

Liberalism, Tolerance, and the Limits of Inclusion

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Often in our conversations of diversity, especially in higher education situations, we extol the virtues and values of diversity.¹ We talk less about the limits and *aporias* which are generated by various forms of diversity, especially in a liberal democracy. That is the topic I propose to address here: How does diversity (and particularly political diversity) pose a special challenge for liberal societies? More specifically, how should liberal democracies respond to political movements that reject the basic premises and moral assumptions of the liberal state? Before I discuss these problems in greater detail, however, I need to briefly define three concepts that are important for the present discussion: liberalism, tolerance, and inclusion.²

LIBERALISM, TOLERATION, AND INCLUSION

When I discuss liberalism, I am not using the term in the way that we normally do in American political discourse. Rather, I am referring to what political theorists have described as classical liberalism. Classical liberalism emerged, depending on how you date it, roughly in the sixteenth or seventeenth centuries. It has its origins, at least in part, in the various revolutions and revolts against monarchies, monarchical power, and the divine right of kings. Raymond Geuss contends (and I agree with him) that there are, at a minimum, five important elements of classical liberalism.³ First, liberal theory focuses on voluntary consent as the foundation of politics. This is representative of its anti-monarchical origins. The basic idea here is that the state is only legitimate if it has the consent of the people. Second, liberalism prioritizes the autonomy of the individual. A third important element is tolerance, which is a necessity in modern, pluralistic societies. This component of liberalism is especially important today, and it's the component I will focus on most closely. However, if you look historically at liberalism, you can see that tolerance already played a central role in the earliest iterations of liberalism. John Locke, one of the liberal theorists, wrote a letter concerning toleration where he laid out a rather robust defense of religious liberties.⁴

A persistent suspicion of absolute, successive, unlimited, or discretionary power is the fourth component of liberalism. You can see this today in terms of the liberal emphasis on limited government. Finally, there is a fifth element to classical liberalism. This will come up at the end of my discussion.

Liberalism exhibits a skepticism about the limits of human knowledge, especially in relation to conceptions of the good. Throughout this discussion, I am going to use the term “conceptions of the good.” When I discuss this, I mean, roughly, the idea that there are various conceptions of what a good life is. I happen to think that there is a fairly specific conception of the good defined by liberalism. This poses a challenge for liberalism because, on the one hand, liberalism emphasizes the importance of toleration and diversity, concerning conceptions of the good. At the same time, there is a fairly specific conception of the good that is embedded within liberalism. It is precisely this tension that contributes towards the paradox of tolerance.

What is toleration? It turns out it is more difficult to define the word than you might think. Here I propose to follow Rainer Forst, who defines it in the following way: “the conditional acceptance or non-interference with beliefs, actions, or practices that one considers to be wrong, but still tolerable, such that they should not be prohibited or constrained.”⁵ What this entails is that there are two normative components to toleration: on the one hand, the tolerated practice or belief is one that society deems morally or politically objectionable. The majority of society rejects or regards as morally problematic a specific belief or set of practices. Yet it is the second normative component that yields this specificity of toleration as a concept. There is an attitude of reprobation, yet there is also an attitude of admittance.⁶ Thus, we tolerate the practice.

There are a lot of examples that come to mind, but one of the most relevant is the toleration of the Westboro Baptist Church, which has theological views that many people find problematic because they deny the basic and moral equality of human beings. However, for a number of complex, and perhaps not so complex, reasons, we tolerate the existence of the Westboro Baptist Church. That is an example of a tolerating practice.

Notice that toleration differs both from the endorsement of a particular belief as well as the outright rejection of a particular belief. In effect, toleration occupies a peculiar position that can generate dilemmas, particularly with regard to the third concept I deploy in this talk: the concept of inclusion.

Inclusion, at least as I use it in this discussion, pertains to the question of what limits, if any, liberal democracies should impose on the participation of illiberal political movements. With these basic concepts in place, I now turn to a question: Is there a basic problem with the discourse of toleration? More specifically, should we attempt to go beyond tolerance? What exactly does it mean to go beyond tolerance? One of the concerns of the discourse of toleration is that it has, at least to certain ears, a paternalistic quality to it. If I say that I am tolerating a practice, there is, at least to certain interpretations, a dismissive quality to this. There is one line of criticism that says that we actually need to go beyond toleration in order to celebrate and embrace differences. It is one thing to say you simply tolerate differences, but it is another thing altogether to say we actively embrace differences.

Here is the problem: What do we do when we encounter forms of life, practices, or beliefs that are grounded in principles that are themselves inhospitable to us or actively opposed to the basic norms of liberal democracy? The basic norms of liberal democracy include, at a minimum, a presumption of moral equality, embrace of human autonomy, and a basic discourse of respect. This is the difficulty. How do we negotiate between tolerance and intolerance?

LIBERAL MEANS AND ILLIBERAL ENDS: ILLUSTRATIONS FROM THE PAST AND PRESENT

In order to illustrate how this dilemma plays out in actual political life, I am now going to pivot to look at a number of specific examples to give you a sense of how this paradox has been navigated historically by different liberal democracies. Hopefully, it will make my admittedly abstract comments a bit more concrete.

The first example I want to begin with is one that comes up quite often in discussions about toleration and its paradoxes, and, more specifically, it comes up in conversations about the challenges that liberal democracies confront when faced with anti-liberal elements. This is the example of the Weimar Republic. Before I talk about it, I will caution you that I am not a historian, and it is important to mention that because there have been tens of thousands of pages written about Weimar Germany. There is a copious secondary literature about the subject, and people spend their lives writing about it, but I am not one of them. In order to ground my discussion, what I can do here is hint at the difficulties that arose.⁷

The Weimar Republic was founded in Germany in the wake of the First World War in November 1918. There were a number of structural challenges that the Weimar Republic faced early on in its existence. Throughout its history, it was constantly grappling with economic pressures, with the burden of reparation debts, and it was trying to come to terms with various cultural trends. To my mind, one of the most instructive and interesting aspects of the Weimar Republic is its political history. In particular, the dilemma that the Republic faced was this: The Constitution of the Weimar Republic was in many ways a canonical liberal document. It enshrined the democratic franchise, protections of the press, and the right to assemble. During the Republic's brief history, however, it was constantly under assault, both from the left and the right.

I have three specific examples, although there are many more. Early on in the history of the Republic, in 1919, there was the so-called Spartacist Revolt, which was a revolt that was organized by the German Communist Party and was ultimately defeated. In 1920, there was the so-called Kapp Putsch. This was a revolt that was led by conservative nationalists and disgruntled members of the military. The Kapp Putsch was crushed relatively quickly. Finally, in 1923, there was an attempted coup by the Nazis (the so-called Beer Hall Putsch), which was also quickly suppressed. It was led by Adolph Hitler, who was given six months in jail for attempting to overthrow the Republic. He used this time in prison to write

Mein Kampf. It was an important moment for the Weimar Republic because often the liberal democratic elements in the various parliamentary governments were much more sympathetically inclined to the right than to the left. It is unfortunately true that many supporters of liberal democracy in the Weimar Republic often looked the other way when it came to the actions of the right, especially the Nazi party.

I highlight this fact to show that the Weimar Republic, throughout its history, grappled with basic challenges. Both the Communist party and the Nazi party rejected the basic elements of the liberal democracy that were in place in the Weimar Republic. This was the basic challenge that the Republic faced: On the one hand, you have a Constitution that enshrines the right to peacefully assemble and safeguards the liberties of the press. At the same time, there were various groups that wanted to use these constitutional protections in order to overturn the basic machinery of the Weimar Republic. Here is the paradox: How exactly should a liberal democracy confront this challenge?

The Communists and Nazis did not intend to compete in the various elections that were held in order to govern according to norms which were consistent with the constitutional order; rather, they wanted to seize power in order to overturn the machinery of liberal democracy. And therein lies the problem. What the Nazis did exceedingly skillfully was to use the protections that were encoded in the Weimar Constitution in order to ultimately overturn it. They also used propaganda skillfully. Where the problem gets more complex is with regard to one of the most infamous and notorious articles of the Weimar Constitution: Article 48. When the article was drafted, it granted significant emergency powers to the President, and the reason it was placed in the Constitution was precisely so that the President would have the power to confront the challenges to liberal democracy. In a sense, the rationale for including Article 48 in the Constitution was to ensure that liberalism would have a mechanism for protecting itself against anti-liberal elements.

What happened in 1932-33 was the Nazis began to accumulate significant power in parliament. This is in part a response to the Great Depression and its various crises. Eventually, Hitler won enough electoral power to allow him to become Chancellor. In 1933, the infamous Reichstag Fire occurred. Hitler accused the Communists of having set it. Suffice it to say that the historical record is much more unclear than that. He used this particular incident to invoke Article 48. It gave him the power to suspend basic constitutional liberties so as to ward off disaster and catastrophe (or so he argued). In short, he established martial law and then ruled throughout World War II with the Weimar Constitution in effect. Indeed, the Nazis never actually abolished the Constitution, but, by that point, it was an empty and hollowed-out document.

This complicates the picture even further. What do you do when you have a part of the constitution that is designed to safeguard liberal democracy but is then used to undermine liberal democracy? This is the dilemma that I have been gravitating towards, and I will now lay it out. If anti-

liberal parties are able to use various forms of media to help them acquire the means to overturn liberal society, when, if ever, is it appropriate to place limitations on their rights, especially the right to organize when they plan to do so in order to overturn democratic institutions?

There is an easy answer to this, but it is too easy. The easy answer is: If you have a party that is explicitly saying they want to overturn liberal democracy, you ban them. That is easier said than done, however, especially in the Weimar Republic, where you have a government that is extraordinarily weak. Moreover, such measures violate the central liberal democratic emphasis on the importance of safeguarding the right to politically organize. The bigger challenge is this: What do we do when it is clear that we have groups that are willing to use the basic protections of liberal democracy as a means of overthrowing constitutional order? If we think about it at that level, it becomes clear that anti-liberal groups can use liberal elements like freedom of speech, the freedom to assemble, and freedom of the press in order to abrogate the same constitution that is meant to institutionalize those protections.

I will shift gears here slightly to help make clear how this challenge is connected with the Weimar example. I will discuss the Harm Principle, developed by John Stuart Mill in *On Liberty*, one of the great works in the liberal cannon. He argues that the only legitimate reason for the state to exercise force over citizens is to prevent harm to others.⁸ Mill famously articulated a vague and ambiguous definition of harm, which is useful from a philosophical standpoint but makes it difficult when you are trying to pin down what the argument is about.

On one level, it may be perfectly obvious what harm is, but, of course, there are much more subtle forms of harm, like psychological harm. How exactly do we negotiate this dilemma? It is useful to briefly say how the United States Supreme Court has tackled this problem. It has articulated a standard that is at least the first cousin to Mill's no harm principle. This is the standard of "fighting words." Historically, the United States Supreme Court has extended great deference to First Amendment liberties, for good reason. There are, of course, limits to this, and one of them has been laid down as "fighting words," or speech that is meant to provoke violence. This is, in a sense, where the Supreme Court tends to draw the line.⁹

One of the most interesting examples of this is a case from the late seventies: *National Socialist Party of America v. Village of Skokie*. I won't say much about how this case was resolved because if I begin to talk too much about the constitutional particulars, it gets me into the weeds, and the resolution of the case is complex. I will just lay out the basic facts that are important for my discussion.¹⁰

In March 1977, the National Socialist Party of America announced that it would hold a march in Skokie, Illinois. Why is that significant? The population of Skokie was roughly 70,000 and, of that number, over half were Jewish, and many were Holocaust survivors. It was not an accident that the Nazi Party chose to conduct their march in Skokie. As you can imagine, this provoked a great deal of outrage

and trauma. There was resistance from the people who lived in Skokie and from other Holocaust survivors, who were horrified, rightly, at the prospect of having to once more watch Nazis parade down the main boulevard. On the other side of the ledger, we recognize that it is extraordinarily important to safeguard the right of free speech and other First Amendment liberties.

Suffice it to say that what happened ultimately was that the party was allowed to march in Skokie, but for a number of complicated reasons they decided to move their venue to Chicago. What is important for my discussion is that ultimately the Supreme Court, albeit indirectly, ended up validating the right of the Nazis to march. This is an interesting case because it provides an instructive example of how the Supreme Court applied the Harm Principle.

I will include one more concrete example, and this one is drawn from contemporary French politics. There has been a reemergence of what many commentators have referred to as the Fascist Right in France, namely Marine Le Pen and the National Front Party. The Front National platform favors exit from the European Union (EU), a reduction in the number of total immigrants, and an outright ban on immigration from North Africa and the Middle East. One of the interesting features of the right-wing parties in Europe is that they are willing to use the discourse of liberalism and liberal democracy in order to argue that it is necessary to place limitations on immigration specifically and liberal principles more generally.

As an illustration of this point, I found a particularly instructive quote in *Le Monde*, and here I provide a rough translation: “I fear that the migratory crisis signals the beginning of the end of the rights of women.”¹¹ This quote is interesting, to my mind, because you see Le Pen, on the one hand, invoking an impeccably liberal principle (i.e. defending the equal rights of women) in order to justify an illiberal end (in this case, closing France’s borders to the “other”). Le Pen is hardly alone in this regard; we can see similar rhetorical strategies deployed by, for example, the Vlaams Belang in Belgium or Geert Wilders in the Netherlands. Here, then, we once more confront the question: How should we think about political movements that use liberal discourses in order to justify illiberal policies? This is a question that the defenders of liberal democracy in the EU will have to come to terms with as populist Right/Fascist parties continue to attract adherents.

RESOLVING THE PARADOX: PROCEDURAL AND SUBSTANTIVE NEUTRALITY

How have liberals responded to this problem of toleration and the paradoxes that come along with it?

One of the most interesting moves has been advanced by William Galston in his book *Liberal Purposes*. Galston distinguishes between what he calls “procedural neutrality” and “substantive neutrality.”

Procedural liberalism is essentially neutral with regards to various conceptions of the good. It stands back and allows individuals in civil society to hash out what the good is. Substantive liberalism cannot remain

neutral on questions of the good because there are any number of principles that animate the practice of liberalism. Galston argues then that the liberal state cannot afford to stay neutral in terms of problems of the good. It has implicit conceptions of the good and must defend them.¹²

One of the problems is that liberals also adopt a moral relativism. There are different kinds of moral relativism, but I will frame my definition to this particular discussion. Moral relativism is the idea that moral truth is relative to particular cultures or individuals. How does that pose a problem for liberalism? When liberalism is confronted by any anti-liberal element, liberalism has to take a stand. It makes it difficult to render defensible transcultural judgments about the good. Liberalism makes robust presuppositions about what the good is, but if a liberal adopts moral relativism, it makes it difficult to talk about transcultural human rights. In order to coherently defend liberalism, liberals must jettison at least the more problematic concept of moral relativism.

IRRECONCILABLE GOODS AND THE TRAGIC DIMENSIONS OF POLITICAL LIFE

I will close with a quote from Isaiah Berlin: “The notion of the perfect whole, the ultimate solution in which all good things coexist, seems to me not merely unattainable . . . but conceptually incoherent. Some among the Great Goods cannot live together. That is a conceptual truth. We are doomed to choose, and every choice may entail an irreparable loss.”¹³ At least in part this means that, for Berlin, there are significant moral goods, and there are times moral goods necessarily conflict with one another. An easy example here is the moral good of clemency versus the moral good of justice. The demand for clemency pulls us in one direction and the demand for justice pulls us in another. We cannot reconcile these two. We have to choose. Berlin’s point here is that when we think about moral goods, there are some we simply cannot reconcile with one another, and this is one of the dilemmas that liberalism must come to terms with. Berlin concludes that the human condition is fundamentally tragic because there are basic conflicts that we cannot reconcile. This is a lesson that liberals often fail to understand; in their hopes for an all-inclusive utopia that celebrates differences, they overlook the tragic possibility that some goods simply can’t coexist, which entails that in certain instances we have to make difficult and profound choices about which ones we want to affirm—or oppose.

NOTES

1. The following talk was given without a written text (although I did prepare an accompanying PowerPoint), and, for the most part, I have elected to retain the oral, extemporaneous quality of its delivery. My thanks go to Maddie Caso for preparing a transcript of my remarks. Thanks also to Deb Roney for numerous excellent recommendations about how to improve the text. In editing the transcript, I have generally limited myself to correcting obvious grammatical mistakes and awkward

phrasings or transitions although I have also taken the liberty of attempting to clarify aspects of the talk that I felt required greater lucidity.

2. I use the terms “toleration” and “tolerance” interchangeably in this essay.
3. Raymond Geuss, *History and Illusion in Politics* (Cambridge: Cambridge University Press, 2001), pp. 69-109.
4. John Locke, *Epistola de Tolerantia, A Letter on Toleration*, Raymond Klibansky, ed., trans. J. W. Gough (Oxford: Clarendon Press, 1968).
5. Rainer Forst, “Toleration” in *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta ed., (Summer 2012), <https://plato.stanford.edu/archives/sum2012/entries/toleration/> (accessed March 20, 2017).
6. On the twofold normative character of toleration, see Rainer Forst, *Toleration in Conflict: Past and Present*, trans. Ciaran Cronin (Cambridge: Cambridge University Press, 2016), pp. 18-26.
7. I have drawn on the following sources for my account of the relevant events from the history of Weimar Germany: Hannah Arendt, *The Origins of Totalitarianism* (New York: Harvest, 1973); Eberhard Kolb, *The Weimar Republic*, 2nd ed., trans. P. S. Falla and R. J. Park (New York: Routledge, 2005); Robert O. Paxton, *The Anatomy of Fascism* (New York: Vintage, 2004); and Detlev J. K. Peukert, *The Weimar Republic: The Crisis of Classical Modernity*, trans. Richard Deveson (New York: Hill and Wang, 1992).
8. For Mill’s discussion of the harm principle and potential applications of the doctrine, see John Stuart Mill, *On Liberty*, ed. Gertrude Himmelfarb (New York: Penguin Books, 1974), especially pages 141-62.
9. For a lengthier discussion of the “fighting words” standard and the complexities of its application as well as related issues concerning free speech and harm to others, see Steven L. Emanuel, *Constitutional Law*, 24th ed. (New York: Aspen Publishers, 2006), especially pp. 492-529.
10. Here I have relied on Chicago-Kent College of Law at Illinois Tech, “National Socialist Party of America v. Village of Skokie.” Oyez, <https://www.oyez.org/cases/1976/76-1786> (accessed March 22, 2017).
11. Pierre Bretau and Samuel Laurent, “Marine Le Pen, Une Féministe à la Mémoire Courte,” *LeMonde.fr*, January 15, 2016, http://www.lemonde.fr/les-decodeurs/article/2016/01/15/marine-le-pen-une-feministe-a-la-memoire-courte_4848295_4355770.html (accessed March 22, 2017).
12. William A. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge: Cambridge University Press, 1991).
13. Isaiah Berlin, “The Pursuit of the Ideal,” in Henry Hardy, ed., *The Crooked Timber of Humanity* (Princeton: Princeton University Press, 1990), p. 13.