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# Dimensions of Liberal Self-Satisfaction: Civil Liberties, Liberal Theory, and Elite-Mass Differences\*

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*Dimensions of Tolerance*, by Herbert McClosky and Alida Brill, epitomizes both the best and the worst of behavioralism, American liberal ideology, and the connection between them. It is, in that sense, a culmination of thirty years of American political science. A response to it inevitably appears old-fashioned because the book itself is old-fashioned. It forces us to confront once more issues of methodological individualism, the role of individual psychology in political judgment, the subtle intertwinings of fact and value, the place of the Bill of Rights in American politics, the virtues of elite libertarianism and the dangers of mass authoritarianism, and other such issues that exercised political scientists in the 1960s and 1970s. My—and the authors'—hope is that these issues are worth yet another round of reflection and that we have learned something since the last time we considered them.

We need first to see the book as the authors do. McClosky and Brill set out in 1976 to answer “two related questions: What influences impel some people to honor and protect the liberties of others, even when those liberties are employed for purposes they perceive as hateful? What leads some men and women, even in a democracy, to assail the rights of those with whom they disagree and to honor obedience, orthodoxy, and conformity over freedom?” (p. 415). Their answers come in the form of responses to an extensive close-ended opinion survey of a national sample of the “mass public” and a large sample of “community leaders and activists engaged in various vocations and playing various roles.” Both groups chose one of two endings to a sentence, such as “For children to be properly educated: 1) They should be free to discuss all ideas and subjects, no matter what. 2) They should be protected against ideas the community considers wrong or dangerous. 3) Neither. 4) Undecided.” (The survey contained over 320 such questions, as well as demographic queries and a few other opinion questions in different formats. Several other surveys also play subsidiary roles in the analysis.)

The authors report their findings in exhaustive detail. Their main point is that community leaders and activists are more libertarian than the mass public, with about one-third of the mass public and two-thirds of the leaders strongly

\* A review of Herbert McClosky and Alida Brill, *Dimensions of Tolerance: What Americans Believe about Civil Liberties* (New York: Russell Sage Foundation, 1983), pp. x + 512, \$29.95 (cloth). The page references in parentheses are to this book.

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supportive of civil liberties. Variations in this general finding are considerable. People support civil liberties more in the abstract than in concrete cases in which they fear or hate the group they are asked to respect. Some leaders, such as lawyers and judges, are on average more libertarian than other leaders, such as police officers. Some rights, such as the right to hold a protest march, are endorsed more than others, such as the right to spit on the flag. Some question formats or sentence wordings generate more civil libertarian responses than others. Then there are complex interactions: some elites (their word) support some forms of civil liberty more than other forms, or more than other elites do. And so on. But the bottom line, which is demonstrated over and over, is that political elites are more tolerant than masses and that the mass public is dangerously intolerant in at least some areas.

McClosky and Brill then ask why and produce several answers. The most important in their eyes is “social learning,” by which people who are close to power centers and/or politically active learn and adopt the basic norms of our liberal society. They do not explain exactly how this process occurs—it is “highly complicated for any given individual” (p. 28)—nor do they seek to demonstrate its occurrence. Their main evidence for the existence of social learning is data showing that political activists are more libertarian than nonactivists with the same demographic characteristics (age, religiosity, education, income, region, and cosmopolitanism of residence). These data do not eliminate the possibility of self-selection—those already inclined to adopt civil libertarian norms become the most politically active—or of systemic bias—those who conform to the norms held by current elites are most successful in gaining political influence. Nevertheless, McClosky and Brill see the data as demonstrating that “activity in public affairs . . . produce[s] greater familiarity with the prevailing values of the political culture. Since . . . in the United States these values are predominantly libertarian, the elites . . . embrace them more strongly than do the members of the mass public” (p. 27).

Their other explanations for variation in tolerance are subsidiary but equally revealing of their underlying assumptions. One is demographic—the well educated (especially those with high “intellectuality”), the well off, the young, city dwellers, and (to a modest degree) Northerners, and men support civil liberties more than their opposites. Another explanation is psychological—people who are misanthropic, inflexible, anomic, conformist, and low in self-esteem support fewer civil liberties than their opposites. A final explanation is substantive—liberals are more libertarian than conservatives; the secular are more libertarian than the devout; people support groups whose values they endorse more than groups whose values they oppose; and most generally, for some people other values outweigh civil liberties.

McClosky and Brill conclude with a mix of worry and hope. On the one hand, the young are more libertarian than the old and “intuitive observation” suggests that much of this tolerance will remain with the young as they age. More important, the influential and powerful are generally tolerant, so libertarianism has strength beyond its numbers. On the other hand, however, many—perhaps most—of the public is not tolerant of many—perhaps most—expressions of civil liberties, and it is very difficult for most citizens to learn why they should endorse freedom for groups they hate or fear. Thus McClosky and Brill “conclude with an observation with which we began—that civil liberties are fragile and susceptible to the political climate of the time, . . . a result in great part of the

failure of large segments of the population to have effectively internalized the libertarian norms to which the American political culture, from the beginning, has been dedicated" (pp. 437-38).

#### NO SURPRISES

The sentence just quoted hints inadvertently at many of the problems of the book, as well as its virtues. Let me begin with the authors' apparently trivial but actually revealing comment about "conclud[ing] with an observation with which we began." The book has no surprises, in several senses. First, it recapitulates, with much more detail and sophistication, McClosky's famous articles of 1964 and 1965.<sup>1</sup> He and his coauthor made precisely the same argument then—American elites are more libertarian than masses, and intolerance is partly a consequence of personality defects—and the world has apparently not changed a bit in twenty years. This stability suggests either that McClosky (and coauthors) has been untouched by the political passions and insights swirling around the civil rights movement, Vietnam, Watergate, and other challenges to liberal certitude or that this book taps a deep underlying structure of American political ideology that persists regardless of ephemeral events and political fads. Political scientists, of course, hope that their work achieves the latter goal, but in this case I fear the former outcome; the book too often averts its eyes from troubling or provocative aspects of liberal theory that would force a reconsideration of accepted liberal truths.

This point is illustrated by the second way in which *Dimensions of Tolerance* has no surprises. It systematically denies or smooths over tensions and contradictions within liberal theory, so it gives us few new ideas or insights on how to think about civil liberties. McClosky and Brill, for example, recognize that sometimes equality and liberty conflict, but they argue that most of the time the two norms reinforce each other. In their words,

The domains of freedom and equality . . . are not always or in all respects compatible. . . . Nevertheless, . . . more often than not, the advancement of one serves to promote the other. If blacks or Jews or women or Indians are permitted to enjoy the full benefits of their civil rights, many of them will move into higher stations in society in which they will be able to disseminate their views and to protect their rights of privacy and due process. . . . [Conversely], as individuals gain greater command over their civil liberties, they also gain greater access to society's benefits. Possessing freedom, they are in a far stronger position to carry on the struggle for their civil rights. [P. 327]

This passage is empirically arguable; blacks and women now enjoy much more liberty than they did thirty years ago but not a corresponding degree of economic equality with whites or men.<sup>2</sup> More important, however, the passage wears in-

1. Herbert McClosky, "Consensus and Ideology in American Politics," *American Political Science Review* 58 (1964): 361-82; Herbert McClosky and John H. Schaar, "Psychological Dimensions of Anomy," *American Sociological Review* 30 (1965): 14-40.

2. A small indication of the relative lack of economic equalization lies in data on median family income. By that measure, blacks held 59 percent of whites' holdings in 1967 (the first year with accurate data) but only 55 percent in 1982. (U.S. Bureau of the Census, *Money Income of Households, Families, and Persons in the United States, 1981*, Current Population Reports, ser. P-60, no. 137 [Washington, D.C.: Government Printing Office, 1983], pp.

tellectual blinders. McClosky and Brill ignore any specification of equality that might impinge on strong definitions of civil liberties (such as some form of "equality of results" that would entail affirmative action or redistribution of resources) and focus only on equality as an equal right to pursue one's own ends—that is, equality as liberty. Once equality is made synonymous with liberty, it is not surprising that "the findings strongly confirm . . . our belief . . . that sensitivity to human rights in one domain (for example, civil liberties) would, in most cases, go hand in hand with sensitivity to human rights in the other [civil rights, or equality]" (p. 328). Thus their implicit definition of equality is so narrow that it has no bite politically and does no work theoretically.

My comment here goes beyond criticism of the book to a larger point about liberal theory (or at least liberal theorists). It is the great glory or fatal flaw, depending on one's perspective, of the liberal tradition that it simultaneously affirms contradictory values—liberty versus equality, family autonomy and private wealth versus individual equal opportunity, majority rule versus minority rights, et cetera.<sup>3</sup> To deny these contradictions and their inevitably accompanying tensions is to be politically complacent and intellectually superficial.

The final meaning of "no surprises" ties into the second. The book does nothing to disconcert its most likely audience—politically active, intellectual, city-dwelling, liberal elites. Over and over these turn out to be just the kind of people a liberal democracy needs to preserve its most valuable heritage. Actually buried in the work, however, are some startling findings that should shake this complacency, but one finds them only with difficulty (and after 400 pages). For example, on some issues the mass public is just as libertarian as community leaders, and both are more tolerant than the Supreme Court. That is, ordinary citizens (even those with less than a high school education) endorse libertarian values denied or hedged by the Court as much as elites do (even though elites are more libertarian on Court-approved liberties). It is equally difficult, and equally intriguing, to discover that for issues on which both the Court and elites are nonlibertarian, the poorly educated public is more tolerant than the well-educated public. And although *Dimensions of Tolerance* points them out, it makes little of the facts that some liberals would deny civil liberties to their opponents, or that economically conservative masses are more libertarian than economically conservative public and private officials, or that both liberal and conservative elites (but not masses) are more tolerant of Nazis than of student activists. The authors, in short, are good scholars who imaginatively analyze their data and carefully report findings that contradict their thesis; but they do not have an eye for anomalies. As a consequence, the book has a profound predictability which will serve mainly to reinforce the self-satisfaction of liberals and elites.

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39–40; U.S. Bureau of the Census, *Money Income and Poverty Status of Families and Persons in the United States, 1982*, Current Population Reports, ser. P-60, no. 140 [Washington, D.C.: Government Printing Office, 1983], p. 7.) Among year-round, full-time workers, women earned 64 percent of men's earnings in 1955 and 62 percent of men's earnings in 1982. (U.S. Department of Labor, *The Earnings Gap between Women and Men* [Washington, D.C.: Government Printing Office, 1979], p. 6; Robert Pear, "Earnings Gap Is Narrowing Slightly for Women," *New York Times* [October 3, 1983], sec. B.)

3. See, e.g., James S. Fishkin, *Justice, Equal Opportunity, and the Family* (New Haven, Conn.: Yale University Press, 1983); Douglas Rae et al., *Equalities* (Cambridge, Mass.: Harvard University Press, 1981); Guido Calabresi and Philip Bobbitt, *Tragic Choices* (New York: W. W. Norton & Co., 1978).

But “no surprises” indicates virtues as well as defects. Indeed, the flaws of *Dimensions of Tolerance* would not merit much consideration if they did not rest on such a strong methodological and substantive base. More important, perhaps, *Dimensions of Tolerance* would not be able to epitomize liberal political science as it does if it did not share the strengths of this tradition along with its weaknesses.

What are its strengths? Above all, its subject. As McClosky and Brill point out in their concluding sentence quoted above, they hone in on “the norms to which the American political culture, from the beginning, has been dedicated.” These norms—the assertion of rights even (especially?) for those who are hated or feared—are surely the most exciting and worthy element of liberalism. The authors are eloquent and compelling in their claim that in a liberal society rights are not privileges to be earned or won, but claims to freedom that inhere in all members. Even those who would deny rights to others, or who have done nothing praiseworthy in their entire lives, have the right to speak, worship, and assemble as they please.

A second value permeating this book is equally constitutive of liberalism, although perhaps less universally admired. That is individualism—the belief that each person may think and (within certain bounds) act as he or she pleases. The individualism that *Dimensions of Tolerance* hymns is the kind most admirable in liberal theory, since it focuses on political speech and action, due process, and privacy rather than on material accumulation or competition for power. At its core, then, the book has no surprises for the right reason: it focuses on values that constitute American political ideology at its best.

The methods of *Dimensions of Tolerance* also have great strength. Survey research seems especially suited to a nation that asserts the importance of individual beliefs. That, after all, is what survey research is all about—finding out what individuals believe. If one can ask the right people the right questions, one can simultaneously advance social science knowledge and reinforce the democratic conviction that what ordinary people think matters. As Willie Loman says, “Attention must be paid,” and pollsters do pay attention to people who ordinarily are voiceless to political decision makers and theorists alike. Here, too, the lack of surprises indicates strength. The authors know how to do survey research well: their item format yields a lot of information while avoiding many serious flaws of question wording; they chose their mass public sample well and their elite sample admirably; and they use simple and straightforward statistical techniques that suit their task as they define it. Thus there are no unpleasant surprises in their empirical analysis—a comment that amazingly few books of this magnitude merit.

#### WHY ARE SOME PEOPLE TOLERANT?

But apart from the problems of “no surprises” described above, even these admirable values and methods are finally unsatisfactory. For our purposes, what matters is that the ways in which they are unsatisfactory provide almost a textbook case of the problems of behavioral political science and liberal theory.

Critiques of behavioralism are hardly novel, but in this case the methodological weaknesses give us an opening into the underlying normative problems of this analysis. In brief, survey research as conducted and interpreted by McClosky and Brill is insistently individualistic and rigorously close-ended, and the book mixes facts and values in problematic ways. Each characteristic limits the depth and, therefore, worth of this book.

Consider methodological individualism first. By asking people a series of questions and focusing only on the aggregation of their answers, the book leaves no room for structural or collective analysis. In quintessential liberal fashion, each answer has exactly the same status as every other answer, and nothing is considered except the answers. This observation does not fault what was done, but it does suggest important things left undone. The authors point out, for example, that professionals and the wealthy are more tolerant than workers and the poor, but they do not consider what having a low income or manual job might do to shape the context within which one looks at civil liberties. Granting rights of due process is more costly to residents of high-crime ghettos and slums than of low-crime suburbs—a fact which merits attention in a discussion of “social learning.” I am arguing here not that slum dwellers are justified in intolerance toward criminal suspects, but that structures and environments may better explain attitudes than Freudian defense mechanisms do. They may not; we should not assume that environment shapes views in predictable ways any more than we should assume that it is irrelevant. The point is that an insistently individualistic survey instrument is a poor tool for considering this whole issue.

Further, McClosky and Brill not only do not consider how elites come to occupy their position—which, after all, is not their task—but they implicitly deny the relevance of this question in such phrases as “[elites] experience a greater measure of social learning than do individuals who, *for whatever reason*, have had little opportunity to participate actively in the public affairs of the community or nation” (p. 238; my emphasis). This point is important because of the book’s underlying presumption that elites are better people, at least in the sense that they are more libertarian, than the masses. Even if we accept the claim that elites are more tolerant (an issue that I will address below), we still do not know what to make of that fact: are they elite because they are more tolerant (self-selection or systemic bias), or more tolerant because elite (social learning), or elite *and* tolerant because of some other factor (intelligence and flexibility, or an inherited status that permits them to look with equanimity on the actions of less-powerful others)? These issues are crucial to any understanding of the relation between tolerance and status, but an individualistic survey focusing only on one moment of time does not even lead us to ask such historical and structural questions, never mind help us to answer them.

A final problem of methodological individualism is that it limits the authors’ vision of not only observers of civil liberties but also of actors. That is, most questions address private actors doing or saying something. Government enters the picture frequently, of course, but seldom as an expressor of rights. This framework keeps McClosky and Brill from considering, to take only one issue, whether the state has the same right to free speech or “speech plus” (symbolic action) as private actors, or whether the state speaks so much that private actors are drowned out, or whether the state shapes the environment within which speech occurs in ways that inhibit individuals’ desire or capability to speak freely. Mark Yudof argues that the eighteenth-century image of the First Amendment as an issue of minority speakers against majority silencers, perhaps using the government as censor, is largely outdated. The government itself is now a dominant speaker and symbolic actor; an emerging issue is how to limit communication by the state so that it does not curtail individual expression.<sup>4</sup> However, the exclusive

4. Mark G. Yudof, *When Government Speaks: Politics, Law, and Government Expression in America* (Berkeley and Los Angeles: University of California Press, 1983).

use of survey research inhibits consideration of actors other than private individuals and keeps the authors from noticing that forces such as corporations or government are appropriately subjects of civil libertarian concern.

Consider next the relation between social scientific analysis and normative argument—our old friend, the fact-value distinction. McClosky and Brill are much too sophisticated to fall into the normal trap for the naive; they are very clear about their own values, and the book is at its most persuasive when they explicate the beauty and urgency of guaranteeing rights and liberty. So they do not pretend to have no stake in the outcome of their investigation. But they do succumb to a more insidious form of social scientism. Despite their best intentions, McClosky and Brill cannot help but see tolerant elites as better, not only more knowledgeable or thoroughly socialized, than intolerant masses. In their laudable eagerness to promote civil liberties, they sometimes mix up endorsement of tolerance with endorsement of tolerators. This point comes from a different angle to the problems just raised—their lack of consideration of why some people are elites and others not, and why elites might find it easier to be tolerant than masses. By associating tolerance with elite status, and by not considering how elites achieve their status and why elites are tolerant, *Dimensions of Tolerance* leads us to believe that elites are better people than masses are, and possibly, that they are elites because they are better people. This subtle elitism is hard to pinpoint because the authors deny it explicitly and sometimes are careful to avoid it. But it emerges in such sentences as “Learning libertarian norms . . . requires not only motivation but a measure of knowledge, enlightenment, and openness to alternative modes of thought and conduct that are not often found among the mass public” (p. 56), and

The low level of political interest displayed by vast numbers of the American people—a level of apathy that is strikingly revealed in their low turnout even for presidential elections—also manifests itself in the low level of awareness and sophistication exhibited by members of the general public when they confront the many vexing issues associated with the enforcement of civil liberties. Because they have assumed more active and far-reaching roles, the opinion leaders are more likely to exhibit greater sensitivity to public life and the values that govern it. . . . Their awareness of diversity is reinforced by their greater ability to move about socially, intellectually, and even physically. . . . They are also more inclined to embrace coherent belief systems and ideologies, and to draw from these beliefs and attitudes appropriate inferences for public policy and civil liberties. [Pp. 418–19]

What is ironic about such statements and the findings on which they rest is that they can be used as evidence for two very different theories of democracy. One, to which McClosky and Brill probably subscribe, is that we are well served to have appropriately socialized elites govern us, given the sad but unmistakable fact that the masses are basically intolerant. We may deplore it, but we must accept that liberal democracy probably would not survive if elites did not hold disproportionate power. The other theory, held by such people as Sheldon Wolin and Benjamin Barber, is that these data indict elite-run “democracy” and show that we must transfer power downward to the masses.<sup>5</sup> If, as McClosky and Brill

5. Sheldon Wolin, “The People’s Two Bodies,” *Democracy* 1 (1981): 9–24; Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley and Los Angeles: University of California Press, 1984).



argue, people learn (and thereby almost always embrace) civil libertarian norms by exercising power in conjunction with others also exercising power, then the more dispersed power is, the more libertarian the masses will become. If elites are libertarian because powerful, nonelites will become libertarian by becoming powerful.

These conflicting interpretations of the same evidence require us to consider how elites come to be elites. If, as McClosky and Brill sometimes imply, they achieve their status (and tolerance) because they are smarter, more self-confident, and more enlightened than the masses, then we could not hope to transfer tolerance downward even if we did transfer power. In that case, we should thank our lucky stars that merit rises to the top. If, however, the alternative theory that McClosky and Brill ignore is the case—that elites (and masses) achieve their status through birthright, race, sex, or sheer blind luck—and if the theory of social learning is correct, then we have no reason to believe that tolerance cannot be transferred downward, and every reason to transfer power (and therefore tolerance) to the masses.

#### WHAT IS TOLERANCE?

Up to this point in the discussion, I have been assuming with the authors that there is one clear set of civil libertarian norms which we all understand, if not accept. The issue has been precisely that—who accepts these norms, and why? The final methodological problem, however, raises a challenge to that assumption. It leads us to ask not who is libertarian and why, but what is libertarianism and how do we know? We move, in short, from questions of democracy to questions of liberalism.

Let us begin with the methodological angle and consider the problems stemming from the book's complete dependence on close-ended interview questions. This point has several facets. First, the authors cannot find out directly why their subjects responded as they did to the inevitably ambiguous stimuli of survey items. Most of the questions are admirably clear, but some are not. (What is the tolerant response to "When countries like Chile, Russia, or Uganda clearly violate the human rights of their citizens, which of these policies should the U.S. follow: 1) Find a way to express American disapproval of such violations; or 2) Keep quiet, since the way foreign governments treat their own citizens is not really our business"? If the unit of analysis is nations, the second answer is the tolerant choice; if the unit of analysis is individuals, the first answer is preferable.) Even for relatively unambiguous questions, the authors can do nothing but infer through "intuitive observation and reasoning" why people answer as they do. Do people seek to restrict abortion because they see women as predominantly child bearers rather than citizens; or because they weigh the rights of the father more heavily than most abortion proponents do; or because, in their understanding of civil liberties, liberties of the fetus dominate those of the mother? If opposition to abortion can conceivably come from anti-civil-libertarian views, alternative civil libertarian views, or super-civil-libertarian views, to equate opposition to abortion with intolerance is merely to assume that civil liberties are exactly what the Supreme Court or scholars say they are. For some issues, of course, this problem is less severe—citizens probably (although we cannot say for sure) share a reasonably similar understanding of the core meaning of free speech, so we can perhaps safely interpret their acceptance or rejection of it. But the most interesting issues lie precisely on the boundaries of common understanding, and we do not necessarily

know what leads citizens to reject abortion, or accept licensed prostitution, or define homosexuality as a life-style rather than an illness (to paraphrase some of the survey questions). By not including open-ended questions or even closed-ended probes to explore why citizens make the choices they do, the authors must either assume that they (and right-minded Americans) know exactly what the civil libertarian response to complicated issues is or admit that they cannot dig very deeply into Americans' belief system.

The other problem with a fixed-choice survey format with no follow-up questions is that the authors can say little about connections among responses that do not conform to the civil libertarian model. This is the old bugaboo of belief system studies—the problem of attitude consistency and coherence. The problem is not, strictly speaking, the methodological issue of open- versus closed-ended questions but, rather, the substantive issue of internal versus external logic. That is, a fixed-choice format tells us whether or how much people hold the same set of beliefs as the authors about many topics—whether, in other words, their internal logic conforms to the external logic of the survey. Such surveys permit us to say with considerable certainty that *X* percent of *Y* type of Americans are libertarian on issues A to C. If, however, people do not give the “tolerant” responses, or do so on some issues but not others, we know nothing about their belief system except that it is not the tolerant one envisioned by the surveyors. It is easy to conclude that therefore they are intolerant or inconsistently tolerant, but such a conclusion is not warranted. All we know is one thing that their belief system is not—we do not know what their belief system is. Their internal logic may be more subtly libertarian than the survey choices permit respondents to be, or it may be communitarian rather than individualistic so that questions about individual rights are irrelevant to them, or it may be incoherent or narrow minded. We simply do not know.

This point of logic is bolstered by empirical research that uses other interview formats to reveal internal logics that would appear incoherent or intolerant on most fixed-choice questionnaires.<sup>6</sup> There are, after all, anti-abortion feminists, pro-abortion Catholics, social libertarians and economic conservatives, political egalitarians and economic differentiators (they are called liberals). And all such “inconsistent” thinkers may hold views that from their perspective are compelling, coherent, and appropriately tolerant. They may not, but survey research as conducted by McClosky and Brill cannot distinguish the idiosyncratic from the unintelligible or intolerant.

We have reached at this point one of the most significant substantive issues for liberal theory raised by *Dimensions of Tolerance*. In brief, how do you know a civil liberty when you see one? McClosky and Brill answer this question implicitly with a rule that makes as much sense as, but not necessarily more than, any other. They begin with the Bill of Rights, particularly with First, Fifth, Sixth, and Fourteenth Amendments, and end with current (as of 1977) Supreme Court interpretations of those amendments. They recognize, indeed insist on, the in-

6. My own work in *What's Fair: American Beliefs about Distributive Justice* (Cambridge, Mass.: Harvard University Press, 1981) is one source of the contentions in this section. See also Robert E. Lane, *Political Ideology* (New York: Free Press, 1962); Carol Stack, *All Our Kin* (New York: Harper & Row, 1974); Milton Rokeach, *The Nature of Human Values* (New York: Free Press, 1973); Richard M. Scammon and Ben J. Wattenberg, *The Real Majority* (New York: Coward-McCann, 1970); and works by Robert Coles and Studs Terkel.

teresting phenomena of implied rights such as privacy and contested rights such as homosexual marriage, and they touch on contradictions among rights such as “free press versus fair trial.” But they do not really address the radical uncertainty that these issues provoke. How can rights simultaneously inhere in all persons and vary according to court doctrine? Are rights discovered, invented, created, or what? What if the Court reverses itself, as *Brown v. Board of Education* rejected *Plessy v. Ferguson*? What happened to the right to separate but equal public accommodations; how can an inherent right disappear? What if rights conflict: why did the rights of the fetus dominate until 1973 and the rights of pregnant women take precedence after that date? *Dimensions of Tolerance* seems to imply that a right is what the Supreme Court says it is at the moment, but that answer is hardly compelling.

McClosky and Brill are not writing as constitutional scholars, and constitutional scholars are not noted for their unanimity on the definition and boundaries of rights. So it would be unfair to expect the authors to resolve the questions raised above. But the absence of any discussion of how rights are defined leads to troubling gaps in the analysis, as well as to troubling questions about the nature of liberalism itself. The book does not discuss, for example, gun control or the rights of parents over their children; is that because the Court has not definitively ruled on these issues? Nor does it address property rights, welfare rights, civil rights, and the whole set of “positive freedoms” invoked by these terms. McClosky and Brill say that these issues primarily involve equality rather than freedom and are to be addressed in their next book. Fair enough, but we readers should at least be aware of the huge set of ideological baggage that underlies a sharp distinction between rights defined as liberties and rights defined as equalities.

Most important, the question of what liberty is feeds directly into questions about the main thesis, that elites are more tolerant than masses. The connection is clearest in the most interesting chapter, which tackles the complicated issues of newly evolving rights. One interpretation of the data in chapter 5 is that elites are not more libertarian than masses but simply more attuned to the vagaries of Supreme Court doctrine. Once the Court has ruled on an issue, such as women’s employment rights, abortion, and homosexual rights, elites adopt the “new” right more quickly than the masses do. But on constitutionally murky issues such as the right to choose when to die from a terminal illness, limits on wiretapping, or the use of dogs to sniff out narcotics in airports, elites and masses differ little. If rights are what the Supreme Court says they are, it is neither terribly surprising that elites endorse controversial claims more (more quickly?) than masses do nor terribly significant for liberal theory. Only if the book’s operationalization of liberty is the correct one, or only if elites are always more libertarian than masses regardless of current fashions in defining liberty, does the elite-mass distinction carry a lot of weight (although exactly what weight is not clear, as I pointed out above).

## LIMITS TO LIBERTY

Reinforcement for the claim that McClosky and Brill are somewhat arbitrary in their specification of liberty, in ways that inadvertently magnify differences between elites and masses, comes in their discussion of the appropriate limits on freedom. The problem lies in their acceptance of the need to “make fine discriminations about the optimal balance between freedom and control” (p. 432). In their eyes, liberties are not absolute. At a minimum, they must be limited by considerations

of "time, place, and manner"; at a maximum, they may at some point "cease to be protected because they are troublesome beyond a community's capacity to tolerate" (pp. 20–21). Although McClosky and Brill do not realize it and, thus, make things confusing for philosophers, they are making two claims here. The first is that there is an appropriate, identifiable distinction between procedural constraints, which are necessary, and substantive constraints, which are unacceptable. The second is that some values may be permitted to override the expression of liberties, but other values may not. Let us consider each of these issues in turn.

The authors assert that rights may, indeed must, be subject to procedural controls, but they may not be limited because of the substantive content of their expression. The difficulty for *Dimensions of Tolerance*, and by extension for a liberal society, is that the "fine discriminations" between procedure and substance too often seem arbitrary or, worse, drawn along lines that the authors and elites, but not necessarily the mass public, approve. For example, is government regulation of scientific experiments on human subjects a substantive (unacceptable) constraint on academic freedom? Apparently so, according to the authors. Is requiring protest marchers to obtain a license to march on public roads a substantive constraint on freedom of speech? Apparently not, according to the authors. Yet both regulations are a form of government control over the circumstances of speech or "speech plus." One could plausibly argue that in this comparison, the distinction between acceptable and unacceptable constraints on liberty seems to depend more on the actors (academics vs. protesters) or their actions (research or protest) than on the analytic difference between procedure and substance. Furthermore, one could plausibly make just the opposite distinction between procedural (acceptable) and substantive (unacceptable) regulations. Subjects of notorious experiments would surely see government regulations of academics as protecting civil liberties;<sup>7</sup> Nazis seeking to march in Skokie, Illinois had ample evidence that licensing of protesters substantively constrains protest.

Even more troubling is a contrast that the authors themselves draw: "A mass demonstration held in a public park might receive police protection, but might be dispersed if held at the city's busiest intersection. A cross burning by the Ku Klux Klan might more easily be tolerated in a field outside of a southern town than in Harlem" (p. 24). The most obvious distinction between the acceptable and unacceptable expressions of opinion in each of these examples is that the acceptable one would have relatively little and the unacceptable one relatively great impact on unsympathetic passersby. Is free speech to be endorsed only when it has no effect? If this is the case, then the difference between tolerant elites and intolerant masses is much less than meets the eye.

This point should not be overdrawn. McClosky and Brill are sometimes very clear about the distinction between procedural and substantive constraints, and the distinction has a long, complex, and honorable history. But on occasion, both in the book and in liberal practice generally, it seems to have more to do with what outcomes elites find desirable than with anything else.<sup>8</sup>

McClosky and Brill, and too many other liberal theorists, run into more trouble in their discussion of when other values may acceptably constrain liberty.

7. See, e.g., James H. Jones, *Bad Blood: The Tuskegee Syphilis Experiment* (New York: Free Press, 1981).

8. For a fascinating argument that substantive constraints on rights are acceptable—even that rights must have substantive content to be of deep value—see Sheldon Wolin, "What Revolutionary Action Means Today," *Democracy* 2 (1982): 18–22.

It is possible to say “never”—that rights such as free speech or freedom to worship may never be constrained by another value in a liberal society. McClosky and Brill eschew that position, however, in their claims that “freedom, however desirable on balance, is not invariably a social good” (p. 20) and “freedom involves not only the removal of restraints, but a weighing and balancing of utilities, in which the absence of restraint is only one element” (p. 23). Here they are, perhaps innocently, opening a can of worms. What does it mean to say that rights may (must) be constrained by utilities? Which rights? Whose utility? Who is to weigh and judge the competing claims of rights and utilities, and by what criteria? And so on, for forests-worth of journal articles and legal briefs.<sup>9</sup>

I have room here to make only one contribution to this debate. My greatest concern is that too often McClosky and Brill, and decision makers in liberal society for whom I am using McClosky and Brill as stand-ins, answer these questions in ways that benefit elites and harm masses. In this book of course, the benefit consists only in making elites look tolerant and masses intolerant, but in real life the benefits may be considerably more substantial. To limit myself to the book: why, for example, permit other values to override the freedom of “desecration of the flag . . . by partisans of a foreign power with whom we are at war” (pp. 23–24), but insist that liberty requires full legal rights for people suspected of horrible crimes? Consider the following passage:

The right to refuse to bear witness against oneself is . . . a protection based on complex and subtle considerations. . . . Many people cannot understand why suspected criminals should be permitted to “hide behind the law,” especially since their alleged crimes have demonstrated disrespect for the law. . . . To many observers it seems clear that innocent defendants would be eager to testify in order to introduce evidence in their own defense; while guilty defendants would refuse to testify in order to conceal evidence that might convict them. . . . These and related arguments, so often raised by critics of the Fifth Amendment’s protection against self-incrimination, have a strong appeal for large segments of the population; and one wonders whether the arguments in defense of the principle would enjoy much acceptance were it not for the frequency with which the principle is enunciated in the media. Not surprisingly . . . support for the principle is usually greater among the elites than among the mass public. [Pp. 157–58]

A lot of things are happening in this passage. One is the subtle and presumably unintentional denigration of the mass public that I discussed earlier: masses are libertarian mainly because television teaches them to be so; elites are libertarian because they understand “complex and subtle considerations.” Another is the absence of consideration of structural or environmental circumstances which I also discussed earlier; the authors ignore the possibility that masses view crime differently than elites because they suffer more from it or lose more frequently in court. But most important here is the possibility that the mass public in this case is placing the utilitarian value of saving as many lives as possible over the libertarian value of freedom from self-incrimination. Why is this form of consequentialism less acceptable than the consequentialism that the authors (and elites and the Supreme Court) espouse in protecting the flag—and citizens’ sensibilities—during a war? Alternatively, the masses may define liberty as the right

9. One of the most persuasive efforts to combine the best of rights theory with the best of utilitarianism is T. M. Scanlon, “Rights, Goals, and Fairness,” in *Public and Private Morality*, ed. Stuart Hampshire (Cambridge: Cambridge University Press, 1978), pp. 93–111.

to walk the streets in safety, rather than as the right to avoid self-incrimination. Why is the substantive definition of liberty wrong, and the legal definition right? (Note, by the way, that we do not know why the masses would choose to limit suspects' rights, since they were not asked.) There may be a compelling answer that would lead us to agree with McClosky and Brill's choice, but none is offered here. And the effect of such a silence is to lead readers to see elites as more tolerant or better judges of when tolerance is preferable to some other value (and therefore better Americans) than masses. Only if the Supreme Court has struck just the right balance between freedom and utility, or made exactly the right choice of which liberty to foster above all others, can we assume that elites who accept Court doctrine really do know best.

#### LIBERTY'S LIMITS ON OTHER VALUES

Before concluding, let me return one more time to McClosky and Brill's basic assumptions about liberty in order to raise one final problem of liberal theory. Assume once more for the sake of argument that there *is* a relatively clear-cut set of civil liberties which most people can agree on, even if they reject them, and that in general, these liberties ought to dominate other substantive values in a liberal society. These assumptions raise a different set of questions about alternative values and alternative specifications of liberty than those I have just discussed. The very insistence that all viewpoints and most actions must be tolerated necessarily elevates one set of values above all others. There is no way around that conundrum; tolerance of all values requires that one value (tolerance) dominate all others. To some, this point is merely a clever ploy in a parlor game, on a par with "All the sentences in this review are false, including this one." But to others, this point is a serious problem; their values or their definition of freedom (whether class revolution, fundamental Protestantism, or vegetarianism) are necessarily denied in a tolerant society. Some can wall themselves off into a separate community which lives according to an unconventional set of religious, moral, or sexual guidelines; generally the courts are sympathetic to such groups so long as they do not impinge on others. But other values—class or racial revolution, for example—cannot be satisfied in a small separatist community. They must involve the whole society. The courts have not been at all sympathetic to such values as soon as they move from speech to action. So libertarianism must deny the validity of some values and some understandings of freedom—an awkwardly intolerant position.

And once again, the question of the inhibitions required by tolerance is particularly problematic when the tension between civil liberties and other values parallels the split between elites and masses. When elites hold the values that epitomize liberalism, at least in the eyes of other elites, there is little opportunity for the mass public even to express, never mind institute, coherent and powerful alternatives. To this point, the book is mute witness; civil liberties are lovingly dissected and other values are at most inferred from intuitive observation.

#### THE IMPORTANCE OF ASSUMPTIONS

What can we conclude from all this? If McClosky and Brill are correct in all their assumptions, then American liberalism will survive only to the degree that it is not democratic. That is, so long as elites (defined by political activism) remain relatively tolerant and masses (defined by political quiescence) remain relatively intolerant, then liberty will thrive only under elite rule. This conclusion is

strengthened if one believes, as the authors sometimes appear to, that elites generally deserve their position because they are more intellectual, enlightened, sophisticated, or otherwise meritorious. In that case, the best individuals and the best values can reinforce one another, so long as the masses remain quiet.

But if McClosky and Brill are incorrect in any of their assumptions, their conclusions do not hold. If, for example, elites simply hold different, not more, libertarian views than the mass public, then the preservation of liberalism does not necessarily require restraints on rule by the masses. If elites are less supportive of liberty than attuned to Supreme Court decisions, the same conclusion holds. Alternatively, if it is the fact of exercising political power that makes one tolerant, and if anyone who exercises power is capable of the same social learning, then liberalism requires even more democracy to thrive. And if elites are tolerant because tolerance is less costly, psychologically or physically, for the well-off and self-confident, then the pursuit of liberty implies considerable redistribution of resources and well-being. If government and corporations are increasingly effective as expressors of rights, then the whole relationship among rights, persons, and institutions needs to be rethought. If the very meaning of rights and liberties is unclear, or if the meaning changes with the times, then liberty is less tied to liberalism than the authors think and perhaps less tied to elite domination. If, to follow another branch of the “what if” tree, basic liberties should not be limited at all, even elites are insufficiently libertarian. Or if appropriate limits are really to be class neutral, then perhaps the distinctions between procedures and substance, and between legitimate and illegitimate overriding by another value, need to be rethought. Finally, if libertarian tolerance is not the most important value for a society to foster, then the civil libertarian state is not the best state. If, that is, the mass public holds coherent, consistent, compelling—albeit nonlibertarian—views, then perhaps the truly democratic state would not end up being very liberal. And so on. Whether deliberately or not, *Dimensions of Tolerance* raises all sorts of fascinating questions that go to the heart of liberal theory. I only wish that the authors had made more of their opportunity and their wealth of data.