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Dimensions of Tolerance: What Americans Believe About Civil Liberties

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DIMENSIONS OF TOLERANCE: WHAT AMERICANS BELIEVE ABOUT CIVIL LIBERTIES. By *Herbert McClosky* and *Alida Brill*. New York: Russell Sage Foundation. 1983. Pp. x, 512. \$29.95.

*Facts are ventriloquists' dummies. Sitting on a wise man's knee they may be made to utter words of wisdom; elsewhere, they say nothing, or talk nonsense.*¹

In *Dimensions of Tolerance* Herbert McClosky² and Alida Brill³ present data about community attitudes toward civil liberties. The data are drawn from questionnaires the authors distributed to several thousand adult Americans eliciting the respondent's beliefs regarding freedom and tolerance. The findings are interesting, but the analysis is inadequate. The data presented in *Dimensions of Tolerance* deserve a more thoughtful and scholarly treatment than they receive in this book.

Dimensions of Tolerance begins with a discussion of liberty — “a frail and tenuous reed, slow to take root, rare, and often short-lived” (p. 13). Liberty, we are told, must be balanced continually against the need for control, and total freedom is not invariably a social good. The authors' stated goal is to discover the influences which “prompt some men and women to honor and protect civil liberties, while others give priority to obedience and conformity” (p. 4).

Quickly, however, a bias appears. To the authors, “silencing revolutionaries and extremists violates a fundamental principle of freedom, since freedom depends on a mutual obligation to grant to others what one claims for oneself” (p. 16). The problem, as the authors see it, is how to persuade “political or religious zealots that their own liberty, and that of the nation itself, is jeopardized by denying liberty to others . . . [o]r that politics and civility depend upon mutual obligations . . .” (p. 17).

These statements suggest that society opts either for freedom or for control, and the bulk of *Dimensions of Tolerance* examines why some people do not opt for freedom. But this dichotomy is simplistic. “Speech advocating violent overthrow . . .,” Robert Bork has written, is “not political speech because it violates constitutional truths about processes and because it is not aimed at a new definition of political truth by a legislative majority.”⁴ It may be argued plausibly that

1. A. HUXLEY, TIME MUST HAVE A STOP 301 (1944).

2. Herbert McClosky is well known as a critic and analyst of American politics and culture. His landmark study, *Consensus and Ideology in American Politics*, 58 AM. POL. SCI. REV. 361 (1964), found that politically active and influential individuals are more likely to respect the civil rights of minority groups and interests than are less politically active individuals. *Id.* at 373-74. McClosky is currently Research Director at the Survey Research Center in Berkeley and professor of political science at the University of California, Berkeley.

3. Alida Brill is Program Director and Scholar in Residence at the Russell Sage Foundation.

4. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1, 31 (1971).

obscenity, libel, and the expression of totalitarian or racist sentiments may be proscribed by a polity without liberty being trampled underfoot.⁵ It is not meaningful to say on the one hand that freedom and control must be balanced and then to assert (as the authors do) that there is one libertarian norm to which all Americans should subscribe. Nevertheless, the authors assume implicitly that one viewpoint, which sees tolerance as *the* preeminent value, is both "correct" and central to the idea of American democracy. In fact, they label what they are studying "The Learning of Civil Libertarian Norms" (p. 232). The potential complexity of the authors' conclusions is thus hobbled by their overly simplistic assumption as to the very nature of tolerance.

What McClosky and Brill provide are correlations. Ideology and tolerance are correlated: conservatives are less libertarian than liberals. Age and tolerance are correlated: older people are less libertarian than younger people. Psychological traits are also analyzed: misanthropic people are less tolerant than sympathetic people. Other factors are examined: educated people are more tolerant than the less educated, and nonreligious people are more tolerant than those more religious. The only possibly relevant factor that seems to have been omitted is economic status. The amount of information assembled is quite impressive, and will no doubt be of great use to other social theorists and scholars.

As the authors admit, however, to learn that one factor (*e.g.*, age) is correlated with opinions on tolerance does not prove that the factor *caused* the correlation. Growing old, for example, does not necessarily cause a shift away from libertarianism: "[a]ge may also reflect the historical period or *Zeitgeist* through which an individual has lived, the events of which have presumably affected and perhaps significantly altered his or her attitudes . . ." (p. 398). All too often, the statistics seem to lead nowhere. For example, although the mass public is likely to support libertarian values in the abstract, it is less likely than community leaders or "elites" (people who occupy positions of influence and power) to support those values when applied to specific situations. While ninety percent of the people polled agreed with the statement, "I believe in free speech for all no matter what their views might be" (p. 50), when the question was whether a community should allow the American Nazi party to use its town hall to hold a public meeting, a much higher proportion of the mass public than of the community elite answered in the negative (p. 53). The implications of these statistics are intriguing; from a civil libertarian standpoint, it might be preferable to discourage the mass electorate from participating in the political process. On the other hand, it may be the process of political involvement that creates tolerance. As another example, it is interest-

5. See generally Bollinger, *The Skokie Legacy: Reflections on an "Easy Case" and Free Speech Theory* (Book Review), 80 MICH. L. REV. 617 (1982).

ing to learn that people who oppose abortion also tend to oppose pornography, sexual freedom, and homosexual rights (p. 334), but the causes of these beliefs are still unexplored. Unfortunately, this book does not — perhaps cannot — provide answers to many of the questions it raises. When the authors do reach conclusions, it often appears that they have failed to consider the complexities of the issues with which they deal. Regarding abortion, they state:

[O]ne has reason to doubt that most anti-abortionists are principally motivated by convictions about the “right to life.” For example, 81 percent of the anti-abortionists among the community leaders and 74 percent of those in the general population support capital punishment. [P. 334.]

This correlation does *not* necessarily undercut the “right to life” justification. Attitudes toward life and death and law and order are not as simple as the authors imply.

The authors’ research also reveals some startling differences between the mass public and the “elite.” The researchers asked, “[i]f a news photographer takes pictures of a famous person entering a house of prostitution, [should] publishing the photos . . . be permitted . . . [or] forbidden as an invasion of privacy” (p. 62)? While a significant majority of the legal elite and community leaders would allow publication, a nearly identical percentage of the mass public would forbid it. McCloskey and Brill use these statistics to support their thesis that community leaders and elites are more tolerant and more in accord with current legal standards than is the general public (p. 64). What is interesting, however, is that the question requires a choice between two values — a free press versus the right of privacy — each of which might be seen as libertarian. The statistic suggests that the general public values the right to privacy more highly than do those more knowledgeable about social “norms.” If borne out by other evidence,⁶ this might suggest that both the law and the community elite are behind, rather than ahead of, the general public in appreciating this libertarian value.

Another interesting statistic reveals that while only six percent of the mass public believes that “[u]sing violence to achieve political goals is sometimes the only way to get injustices corrected,” eleven percent of the community leaders and sixteen percent of the legal elite agreed with the statement (p. 75). Fully one-quarter of the legal elite declined to declare the use of violence always wrong. This may, in one sense, show the increased “tolerance” of elites, but it may also indicate

6. This thesis is given some support by another statistic in *Dimensions of Tolerance*. Twenty-eight percent of the mass public agreed with this statement:

When applying for a job, a person’s prison record should be kept confidential since the ex-convict deserves a chance to make a fresh start.

Only 19% of the community leaders, and 14% of the legal elite, agreed with the statement. P. 194. These results could indicate a greater regard for privacy among the mass public than in the other groups

that the more experience people have with the legislative and judicial processes of this country the less faith they have that those processes work effectively.⁷ As with other correlations in the book, the authors merely *begin* the search for understanding.

Dimensions of Tolerance, then, is flawed, but it remains very useful. The book's value lies not in its lengthy second-hand summaries of the constitutional status of certain civil liberties in 1977,⁸ or in its generalizations, which are of questionable validity. For example, the authors refer to the "low level of political interest displayed by vast numbers of the American people" (p. 418) although McClosky himself has previously refuted this common misconception.⁹ The value of this book lies in its wealth of useful and thought-provoking information. The statistics and correlations are there; the truly thoughtful and revealing conclusions remain to be drawn.

7. It is also worth noting that the sizable minority of lawyers who do not completely reject the use of violence in the pursuit of justice is hard to reconcile with the authors' assertion elsewhere that "lawyers are more disposed than any other segment of the population to adjust their beliefs to the rulings of the higher courts." P. 419. The higher state courts have not been hospitable to civil disobedience even when nonviolent. *See, e.g., State v. Marley*, 54 Hawaii 450, 472-73, 509 P.2d 1095 (1973) (even nonviolent illegal behavior is unacceptable except under extremely unusual circumstances).

8. Chapters 2 through 5 of *Dimensions of Tolerance* summarize the results of the authors' research in four discrete sections: "The First Amendment: Freedom of Speech and Press"; "The First Amendment: Symbolic Speech, Conduct, Assembly, and Religion"; "The Rights of Due Process"; and "The Rights of Privacy and Lifestyle." Each section begins with a summary of the legal status of the right in question which McClosky and Brill based on memorandums prepared for them in 1977. The summaries are outdated, oversimplified, and of use only to the lay reader.

9. McClosky wrote:

The few cross-national studies conducted so far indicate, however, that despite the low [voter] turnout, other indexes of participation — political interest and awareness, expressed party affiliation, sense of political competence, etc. — tend to be higher in the United States than in many other countries, such as France and Italy.

Political Participation, in 12 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 255 (D. Sills ed. 1968).