

3-1-2017

Liberalism and Tolerance

William Voegeli

Follow this and additional works at: <https://digital.sandiego.edu/sdlr>

 Part of the [Ethics and Political Philosophy Commons](#), and the [Law Commons](#)

Recommended Citation

William Voegeli, *Liberalism and Tolerance*, 54 SAN DIEGO L. REV. 319 (2017).

Available at: <https://digital.sandiego.edu/sdlr/vol54/iss2/7>

This Law & Religion is brought to you for free and open access by the Law School Journals at Digital USD. It has been accepted for inclusion in *San Diego Law Review* by an authorized editor of Digital USD. For more information, please contact digital@sandiego.edu.

Liberalism and Tolerance

WILLIAM VOEGELI*

Take the key terms quite literally, and a symposium on the relationship between liberalism and tolerance has no subject matter.

“Liberalism” is, of course, a contested term. Milton Friedman and Arthur M. Schlesinger, Jr. disagreed about nearly every public policy, yet each described himself as a liberal. But whatever one’s understanding of liberty might be, making it an ism renders liberty, at least, an important political consideration and, at most, the decisive one.

The most straightforward, compelling way to make liberty important and unassailable is to anchor it in the concept of rights. Liberty grounded in rights means that the person whose liberty has been curtailed or denied suffers a violation rather than a mere disadvantage. In the language of the Declaration of Independence, something inalienable has been taken from its rightful possessor, and the government that derives its just powers from the consent of the governed for the purpose of securing individuals’ rights has failed in its *raison d’être*.

The noun *tolerance*, verb *tolerate*, and adjective *tolerant* made their way into the English language 500 years ago from the French word *tolération*, which meant permission granted by authority.¹ It, in turn, was derived from the Latin *tolerare*: to endure, bear, or suffer.² Clearly, the idea of

* © 2017 William Voegeli. Ph.D., M.A. 1984, Loyola University, Chicago, Il.; B.S. 1975, Illinois State University. He is a visiting scholar at the Henry Salvatori Center at Claremont McKenna College, and a senior editor for the Claremont Review of Books at the Claremont Institute.

1. *Toleration*, ONLINE ETYMOLOGY DICTIONARY, http://www.etymonline.com/index.php?term=toleration&allowed_in_frame=0 [https://perma.cc/B69R-XPXV] (last visited Mar. 21, 2017).

2. *Id.*

liberty based on rights is antithetical to the notion of permission granted by authority. This would mean that tolerance is irrelevant to liberalism: if Smith possesses a particular right, it makes no difference whether Jones finds it enjoyable, endurable, or intolerable when Smith exercises that right.

In 1790 the Hebrew Congregation of Newport, Rhode Island wrote to President George Washington, welcoming him to the city and praising him as the chief official of a new government notable for “generously affording to all Liberty of conscience, and immunities of Citizenship—deeming every one, of whatever Nation, tongue, or language equal parts of the great governmental Machine.”³ The letter thanked God, and Washington, for “all these Blessings of civil and religious liberty which we enjoy under an equal and benign administration.”⁴

In his famous reply, Washington graciously but pointedly called their gratitude unnecessary. Indeed, they got the key point exactly wrong: generosity has nothing to do with this new government’s virtues. Rather,

It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.⁵

Coming from that direction, the contention that there is no need to say “Thank you” is magnanimous. From the other, the refusal to be grateful can be assertive or even truculent. In the HBO series *The Sopranos*, Tony Soprano attempts at one point to placate Richie Aprile, an ex-convict who wants full and immediate restoration of the protection rackets and other illegal activities he controlled before he served his prison sentence.⁶ “You’re going to be taken care of,” Tony says.⁷ “What was yours before you went away will be yours again. You just gotta give it some time.”⁸ This does not go over well. “What’s mine is not yours to give me,” Richie replies coldly.⁹

If my rights *are* my rights, then they’re not yours, or the government’s, or anyone’s, to give to me *or* take from me. How you or the government feel about my rights and how I exercise them may be interesting, but it is

3. Letter from Hebrew Congregation, Newport, Rhode Island, to George Washington, President, United States (Aug. 17, 1790), <http://billofrightsinstitute.org/wp-content/uploads/2011/12/GeorgeWashingtonLettertotheHebrewCongregation.pdf> [<https://perma.cc/N63X-XW8R>].

4. *Id.*

5. *Id.*

6. *The Sopranos: Toodle-Fucking-Oo* (HBO television broadcast Jan. 30, 2000), <https://www.youtube.com/watch?v=cELBRnODXGw> [<https://perma.cc/HH4R-U2ZK>].

7. *Id.*

8. *Id.*

9. *Id.*

not important. Whether my rights present themselves as things others feel they must endure has no bearing on the demarcation or exercise of those rights.

The liberal thinkers who made the question of rights central offered formulas for determining rights' limits. John Stuart Mill's "harm principle" from *On Liberty* states, "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."¹⁰ This is perfectly congruent with Thomas Jefferson's axiom in *Notes on the State of Virginia*: "The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbour to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg."¹¹ As a colloquial expression of the same idea has it, "Your right to swing your arm ends where my nose begins."

Another path leading to the same destination emphasizes reciprocity rather than harm. According to John Rawls's *A Theory of Justice*, "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others."¹² Sorting out this mutually acceptable arrangement is likely to conclude with something indistinguishable from Mill's harm principle. No reasonable person, that is, would agree to let others, at their discretion and for their purposes, harm him, even a person who could envision circumstances where he might wish to inflict harm on others.

If we follow the logic and experience telling us that liberalism's commitment to the primacy of freedom rests on the concept of inalienable rights, then we can formulate a null hypothesis: Adhering to liberalism's standards, and pursuing liberalism's goals, has nothing to do with tolerance—not with its presence or absence, nor with its quantity and quality. Under liberalism, there are only two categories of intolerable acts: those that inflict harm *on* others; and those that exercise power over a member of a civilized community, against his will, for any reason other than to prevent harm *to* others. Following the logic of liberalism tells us that such acts must be prevented, and all others must be permitted. We stipulate this distinction, and then adhere to it, not because tolerance is an inherently

10. JOHN STUART MILL, *ON LIBERTY* 22 (Ticknor & Fields 2d ed. 1863) (1859).

11. THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* 265 (1787).

12. JOHN RAWLS, *A THEORY OF JUSTICE* 60 (1971).

admirable or important consideration, but simply as a logical consequence of the commitment to liberty.

To cast doubt on this null hypothesis is to raise the possibility that the question of whether liberals can and should be tolerant is complex and central, rather than easily settled and peripheral. If the null hypothesis remains intact and formidable after being challenged, the best answer to the question of whether liberals can and should be tolerant is, “Yes, of course.” To the extent, however, that the null hypothesis appears to give an incomplete, defective account of what is needed to make liberalism work in theory and in practice, the answer changes to, “Yes . . . up to a point.” The question then becomes what that point is, how to define and discern it, and what we do when we’re at or near it.

We may begin to call the null hypothesis into question by noting that Mill qualifies the harm principle when he stipulates that it applies only to members of a *civilized* community, not to “those backward states of society in which the race itself may be considered as in its nonage.”¹³

The early difficulties in the way of spontaneous progress are so great, that there is seldom any choice of means for overcoming them; and a ruler full of the spirit of improvement is warranted in the use of any expedients that will attain an end, perhaps otherwise unattainable. Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement, and the means justified by actually effecting that end. Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion. Until then, there is nothing for them but implicit obedience to an Akbar or a Charlemagne, if they are so fortunate as to find one. But as soon as mankind have attained the capacity of being guided to their own improvement by conviction or persuasion (a period long since reached in all nations with whom we need here concern ourselves), compulsion, either in the direct form or in that of pains and penalties for non-compliance, is no longer admissible as a means to their own good, and justifiable only for the security of others.¹⁴

It follows that liberalism, the political disposition that insists on making the harm principle the fundamental rule guiding how government treats citizens and how they treat one another, has a prerequisite: liberalism can work in nations that have arrived at that stage of development where people can improve through free and equal discussion, but nowhere else. And because the difficulties in the way of spontaneous progress that would lead to that state of affairs are so great, liberalism rests on an awkward paradox: the preconditions that make it possible are usually *illiberal*: a benevolent despot who uses any expedient that hastens the passage from

13. MILL, *supra* note 10, at 24.

14. *Id.* at 24–25.

barbarism to civilization. This foundation for liberalism *may* be otherwise obtainable by some particular group of people, but may well not be.¹⁵

This qualification of liberalism, in the terms Mill made it, does little to challenge the null hypothesis that tolerance isn't all that important for liberalism. He hastens to add that civilized nations, ones where people can be improved by reason and persuasion, are the only ones that concern us when we address the question of how the harm principle can be made operational.¹⁶ As Mill describes it, tolerance—the willingness to listen to viewpoints we find ridiculous or even pernicious on the chance that there might be some benefit or enlightenment to be gained by doing so—is part of the civilizational package deal that makes liberalism possible.¹⁷ “The spirit of liberty is the spirit which is not too sure it is right,” in Learned Hand’s famous formulation.¹⁸ It is “the spirit which seeks to understand the minds of other men and women,” and that “weighs their interests alongside its own without bias.”¹⁹

When people express foolish or dangerous ideas, the government officials and citizens who disagree strongly should stand aside. Even if we have no interest in accepting or acting on erroneous opinions, their full, free expression is beneficial. Error itself makes truth clearer and more ascertainable. “He who knows only his own side of the case, knows little of that,” Mill elsewhere contends in *On Liberty*.²⁰ If someone seeks to understand how and why wrong ideas *are* wrong, “[h]e must be able to hear them from persons who actually believe them; who defend them in earnest, and do their very utmost for them. He must know them in their most plausible and persuasive form.”²¹ Our intellectual immune systems will be weakened if excessive moral hygiene banishes dangerous or disdained ideas. People who have been spared the ordeal of encountering arguments they find

15. Note that according to this logic of historical development, there must be at least one portion of mankind that, as he would say, became civilized spontaneously. That is, the people who were first civilized could not have had civilization imposed on them by civilized despots: there weren't any around. And since the historical record shows that there were several early civilizations in locations on the globe too distant from one another to be overcome by early means of transport, it seems likely that more than one civilization developed without being improved by a conqueror.

16. MILL, *supra* note 10, at 23.

17. *See id.* at 47.

18. Judge Learned Hand, *The Spirit of Liberty* (May 21, 1944), <https://texashistory.unt.edu/ark:/67531/metaph183520/m1/1/> [<https://perma.cc/2XF2-TG96>].

19. *Id.*

20. MILL, *supra* note 10, at 71.

21. *Id.* at 72.

absurd or obnoxious, Mill wrote, “have never thrown themselves into the mental position of those who think differently from them, and considered what such persons may have to say; and consequently they do not, in any proper sense of the word, know the doctrine which they themselves profess.”²²

Liberty and tolerance go together, then, because both are consequences of epistemological openness, curiosity, and humility. This disposition, in turn, is the logical, necessary result of the commitment to reason that differentiates civilized people from barbarians. Liberals need to worry about tolerance, it appears, only to the extent they worry about maintaining liberalism’s civilizational prerequisite.

And, Mill strongly suggests, they don’t need to worry about it all that much. In his account, civilization and liberalism—free and equal discussion, improvement through persuasion, resorting to coercion for the sole purpose of preventing harm to others—are very advantageous, agreeable modes of life.²³ Those nations that have made the difficult, dicey transition from barbarism to civilization are highly unlikely to climb back down voluntarily. There was a long, benighted barbarous era anterior to the attainment of civilization, but *as soon* as the civilizational prerequisite for liberalism is attained, the harm principle becomes fully operational and morally mandatory. Coercion for any reason other than preventing harm is “*no longer* admissible,” implying it will never again be admissible, implying in turn that we may expect the civilizational prerequisite of liberalism to go on and on, from strength to strength.²⁴

What if, however, civilization is not an irreversible attainment? As the *New Yorker*’s Adam Gopnik has written, “Mill is like a man who has spent his life on one of those moving walkways you find in airports. He takes the forward movement so much for granted that he never makes it his subject.”²⁵

Our null hypothesis, that tolerance is one of liberalism’s details rather than one of its central concerns, is not seriously challenged by the argument that the preconditions for liberalism are not self-generating.²⁶ Those circumstances where illiberalism is merely pre-liberalism, as benevolent despots strive to civilize barbarous peoples, simply lie outside Mill’s field of inquiry. If, however, civilization is not self-*sustaining*, then tolerance becomes a large, urgent question, rather than a small, trivial one. Liberal

22. *Id.* at 72–73.

23. *See id.* at 85.

24. *Id.* at 25.

25. Adam Gopnik, *Right Again: The Passions of John Stuart Mill*, NEW YORKER (Oct. 8, 2008), <http://www.newyorker.com/magazine/2008/10/06/right-again> [<https://perma.cc/D2X6-BECP>].

26. EVELYN WAUGH, *THE ESSAYS, ARTICLES AND REVIEWS OF EVELYN WAUGH* 625 (Donat Gallagher ed., Little, Brown & Co. 1983)

societies must now confront the possibility that the harm principle might not perpetuate itself, and may even help extinguish itself, by undermining the civilization its operation presupposes.

The case of Mill suggests there are good reasons why so many people use the political terms “liberal” and “progressive” interchangeably. Liberals believe in progress because they believe in a virtuous circle: freedom promotes progress, and progress promotes freedom. As the quality of life improves, and the sources of and occasions for conflict diminish, people are left increasingly amenable to further improvement through reason and persuasion. In turn, reasoning people see how life has been improved by free discourse and inquiry, and knowing these benefits they wish to preserve and expand freedom in the expectation of securing even greater benefits in the future.

The hallmark of the conservatism that stands athwart liberalism and progressivism yelling, “Stop!” is the conviction that the civilizational prerequisites of liberalism are *not* self-perpetuating: not always; not necessarily; not usually; and, quite probably, not ever. In 1964 Evelyn Waugh reviewed two biographies of Rudyard Kipling, whom he described as “a conservative in the sense that he believed civilization to be something laboriously achieved which was only precariously defended. He wanted to see the defences fully manned and he hated the liberals because he thought them gullible and feeble, believing in the easy perfectibility of man and ready to abandon the work of centuries for sentimental qualms.”²⁷

The beliefs Waugh discerned in Kipling were ones he had expressed in his own voice twenty-five years previously. “I believe,” he wrote in his “Conservative Manifesto,” “that the anarchic elements in society are so strong that it is a whole-time task to keep the peace.”²⁸ He was profoundly skeptical of the idea that the airport walkway that took us from barbarism to civilization will simply keep going forward forever, either because it cannot be stopped or reversed, or because no one would wish to.²⁹ To the contrary, “Civilization has no force of its own beyond what is given it from within. It is under constant assault and it takes most of the energies of civilized man to keep going at all.”³⁰ By the same token, “Barbarism is never finally defeated; given propitious circumstances, men and women who seem quite orderly will commit every conceivable atrocity.”³¹ Thus,

27. *Id.*

28. *Id.* at 161.

29. *Id.* at 161–62.

30. *Id.* at 161.

31. *Id.* at 162.

without “unremitting effort” we risk “the dissolution . . . of the spiritual and material achievements of our history.”³²

Mill and Waugh’s arguments do not allow us to simply reject the null hypothesis, which holds that tolerance is a trivial consideration for liberalism, a system of ideas and government that will function satisfactorily as long as people adhere to such rules as the harm principle and reciprocally establishing rights’ extent. It is possible, however, that Mill’s discussion of liberalism’s civilizational prerequisites, combined with Waugh’s arguments about civilization’s inherent fragility, raise serious questions about the null hypothesis. If barbarism is humankind’s default option so that it requires unremitting effort both to establish and maintain civilization, then the question of tolerance may be important and central to the fate of a liberal order that presupposes civilization. Mill’s stipulation raises a possibility he does not engage: a civilized community may find it advisable to exercise power against some of its members, not only to prevent harm to others, but also—sometimes, under some circumstances—because failing to exercise such power will permit the community to become uncivilized, or insufficiently civilized, so that reason and persuasion can no longer guide public life. It may be, in these circumstances, that the illiberalism required to civilize barbarians, and make liberalism possible, is also required to make liberalism tenable, either by maintaining or restoring the prerequisites liberalism rests on.

There is a second, related difficulty. The civilized communities liberalism presupposes must be both civilized *and* communities. Mill treats barbarism and civilization as properties of “the race itself” or “mankind.”³³ No Akbar or Charlemagne ever presided at once over *all* mankind, so their efforts to make people amenable to reason and persuasion applied only to that portion of mankind they ruled at any one time. This formulation suggests that barbarous peoples are more barbarous than they are peoples and, conversely, that communities do not become real communities until they are civilized. Barbarians, on this view, are held together in particular social groupings only by force, which increases the likelihood that their bonds are artificial, weak, and meaningless. The bonds uniting a civilized community, by contrast, are ones forged and modified by people capable of being improved by free and equal discussion, which increases the likelihood that the bonds are genuine, sturdy, and meaningful.

If all this is true, then the sturdiness of civilization is inextricably bound up with the sturdiness of civilized communities. Those who have known the advantages that come from relying on reason, and on limiting coercion

32. *Id.*

33. MILL, *supra* note 10, at 24–25.

to the stringent terms of the harm principle, will have a strong desire to remain civilized and grow more civilized. And those communities held together by bonds freely chosen by reasonable people, will want to maintain and strengthen those bonds.

There are, however, historical and anthropological reasons to doubt that the inertial cohesiveness of sincere, reasoning, civilized communities *is* true. Tribalism—Us and Them—has always been a powerful force in human affairs. It long predates the Enlightenment, or any older, more general commitment to the power and excellence of reason, such as the emergence of philosophy in ancient Greece. Akbar and Charlemagne did not conquer and consolidate on behalf of reason, but out of a complicated mix of motives, revealed religion being prominent among them. Making people reasoners was subordinate to making them believers. More precisely, reasoning worthy of the name was not understood to exist apart from or in opposition to believing in the true, revealed faith.

The forces that hold communities together, then, are much more numerous and complex than a commitment to reason for the sake of reason, or for the sake of the benefits it brings. And this more complicated set of motives and aspirations holding communities together admits the possibility of a community being more fragile than Mill suggests. The power of reason may not be enough to sustain it. Some people may reason themselves out of the ties that connect them to a community. Other people, as a result of immigration without assimilation, or voluntary estrangement, may find themselves situated in but not members of the community.

Under these circumstances, again, a prerequisite for liberalism may prove so tenuous that it is jeopardized by the operation of liberalism. Ideas, beliefs, words, and actions that do not harm anyone, but do threaten the community's cohesion or even existence may be intolerable. The community that does nothing to oppose and curtail them may find itself a dissolving or dissolved community, unable to make liberalism function.

Consider the Netherlands, described by Dutch writer (but American resident) Ian Buruma as “an oasis of tolerance, a kind of Berkeley writ large, where people were free to do their own thing.”³⁴ In 2004, filmmaker Theo van Gogh was murdered on the streets of Amsterdam by an assailant who shot him several times, then cut his throat from ear to ear with a knife, which

34. Ian Buruma, *Final Cut: After a Filmmaker's Murder, the Dutch Creed of Tolerance Has Come Under Siege*, NEW YORKER, Jan. 3, 2005, <http://www.newyorker.com/magazine/2005/01/03/final-cut-2> [<https://perma.cc/R3CY-CV5X>].

he then used to affix a letter to Van Gogh's lifeless body.³⁵ The letter made clear that the murderer, Mohammed Bouyeri, a second-generation Moroccan immigrant, was infuriated by *Submission*, Van Gogh's documentary movie about the abuse of women by devout Muslims.³⁶ Bouyeri appears to have acted alone, but his cause was not the private mission of a solitary lunatic.³⁷ Buruma reports that for many weeks after the crime, "young men of Moroccan origin . . . cheered as they passed the spot of the filmmaker's death."³⁸ One told a television interviewer that Van Gogh's violent end was just; he had been punished by God.³⁹

At the time of the murder, about one tenth of the Netherlands population consisted of first-generation immigrants, mostly from Turkey, Surinam, and northern Africa.⁴⁰ Immigrants and their children were only partially integrated into Dutch society, and much of the separation was by mutual choice.⁴¹ After Van Gogh's death, Paul Scheffer, one of the country's most influential liberal public intellectuals wrote,

Segregation in the big cities is growing, and this is very bad news. That is why the soothing talk of diversity and dialogue, of respect and reason, no longer works. Tolerance can survive only within clear limits. Without shared norms about the rule of law, we cannot productively have differences of opinion.⁴²

To insist on the importance of shared norms is to second the motion that liberalism both requires community and cannot take it for granted. The feasibility of ordering a society so that compulsion is used for the sole purpose of preventing harm to others presupposes a robust, widely shared ethic of self-restraint and mutual respect. One of Chicago's official mottos is, "I will." The legendary columnist Mike Royko, nemesis of the Richard J. Daley political machine, always insisted, however, that the corrupt city's real motto was, "I will . . . if no one's looking." Liberalism has a Ring of Gyges problem. The police cannot be everywhere. If many citizens' consciences are so atrophied or twisted that they are prepared to attempt any transgression so long as no one's looking, limited government is going to have to be aggressively augmented, and will wind up being indistinguishable from unlimited government.

It appears, then, that resorting to compulsion for the sole purpose of preventing harm to others may sound simple, but is often quite difficult.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

Preventing harm could mean arranging for a police officer to forcefully thwart the commission of violence. No society has been wealthy enough to provide every citizen with a personal security entourage, however. Ayaan Hirsi Ali, Van Gogh's collaborator on *Submission*, had round-the-clock police protection for a time after his murder, since she also received numerous death threats about the film. One reason Hirsi Ali eventually moved to the United States was resentment, popular and governmental, about the expense and trouble of protecting her.

Ordinarily, then, prevention means not personal security forces for all, but a system of law enforcement, courts, and correctional institutions. A robust criminal justice system will deter even the citizen afflicted with abysmally weak impulse control, who will come to understand that the risks entailed by picking his neighbor's pocket or breaking his leg outweigh the rewards. A society bolstered by shared norms against theft and violence can thrive with a relatively modest criminal justice system, while one where such norms have broken down or never formed will risk descending into a war of all against all, no matter how many police stations, courthouses, and prisons it builds.

On December 31, 2015, hundreds of German women, out celebrating New Year's Eve in Cologne and other cities, were surrounded by large groups of men, who groped and, in some cases, stripped and raped them.⁴³ The authorities determined that the assailants were young men from North Africa, living in Germany as refugees, asylum seekers, or illegal immigrants.⁴⁴ Because immigration was already politically controversial, the police and press attempted at first to downplay the scope of the attacks.⁴⁵ One British newspaper columnist, Joan Smith, later insisted that while the Cologne story was distressing, it vindicated neither opposition to large-scale immigration from the Middle East to Europe, nor pessimism about the subsequent assimilation of migrants. "It would be naïve to assume that men with unacceptable attitudes towards women will undergo an instant change of heart on arriving in countries with a commitment to gender equality" she wrote.⁴⁶

43. Joan Smith, *Cologne New Year Sex Assaults Are a Wake-Up Call: All Women Have the Right to Feel Safe*, INDEPENDENT (Jan. 9, 2016, 9:06 PM), <http://www.independent.co.uk/voices/cologne-new-year-sex-assaults-are-a-wake-up-call-all-women-have-the-right-to-feel-safe-a6804436.html> [<https://perma.cc/Z2HH-YNYZ>].

44. *Id.*

45. *Id.*

46. *Id.*

Remarkably, however, Smith thought it was *not* naïve to expect that “the problem can be managed through education and a direct challenge to views which are inherently sexist, or homophobic. If we can teach refugees English or German, we can also teach them about the importance of equality and human rights.”⁴⁷ This optimism rests on the belief that shared norms, arduously forged over long centuries in highly specific cultural contexts, can be easily imparted to those whose socialization has formed radically different moral sensibilities. A few brightly colored brochures and some well-organized orientation sessions for the earnest, receptive students will get everybody on the same page. Clearly, one danger of life in a liberal society, where the worth and nobility of free and equal discussion is considered self-evident, is that this congenial experience renders incomprehensible those who scorn rather than welcome such discussion. According to some reports, Theo van Gogh’s pleas to his assailant in the course of the lethal attack included, “Surely we can talk about this.”⁴⁸

Shared norms about respecting reason and persuasion are neither necessarily nor most reliably imparted, sustained, and strengthened *by* reason and persuasion. People cannot be persuaded to let themselves be persuaded: they must first be disposed to think more highly of free and equal discussion than of resorting to force. A liberal society must be especially concerned about factors, sociological and ideological, that would instead leave people more favorably disposed to satisfying their appetites, advancing their interests, or resolving their differences by force and fraud instead of by reason. The sociological factors include the weakening of intermediary structures—families, interconnecting networks of friends, religious and civic organizations, voluntary associations of various kinds—which inculcate and nourish shared understandings about acceptable and unacceptable conduct. The ideological ones involve advocacy of the position that certain beliefs are too important to be left to full and free discussion, but must be asserted by any means necessary. Mohammed Bouyeri, it appears, was not a thug or psychotic, but a fanatic who killed Van Gogh in the belief that Islam was being defamed. The assassins at the Paris offices of *Charlie Hebdo* magazine, who killed to protest the depiction of the Prophet Muhammad, had similar motives.

On the basis of all these considerations, it is now possible to state a challenge to our null hypothesis. Liberalism cannot thrive or even endure if liberals attempt to institute it in a society that is not: (a) civilized, in Mill’s sense of being amenable and devoted to full, equal discussion; (b) cohesive, in the sense that the members of the polity feel a strong attachment to it, their fellow citizens, and certain basic, distinctive precepts; and that

47. *Id.*

48. Buruma, *supra* note 34.

does not (c) manifest this civilization and cohesion in the habits, dispositions, and day-to-day lives of the great majority of citizens. Because liberalism is so dependent on these prerequisites, the question of tolerance is a serious, difficult one for liberalism, not an easy one that can be dispatched simply by invoking the basic tenets of the liberal project. If, as Scheffer wrote after the Van Gogh murder, “Tolerance can survive only within clear limits,” then the viability of liberalism may depend on maintaining or restoring those limits. Under those circumstances, the best liberal—the one whose words, deeds, and decisions do the most to uphold and the least to imperil the effort to preserve and fortify liberalism—may be one who is willing to violate liberalism’s rules, rather than one who insists on adhering to them categorically.⁴⁹ The best liberal, that is, will show statesmanlike flexibility about exercising power over members of a civilized community against their will. Compulsion may be a better choice than tolerant acquiescence if their words, deeds, and beliefs jeopardize liberalism’s prerequisites, even though they don’t directly harm or threaten other members of the community. By contrast, the orthodox liberal who insists on adhering to liberal strictures under all circumstances, regardless of the consequences, may be so rigidly doctrinaire as to facilitate the destruction of the clear limits without which tolerance and liberalism cannot survive.

Unpacking the position of those liberals resolutely opposed to qualifying the harm principle for the sake of maintaining or reestablishing the prerequisites that make liberalism possible yields two possibilities. Some take the position that, in theory, there *could* be circumstances where the preservation of liberalism was better served by curtailing liberalism than by adhering to all its principles, fully and strictly. It’s just that no concrete situation ever seems so dire to them as to justify using compulsion against anyone for any purpose other than to prevent harm to others.

Others take a more categorical, romantic position: it is preferable, if worse comes to worst, for liberalism to succumb to difficulties beyond liberals’ control than for it to be diminished by compromises within their control. The logic here is that if liberals start making concessions about fundamental principles in response to one tangible threat to liberalism’s prerequisites, they will put the whole liberal project on a slippery slope. Liberalism’s enemies will keep finding other dangers that call for other curtailments, and will keep pointing back to the concession liberals agreed to as a precedent validating new compromises. If liberalism’s destiny is

49. *Id.*

to become extinct, liberals should at least refuse to be actively complicit in its demise.

The position of those willing to curtail liberty—to use compulsion not just to prevent harm to others’ persons and property, but sometimes to uphold civilization, community, or shared norms—is more complicated. As their stance is not categorical, their approach is necessarily prudential. No formula can usefully define the circumstances where it’s best to curtail liberty; the world’s complexity defeats all efforts at writing recipes for good governance. “The only way a man can remain consistent amid changing circumstances is to change with them while preserving the same dominating purpose,” Winston Churchill once wrote.⁵⁰ “A Statesman should always try to do what he believes is best in the long view for his country, and he should not be dissuaded from so acting by having to divorce himself from a great body of doctrine to which he formerly sincerely adhered.”⁵¹

That the statesmanship Churchill recommends is flexible does not mean it is random, improvised, simply tactical, or fundamentally amoral. While never more than tentatively attached to a body of doctrine, it *is* directed by a dominating purpose, an understanding of the country’s best interests in the long term. Different statesmen will have different dominating purposes, but the various conceptions about the national interest are not so idiosyncratic as to preclude efforts to make helpful generalizations. There are, I believe, four main dispositions regarding liberalism and tolerance, each offering a distinct framework for considering the question of when to curtail liberty for the sake of upholding civilization, community, or shared norms. The four are: pre-modern conservatism, modern conservatism, modern liberalism, and post-modern liberalism.

Conservatism, as both the word itself and Evelyn Waugh’s account of it suggest, is dominated by a sense of precariousness. One formula holds that liberals think politics is about making the world a better place, while conservatives think the whole point is to keep it from becoming even worse. By *pre-modern* conservatives I mean those who reject all the thinking about individual liberty, inalienable rights, equality before the law, government by consent of the governed, separation of church and state, and the sovereign dignity of the private conscience that liberals, in the broadest sense of the term, treat as self-evident truths. This position, sometimes called throne-and-altar conservatism, was explicated most ably by Joseph

50. CHURCHILL BY HIMSELF: THE DEFINITIVE COLLECTION OF QUOTATIONS 513 (Richard Langworth ed., 2008).

51. Steven F. Hayward, *Churchill’s Personal Traits*, 2010 CEO ADVANTAGE J. 38, 42, <http://www.theceoadvantage.com/journal/2010/churchills-personal-traits/> [<https://perma.cc/K2BU-2KXD>].

de Maistre, the eloquent, erudite defender of absolute monarchy and papal supremacy.

The pre-modern conservative does not fault Mill for saying that civilization is a prerequisite for liberalism, but thinks he *is* wrong to imply that civilization is valuable primarily because it makes liberalism possible. In fact, civilization is much more important than liberalism, which means barbarism is much worse than absolute rule. The pre-modern conservative does not, therefore, wrestle with the question of whether and when to curtail liberalism for the sake of preserving liberalism. Simply preserving civilization is always ample justification for curtailing liberalism.

Further, the pre-modern conservative strongly suspects that liberalism, a product of such Enlightenment ideas as the belief in science, reason, and progress, poses a grave threat to civilization, which requires certainty and force to keep people in line. This type of conservative is, therefore, energetic rather than reluctant and conflicted about restricting liberalism. He agrees with Mill that despotism is a legitimate mode of government in dealing with barbarians. The problem is that barbarism is not a phase of human history, but the defining attribute of human nature. *All* men are barbarians, some a bit less so than others at any given moment, but none decidedly or irreversibly. It isn't just primitive illiterates in mud huts who require an Akbar or a Charlemagne to avert chaos and ghastly atrocities, but all people in all times and places. That predicate of liberalism, the acquisition by a significant portion of mankind of the capacity to be improved by free and equal discussion, will never arrive.

Many liberals believe that *all* conservatives are pre-modern conservatives, pretending to have made their peace with modernity but deep down—so deep down they may never admit or even realize it—remaining opposed to the whole modern project. According to political scientist Corey Robin, all conservatives, from Edmund Burke to John Calhoun to Ronald Reagan to Rush Limbaugh, are united and animated by “a genuine conviction that a world . . . emancipated will be ugly, brutish, base, and dull. It will lack the excellence of a world where the better man commands the worse.”⁵²

If we try to understand conservatives as they understand themselves, however, the counter-revolution against modernity has been abandoned. The purpose of conservatism is not to make liberalism go away—it won't, ever—but to save it and civilization from liberalism's worst tendencies

52. COREY ROBIN, *THE REACTIONARY MIND: CONSERVATISM FROM EDMUND BURKE TO SARAH PALIN* 13 (2011).

and defects. At the beginning of *Democracy in America*, Alexis de Tocqueville announces that its subject is the “great democratic revolution . . . taking place among us,” and makes clear that he is not one of those who “still hope to be able to stop it.” Rather, he considers it “irresistible,” the “most continuous, the oldest, and the most permanent fact known in history.”⁵³

If we take modern conservatives at their word that they want liberalism to succeed as much as liberals do, the dispute between them is prudential, not theoretical. Conservatives are deeply impressed by the frailty of liberal institutions, while liberals are deeply impressed by their durability. Justice Robert Jackson wrote in his dissenting opinion in *Terminiello v. Chicago* that “a little practical wisdom” was needed to prevent the Bill of Rights from becoming “a suicide pact.”⁵⁴ Five Supreme Court justices ruled that Chicago’s breach-of-the-peace ordinance violated Arthur Terminiello’s right to free speech, even though his inflammatory remarks did indeed catalyze a public disturbance. They did *not*, we may safely assume, think the Constitution is or should be a suicide pact. Rather, they concluded that letting Terminiello speak without the city’s interference was a lesser threat to liberty and public order than curtailing his right to speak.

In 1863 President Lincoln defended the arrest and military trial of Arthur Vallandigham, an Ohio politician who was speaking against the Union cause. The arrest was made, Lincoln wrote, because Vallandigham was “laboring, with some effect, to prevent the raising of troops, to encourage desertions from the army, and to leave the rebellion without an adequate military force to suppress it.”⁵⁵ These efforts were “damaging the army, upon the existence and vigor of which the life of the nation depends.”⁵⁶ As he had done in many courtroom arguments, Lincoln posed and answered a question to frame the issue in a way favoring his side of the case. “Must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of a wily agitator who induces him to desert?” the president asked. “I think that, in such a case, to silence the agitator and save the boy is not only constitutional, but withal a great mercy.”⁵⁷

Lincoln allows that the grave peril posed by the Civil War alters the equation: the government is permitted to take certain actions in “cases of rebellion or invasion” that would be unwarranted and impermissible in other circumstances. In 1861 he had made a similar argument to defend

53. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 3 (Harvey C. Mansfield & Delba Winthrop trans., Univ. of Chi. Press 2000) (1835).

54. *Terminiello v. City of Chicago*, 337 U.S. 1, 37 (1949).

55. Letter from Abraham Lincoln, U.S. President, to Erastus Corning and Others (June 12, 1863), <http://teachingamericanhistory.org/library/document/letter-to-erastus-corning-and-others/> [<https://perma.cc/WSC8-RWAW>].

56. *Id.*

57. *Id.*

his suspension of habeas corpus protections in the aftermath of the attack on Fort Sumter. Lincoln also, in that case, made his best points by posing questions. One was specific: “are all the laws, but one, to go unexecuted, and the government itself go to pieces, lest that one be violated?”⁵⁸ Two others were more philosophical: “Is there, in all republics, this inherent, and fatal weakness? Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?”⁵⁹

Taking office in 1801, a time of national tensions but not a crisis as severe as civil war, President Thomas Jefferson took a more confident view about a government too weak to maintain its own existence. “If there be any among us who would wish to dissolve this Union, or to change its republican form,” he said in his first inaugural address, “let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it.”⁶⁰ The Constitution is not a suicide pact in this view because: (a) so few among us have politically suicidal tendencies; and (b) so many more are reasonable and would undertake an aggressive intervention for the sake of suicide prevention.

The fact that 60 years later it took an astounding civil war to prevent the republic’s suicide, argues that Jefferson may have been over-confident about tolerating error of opinion. The liberal who takes the position that errors undermining liberalism’s prerequisites become intolerable only when the dangers they create become large and imminent, runs the risk of responding too late to every threat. On the other side of the spectrum, the vigilant liberal inclined to err on the side of caution by intervening to suppress every expression or social trend capable of undermining liberalism, may constitute a greater threat to liberalism than any of the dangers he acts to thwart. The next Ice Age will probably begin with a blizzard, but most blizzards are just blizzards, not the beginning of a new Ice Age.

Generalizing broadly, modern conservatives are, as we have noted, more disposed to intervene to prevent liberalism—in the broadest sense of the term—from succumbing to its distinctive proclivities and vulnerabilities. Modern liberals are more disposed to adhere strictly to the provisions of

58. *Id.*

59. Abraham Lincoln, U.S. President, Message to Congress in Special Session (July 4, 1861), <http://teachingamericanhistory.org/library/document/message-to-congress-in-special-session/> [<https://perma.cc/6TS6-8UHZ>].

60. Thomas Jefferson, U.S. President, First Inaugural Address (Mar. 4, 1801), <https://jeffersonpapers.princeton.edu/selected-documents/first-inaugural-address-0> [<https://perma.cc/PSS8-2NCL>].

the harm principle, confident or at least hopeful that the freedoms it confers will reinforce rather than undermine liberalism. “I have never yet heard of a girl being ruined by a book,” said New York legislator—and later mayor—Jimmy Walker, in opposing a “Clean Books Bill.” Liberals endorse this application of the harm principle, while conservatives worry about complacently putting a nation’s moral prerequisites at risk. Those who believe that people can be improved by books, even as they can be improved by free and equal discussion, should not be so certain that they cannot also be worsened by books.

This generalization explains just so much about our politics. It is complicated by the fact that conservatives and liberals have different dominating purposes, in Churchill’s sense of the term—different conceptions of the nation’s long-term best interests—so will disagree about what sort of threats to the viability of liberalism are intolerable—indeed, whether certain “threats” are even threatening. Conservatives, for example, are especially concerned about the rights to acquire, hold, and voluntarily exchange property, while liberals are especially concerned about the government’s ability to promote economic opportunity and security, as well as the people’s ability to pursue this goal through the political process. Conservatives, as a result, view most liberal proposals for regulating campaign finance as serious curtailments of fundamental civil liberties for the sake of slight, dubious social benefits. Liberals regard the same regulations as effecting trivial reductions in the freedom of speech for the sake of vital political and policy benefits.

We have noted that liberalism and progressivism are often used synonymously. The direct, commonsensical understanding of *progress* is that it means getting closer to some goal, which is both comprehensible and clearly better than the current state of affairs. The ism of progressivism was, at first, a belief that understanding the laws of history would move mankind to a better future, just as understanding the laws of nature had improved the human condition through technologies like the steam engine and anesthesia. Condorcet asserted that there is “a science that can foresee the progress of humankind, direct it, and accelerate it.”⁶¹

Post-modern liberalism simultaneously enlarges and jettisons this notion. Progress cannot mean getting closer to a defined goal, because *progressivism* really means accepting that our standards of what it means *to* progress, to get better, will constantly change. As William James wrote in *Pragmatism*,

61. James W. Ceaser, True Blue vs. Deep Red: The Ideas that Move American Politics 9 (2006), http://www.hudson.org/content/researchattachments/attachment/1254/ceaser2006_bradley_symposium.pdf [<https://perma.cc/NV99-C5VX>].

“‘The true’ . . . is only the expedient in the way of our thinking, just as ‘the right’ is only the expedient in the way of our behaving.”⁶²

The post-modern liberal rejects the modern liberalism of John Stuart Mill, with his stipulations that liberalism can work only among the civilized, and that barbarians need to be made civilized, however roughly, before they’re prepared for and worthy of liberalism. That whole distinction between civilization and barbarism strikes the post-modern liberal as morally repugnant and intellectually untenable. The “denial of universal principles,” according to historian James Kloppenberg, is the essence of “anti-foundationalism,” another term for post-modernism. “[H]uman cultures are human constructions; different people exhibit different forms of behavior because they cherish different values.”⁶³ Charlemagne and Akbar were neither better nor worse than the people they subjugated and “civilized,” just different, especially in the sense of being more powerful. If the battlefield results had been otherwise, the “barbarians” would have been the ones “civilizing”—imposing their values upon—the “civilized.”

The post-modern perspective would seem to make tolerance a non-problem, both in general and for liberalism in particular. No idea should be suppressed, because no idea is any better or worse, any more or less dangerous, than any other. And if an idea, habit, or disposition turns out to be inimical to liberalism . . . well, who’s to say that liberalism is such great shakes? It, too, is just one more human construction based on values that are neither better nor worse than any other values.

In practice, however, post-modernism has proven more conducive to legitimizing intolerance than tolerance. The proliferation of campus speech codes and rules against micro-aggressions testify to this development. Part of the explanation for this phenomenon is that if “the true” and “the right” are merely the expedient, they are held up as standards only because some groups have prevailed over other groups. Groups that dislike those standards, and dislike their position vis-à-vis the dominant groups, have every reason to reject and resist them by any means necessary. To put the point another way, the capability Mill calls for of being improved by free and equal discussion cannot be taken seriously in social circumstances where some are markedly less free and less equal than others. Where such

62. WILLIAM JAMES, PRAGMATISM: A NEW NAME FOR SOME OLD WAYS OF THINKING 222 (Longmans, Green, & Co. 1909) (1907), <http://www.gutenberg.org/files/5116/5116-h/5116-h.htm> [<https://perma.cc/757C-UCTF>].

63. JAMES T. KLOPPENBERG, READING OBAMA: DREAMS, HOPE, AND THE AMERICAN POLITICAL TRADITION 79 (2011).

disparities obtain, the less free and unequal should feel no obligation to tolerate ideas, habits, or dispositions that perpetuate or compound their disadvantages.

Post-modern liberalism, then, aggressively reinterprets the harm principle. Even if you don't pick my pocket or break my leg, you harm me if you hurt my feelings, especially if you do so in a way that diminishes my sense of self-worth by reinforcing existing status and power disparities. One of the first campus speech codes attempted to ban "inappropriately directed laughter" and the "conspicuous exclusion of students from conversations."

Post-modern liberalism's feasibility and coherence is highly doubtful. For one thing, the Van Gogh murder, Cologne sexual assaults, and *Charlie Hebdo* massacre call into question the possibility of a stable, effective coalition of the disadvantaged. Feminists and Islamists, for example, are likely to be too busy fighting one another to join forces against the oppressors who are, purportedly, their real nemesis.

More generally, if "the right" is merely expedient, then history's subjugators did not commit any transgression. They just won. Those who have inherited the privileges those winners made possible have no more right to perpetuate their advantages than those who want to redress the imbalances that have come down to the present day—but they also have no less. This view of things reverses Clausewitz's famous dictum: politics is now simply war carried out by other means.

I began by raising the possibility that tolerance is minor issue, having no bearing on whether liberalism works out or makes sense. I conclude by noting that it is a central question, for liberalism and politics in general. Tolerance is important because intolerance is important. "Anything Goes" is one of Cole Porter's best songs, but is unlikely to become any country's national anthem. The questions of what *doesn't* go, and why, and how to prevent it from going any further, explain a great deal about the political ideologies of our era, as well as the premises on which social orders in other times and places have been based.