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# Alexander on Koppelman on Alexander

LARRY ALEXANDER\*

In my book *Is There a Right of Freedom of Expression?*, I argued that liberalism, to the extent it is defined by a commitment to freedom of illiberal speech, illiberal religions, and illiberal associations, is at its core paradoxical.<sup>1</sup> For, I argued, if liberalism is the correct political philosophy, it must regard illiberal thought and its manifestations in action and policy as fundamentally mistaken. And these mistaken illiberal views cannot be deemed by the liberal to have value as views, except perhaps for whatever instructive value they might have in getting people to see the truth of liberalism. When such views pose no danger to the liberal regime, the liberal can tolerate their expression and to some extent their manifestation in action. The liberal might even frame this tolerance as a right—though a right that can be rescinded when illiberal views threaten to become ascendant. In other words, liberalism can tolerate illiberal views that do not appear to threaten the liberal regime’s existence. The relation between liberalism and illiberal views, therefore, if liberalism is to avoid paradox and incoherence, must be a *modus vivendi* relation of qualified and limited tolerance rather than a relation in which illiberal views have rights as a matter of principle. Liberalism, like any other fighting faith, must take its own side in the argument with illiberal views and eschew the false high ground of principled neutrality in matters of speech, religion, and association.

That is the position I took in the book. And it is a position with which Koppelman purports to disagree. Liberalism can’t be paradoxical, says Koppelman, because, like baptism by immersion, he has seen it done. But a

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1. LARRY ALEXANDER, *IS THERE A RIGHT OF FREEDOM OF EXPRESSION?* 169–81 (2005).

careful reading of Koppelman’s paper will reveal that he agrees with rather than disputes my argument. For example, he says “liberalism will tolerate the dissemination of illiberal ideas, hate speech, etc. But it will only tolerate harmless Nazis who merely march around in silly uniforms.”<sup>2</sup> And in a footnote, he favorably quotes Stephen Macedo, who says that Nazis cannot be Nazis but can only play at it.<sup>3</sup> In other words, Koppelman endorses liberalism’s toleration of Nazis so long as there is no danger of the Nazis gaining political power. The Nazis have a right to be ineffective.

That is, of course, completely consistent with my view. Indeed, in the last chapter of my book I make a similar argument for a pragmatic rather than a principled case for free speech, religion, and association rights.

On the same page as his allusion to Nazis, Koppelman echoes John Rawls’s (as he puts it) “simple and elegant case for toleration of the intolerant.”<sup>4</sup> Rawls thought the liberty of illiberals “should be restricted only when the tolerant sincerely and with reason believe that their own security and that of the institutions of liberty are in danger”<sup>5</sup>—a position Koppelman apparently endorses. In other words, your right to espouse illiberal views ends when there is a real danger that those views might prevail. If that is Koppelman’s view, then he and I are in complete agreement.

And again later in the piece, Koppelman points out that the *Brandenburg* free speech test, which limits advocacy of illegality unless it is directed to and likely to incite imminent lawless action, has prevailed for almost 50 years “without untoward results.”<sup>6</sup> “But,” he says, “its appropriateness is contingent on the success of probabilistic judgments based on local conditions that may change.”<sup>7</sup> Again, that position is surely not opposed to mine.

Ultimately, the rights of illiberals under liberalism will turn not merely on the relative political strength of illiberals. They will also turn on how thick or thin is one’s conception of liberalism. The thicker the conception, the more views will be deemed illiberal ones. On quite thin views of liberalism, the liberal tent will be quite broad, and fewer views will be illiberal ones. Koppelman’s liberalism is quite thin. He is a big tent liberal, as am I. So he and I can be quite generous when it comes to rights of speech, religion, and association.

Even for us big tent liberals, however, there will still be some illiberals around, and some of them may turn out to be real threats who will have to be suppressed. Were Bolsheviks a real threat in America in the Red Scare

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2. Andrew Koppelman, *Unparadoxical Liberalism*, 54 *SAN DIEGO L. REV.* 257 (2017).

3. *Id.* n.14.

4. *Id.*

5. JOHN RAWLS, *A THEORY OF JUSTICE* 193 (Harvard Univ. Press rev. ed. 1999).

6. Koppelman, *supra* note 2, at 269.

7. *Id.*

after the Russian revolution? Probably not. Was the Communist Party a real threat in mid-century? I'll leave it to others to judge. Are illiberal Muslims a real threat to liberal regimes today? One would think not, but the "no go" zones in France and Britain are surely a cause for concern.

But big tent, thin liberalism is not the only brand. A quite striking trend that worries me and should worry Koppelman is that the thin liberalism that characterized the Democratic Party of John Kennedy and that remained dominant through the Bill Clinton years has been transmogrified into a much thicker and therefore less tolerant brand of liberalism. Indeed, I believe it can no longer be called liberalism at all. It calls itself progressive and is a suitable heir to the progressives of the early 20th century, who surely were not liberals. Today's progressives do not prize liberty—of speech, religion, or association, much less of economic matters. The only liberty about which they seem passionate is sexual liberty. Liberty excites them far less than does equality. And although they give some lip service to economic equality, they seem much more obsessed with equality of esteem, and less with regard to individuals than with regard to identity groups of an ever-multiplying number. Kurt Vonnegut's broad satire of equality of esteem, *Harrison Bergeron*, is beginning to seem more prophetic than outlandish. So, too, for Orwell's "newspeak." The "equality of group esteem" version of progressivism will have become such a thick version of liberalism that the term "liberal" will seem completely inapplicable. There will be little if any tolerance of opposing views, and the "safe spaces" for the progressives will be unsafe spaces for us big tent liberals to enter.

