objection component toward LGBT people and their practices ultimately stems from the failure to recognize and Respect LGBT people with regard to the diversity-between-ourselves.

All of this is not to say that people will necessarily cease to think and act with prejudice toward LGBT people. It is instead to say that the *legitimacy* of the objection cannot be maintained in any general sense. Of course, pragmatically it makes sense to maintain a minimum requirement of tolerance by those people who refuse to change their ethical point of view that opposes same-sex marriage and/or homosexuality. Yet, this pragmatic consideration does not concede that such opposition is legitimate, for prejudice should still be repudiated (or reproached) even when we demand tolerant action. Tolerance is the minimum pragmatic requirement for action, but Irigaray's conception of difference shows *why* LGBT people are owed positive equivalent regard, or indifference at the very least: their identity is not reducible and should not be reduced to a comparison with the biased conception of a neutral human Subject.

It is because LGBT people have a positive identity that they should not be begrudgingly tolerated. Irigaray argues, "[c]hanging these habits is a long process, because it means changing attitudes, changing the cultural climate, stereotypes and customs, and so on. Yet it also requires an immediate response."⁵⁹ The immediate response is repudiation of the prejudice that acts as an illegitimate objection component to LGBT lifestyles, including same-sex marriage. In other words, this positive appreciation of LGBT identities and practices, regardless of how they similarly or dissimilarly relate to heterosexuality, amounts to the proper acknowledgement of LGBT dignity.

The result of this dual reading is a combined approach to considerations of rights, tolerance, and respect that could be phrased as follows: all people are to be acknowledged as potentially differing persons who exist intersubjectively. These people of potential differences, having basic equal status, are entitled to contribute to the establishment of the norms that they are to live by. Respect involves a revised understanding of and encounter with difference(s). Thus, the combined reading I present articulates the demand for recognition in difference whilst simultaneously making claims for equivalent political and legal recognition. The combined approach created by this dual reading offers the best chance at achieving what might now be called 'equal regard' between heterosexuals and LGBTs.

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NOTES

1. Rainer Forst, "The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach." *Ethics* 120:4 (2010, 725-6); *Toleration in Conflict: Past and Present*. Trans. Ciaran Cronin. Cambridge: Cambridge University Press, 2013, 564-8.
2. Additionally, Forst discusses the coexistence conception; however, this will be excluded from the present article as it does not directly relate to the case of same sex marriage.
3. To provide just one example of each issue, The *Daily Mail* reports that the first three months of 2013 have seen homophobic attacks triple in France when compared to the same period of 2012, and the Australian Federal Government recently challenged the Australian Capital Territory's legalisation of same-sex marriage in the High Court of Australia, and won. See: Amanda Williams, "'This is the true face of homophobia': Gay man viciously beaten in Paris posts picture of his injuries to Facebook in protest move that has now gone viral." *The Daily Mail*, May 27, 2013, <http://www.dailymail.co.uk/news/article-2307288/Paris-gay-attack-victim-Wilfred-Bruijns-Facebook-injuries-picture-goes-viral.html#ixzz2UZH3Bjz1> (accessed May 28, 2013); Elizabeth Byrne, "High Court throws out ACT's Same-Sex Marriage Laws." *ABC News*, December 12, 2013, <http://www.abc.net.au/news/2013-12-12/high-court-decision-on-act-same-sex-marriage-laws/5152168> (accessed February 28 2014).
4. Wendy Brown states, "Today, tolerance is uncritically promoted across a wide range of venues and for a wide range of purposes." *Regulating Aversion: Tolerance in the Age of Identity and Empire*. Princeton and Oxford: Princeton University Press, 2006, 2.
5. A shift in terminology has occurred in Irigaray's work from 'sexual difference' to 'sexuate difference'. The term 'sexuate' is intended to reflect an ontological difference between women and men, without denying that multiple forms of diversity exist among and between women and men.
6. Rainer Forst, *Contexts of Justice*. Trans. Jon M. M. Farrell. Berkeley: University of California Press, 2002, 292; "The Justification", 735.
7. Forst, "The Justification", 720.
8. Rainer Forst, "The Ground of Critique: On the Concept of Human Dignity in Social Orders of Justification." *Philosophy & Social Criticism* 37:9 (2011, 969).
9. Forst, *Contexts*, 237-8.
10. Rainer Forst, "First Things First: Redistribution, Recognition and Justification." *European Journal of Political Theory* 6:3 (2007, 302).
11. Forst, "The Justification", 725; *Toleration*, 565.
12. Forst, "The Justification", 726.
13. It bears mentioning that I do nonetheless believe these issues can be defended.
14. Rainer Forst, "The Limits of Toleration." *Constellations* 11:3 (2004, 315-6); *Toleration*, 27-8.
15. Forst, *Toleration*, 28.
16. Forst, "The Limits", 319.
17. Forst, "The Limits", 316.
18. Forst, *Toleration*, 31-2.
19. Forst, "The Limits", 314-5.
20. Forst, "The Limits", 315; *Toleration*, 20-1.
21. Forst, *Toleration*, 19-20. Jürgen Habermas agrees: "tolerance is only required and only possible if those involved base their rejection on a *reasonable*, persisting disagreement. We do not respond to the racist or the chauvinist with a call for more tolerance, but rather with the demand that he overcome his prejudice." See: "Equal Treatment of Cultures and the Limits of Postmodern Liberalism." *The Journal of Political Philosophy* 13:1 (2005, 25).
22. Forst, *Toleration*, 31-2.
23. Forst, *Toleration*, 19.
24. Forst, "The Limits", 312.
25. Forst, *Toleration*, 568.
26. Forst, *Toleration*, 568.
27. Forst, "The Limits", 319.
28. Forst, *Toleration*, 19.
29. Forst, *Toleration*, 19-20.
30. Cheshire Calhoun, *Feminism, the Family, and the Politics of the Closet: Lesbian and Gay Displacement*. New York: Oxford University Press, 2000, 132-60.
31. Drucilla Cornell, "Gender, Sex, and Equivalent Rights" *Feminists Theorize the Political*. Eds. Judith Butler and Joan Scott. New York: Routledge, 1992, 288.
32. Forst, *Contexts*, 282-6. Note that Forst uses the terminology of 'esteem' rather than 'appreciation' here. Again, I have

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decided to shift the terminology, given that ‘esteem’ has a comparative component and does not truly reflect what I take LGBTs to be striving for.

33. The *International Lesbian, Gay, Bisexual, Trans and Intersex Association* (ILGA) is perhaps the best known, and has six divisions: Africa, Asia, Europe, Latin America and Caribbean, North America, and Oceania. See: International Lesbian, Gay, Bisexual, Trans and Intersex Association, *ILGA Constitution*, 2010, <http://ilga.org/ilga/en/article/mwRuv8317u> (accessed July 1, 2013).

34. European Union Agency for Fundamental Rights (FRA), *EU LGBT Survey: European Union Lesbian, Gay, Bisexual and Transgender Survey Results at a Glance*. Luxembourg: Publications Office of the European Union, 2013, 15-24.

35. FRA, *EU LGBT Survey*, 15-24.

36. Diane Richardson, “Locating Sexualities: From Here to Normality.” *Sexualities* 7 (2004), 391.

37. Diane Richardson, “Sexuality and Citizenship.” *Sociology* 32 (1998), 92—emphasis added).

38. Luce Irigaray, *Democracy Begins Between Two*. Trans. Kirsteen Anderson. New York: Routledge, 2000a, 122.

39. Irigaray, *Democracy*, 121-3.

40. Margaret Whitford, *Luce Irigaray: Philosophy in the Feminine*. London: Routledge, 1991, 102.

41. Reproach may be warranted in the sense argued for by Cheshire Calhoun. See: “Responsibility and Reproach.” *Ethics* 99:2 (1989), 389-406).

42. Luce Irigaray, *I Love To You*. Trans. Alison Martin. New York: Routledge, 1996, 35.

43. Kay Lalor, “Constituting Sexuality: Rights, Politics and Power in the Gay Rights Movement.” *The International Journal of Human Rights* 15:5 (2011), 690. Lalor does not write about Irigarayan philosophy specifically. However, this insight illustrates the conception of difference in Irigaray’s work.

44. Many scholars have dedicated significant attention to the supposed problem of heterosexism in Irigaray’s work. Alison Stone, Rachel Jones, Marguerite La Caze, and Rebecca Hill all believe that Irigaray’s work can be successfully read beyond the two of sexuate difference. See: Alison Stone, “The Sex of Nature: A Reinterpretation of Irigaray’s Metaphysics and Political Thought.” *Hypatia* 18:3 (2006), 161-224); Rachel Jones, *Irigaray: Towards a Sexuate Philosophy*. Cambridge: Polity Press, 2011, 183-4; Marguerite La Caze, “The Encounter between Wonder and Generosity.” *Hypatia* 17:3 (2002), 7-9); Rebecca Hill, *The Interval*. New York: Fordham University Press, 2012, 150.

45. Irigaray, *Democracy*, 129.

46. Moira Gatens, *Imaginary Bodies: Ethics, Power and Corporeality*. London: Routledge, 1996, 11. Although it has become increasingly common to discuss ‘gender inequality’ rather than sex in recent decades, *sex* should retain a primary focus, since “it is not masculinity *per se* that is valorized in our culture but the *masculine male*.” See: Gatens, *Imaginary Bodies*, 15 (original emphasis).

47. Kathy Miriam, “Toward a Phenomenology of Sex-Right: Reviving Radical Feminist Theory of Compulsory Heterosexuality.” *Hypatia* 22:1 (2007), 211—emphasis added).

48. Luce Irigaray, *Je, Tu, Nous*. Trans. Alison Martin. New York: Routledge, 2007, 8.

49. Irigaray, *Democracy*, 5.

50. “Perception implies: I am not you, you are irreducible to me.” Luce Irigaray, *To be Two*. Trans. Monique M. Rhodes and Marco F. Cocito-Monoc. London: The Athlone Press, 2000b, 40.

51. La Caze, “The Encounter”, 2.

52. La Caze states, “Generosity, by contrast, involves regarding others as essentially similar to ourselves” (“The Encounter”, 2). However, I believe that my use of the term ‘equivalent’ is in the spirit of this definition. Importantly, I am not denying that similarities can exist between normative heterosexuals and LGBTs. I simply hold that when differences emerge they need to be encountered in an alternative way. We should not think that we have nothing in common with others, but we also should not fool ourselves into believing that only our similarities matter.

53. Irigaray, *I Love To You*, 64.

54. Luce Irigaray, *Thinking the Difference: for a Peaceful Revolution*. Trans. Karin Montin. London: The Athlone Press, 1994, 86.

55. Irigaray, *Democracy*, 1-20, 49-59.

56. Irigaray, *Democracy*, 9.

57. Forst, “Ground of Critique”, 967.

58. Irigaray, *Democracy*, 11-2; *Je, Tu, Nous*, 14.

59. Irigaray, *Thinking the Difference*, xvi.