

Toleration, Persecution, and State Capacity

1.1 Introduction

1.1.1 Three Myths about Religious Persecution

The relationship between religion and the state remains contentious. Religious differences continue to be a major source of tension and sometimes violence across the world. Even in liberal democracies there are frequent disagreements about the scope of religious freedom. Do states have the right to regulate religious clothing? Can the state prohibit religious organizations from discriminating against individuals who do not share their beliefs? Should states fund religious schools? How stable are institutions that support religious liberty?

We do not provide direct answers to all of these questions. Rather, we argue that to tackle issues such as these we first need to know where our modern notions of religious freedom come from. This requires an understanding of the processes that governed the emergence of religious liberty. It requires not just a knowledge and understanding of history, but also an appreciation of the political and economic challenges that confronted premodern states. This is what we provide in this book.

Doing so requires confronting several popular myths that have grown up around the subject of religious toleration. The first myth is that religious violence was ubiquitous in medieval and early modern Europe. This claim is repeated in popular histories and is sometimes accompanied by the claim that other parts of the world such as Islamic Spain, the Middle East, or the Mongol Empire were comparatively tolerant. Books and films have shaped a widely held view of the Middle Ages and early modern period in which we are led to believe that the execution of heretics and witches was an everyday occurrence. This reflects the influence of novels like Umberto Eco's *The Name of the Rose* and less edifying forms of entertainment such as the 2010 film *Black Death* starring Sean Bean. These popular depictions of medieval

Europe suggest that religious persecution was an ever present feature of life in the past. In many respects, this is a reassuring image. At least in the West it allows us to view religious violence as the product of intolerant and superstitious individuals.

But were people in medieval Europe, in fact, more prone to persecute religious minorities? An alternative view is that medieval Europeans, like all people, responded to the incentives generated by the institutions that surrounded them. Religious persecutions did not reflect fanatical or irrational beliefs. Rather, they reflected the political economy of the premodern world, in which rulers depended on religious authorities for legitimacy.

Most of the time, religious violence was largely contained. The popular characterizations of the premodern period are, in many respects, misleading. They reflect nineteenth- and twentieth-century concerns as much as they do historical realities. A body of work by historians writing from the 1970s onward has established that witches were, in general, not persecuted in medieval Europe and that the persecution of heretics was rare before 1200, and with some well-known exceptions, sporadic until the Reformation. Even that most reviled institution – the Spanish Inquisition – executed only a tiny proportion of the individuals whom it investigated. Moreover, its fury was largely directed not against Protestants but against converted Jews. Nonetheless, though religious violence was far from ubiquitous in premodern Europe, there was also no religious freedom. Conditional toleration worked by compartmentalizing religious communities into their own separate legal and often physical spheres. In what follows we highlight the costs – both in lives and coin – of organizing society in this manner.

A common view attributes the rise of religious freedom to a changing intellectual climate and to arguments made by thinkers such as John Locke, Baruch Spinoza, and Pierre Bayle for religious toleration. Our approach is different. We ask: “If these thinkers were responsible for the rise of religious liberty in Europe, then why did they come to prominence when they did, at the end of the seventeenth century?” If ideas are all that mattered, then why didn’t religious liberty take hold in Europe before the seventeenth century? There were, after all, thinkers writing about toleration during earlier periods.

As early as the fourth century, Quintus Aurelius Symmachus (345–402 CE) put forward a credible case for intellectual pluralism: “We gaze up at the same stars; the sky covers us all; the same universe encompasses us. Does it matter what practical system we adopt in our search for the Truth? The heart of so great a mystery cannot be reached by following one road only” (Symmachus, 1896). Paulus Vladimiri delivered a treatise at

the Council of Constance (1414) arguing that Christian and pagan nations could coexist in peace. Why were these arguments unconvincing to their contemporaries?

We propose that ideas played a less crucial role than did the changing incentives facing European rulers in the early modern period. The transformation of early modern economies and states led to the gradual recognition of the importance of religious freedom.

A final misguided feature of our popular image of the past is that the main source of religious violence was the state. Political authorities are often portrayed as having encouraged or used religious persecution for their own ends. The state was rapacious (e.g., *Robin Hood* [1938]) and aspired to absolute power (e.g., *A Man for All Seasons* [1966]). It stoked religious persecution (e.g., *The Devils* [1971]), and above all, it is portrayed as arbitrary and willing to use power uniquely in the interest of the elite against society as a whole (e.g., *The Three Musketeers* [1973]).

But this focus on the oppression of the individual by the all-mighty state largely reflects modern concerns. The state – as we understand it today – was largely absent from the lives and experiences of ordinary people in the premodern world. Authority, as encountered by villagers and townspeople in the medieval and early modern world, was almost always local. While medieval and early modern states did use religious persecution to shore up secular power, religious leaders and local elites were also frequent instigators of religious coercion. In many instances, the elites at the center of government were more liberal than were local elites.

This book seeks to replace these popular images of the rise of religious freedom with a novel account. We do this by studying the institutions that governed the premodern world; in particular we focus on the importance of identity rules. These are rules for which either the form of the rule or its enforcement depends on the social identity of the parties involved (e.g., religion, race, or language). In contrast, impersonal rules are rules for which both the form of the rule and its enforcement are independent of the identity or status of individuals.¹

Reliance on identity rules both precluded genuine religious freedom and was incompatible with liberalism or the liberal rule of law. We argue that the rise of modern states – states capable of enforcing general rules – provided the precondition for religious peace and for the eventual rise of religious and other liberal freedoms.

A consequence of the fact that religion and political power have been bound together since prehistory was an absence of religious freedom throughout most of history. Even when religious dissidents were not being burned alive for their beliefs, individuals were typically not free to change religion or practice their faith. We investigate the reasons that led some

states to persecute individuals for their religious beliefs and other states to refrain from persecution. Doing so allows us to explain why religious persecutions eventually declined in Western Europe, leading to the rise of both religious and other liberal freedoms.

In exploring the connections between state development and religious tolerance, we shed light on a larger story – that of how the rule of law first emerged in Europe. States can govern by devolving power to local elites and allowing them to set rules. The rules that typically result are identity rules.² Rules based on religious identity played a vital role in maintaining order in Europe for many centuries. But they also imposed costs: treating individuals differently, and placing them into separate legal categories, on the basis of their identity, prevented individuals from reaping the benefits that come from trading and sharing ideas across religious boundaries and opened the way for religious persecution.

The Victorian sociologist Henry Sumner Maine called the transition from identity rules to general rules the move from status to contract (Maine, 1861). Maine described the development of societies from legal systems in which individuals were bound by compulsory obligations that derived from their status to societies organized on the basis of obligations individuals enter into by volition. Reliance on contracts and on general rules is conducive to individual liberty while status and identity rules are inimical to it. This is also an important part of the emergence of what North, Wallis, and Weingast (2009) call open access orders and what Acemoglu and Robinson (2012) call inclusive economic and political institutions.

As states built their own apparatus for tax collection and the enforcement of laws, they were forced to abandon identity rules and to employ more general rules of behavior. These general rules increased the legibility of society, to use James C. Scott's evocative term; they made it easier for governments to govern (Scott, 1999). Building on the work of Thelda Skocpol and Michael Mann, scholars have adopted the term state capacity to describe this increase in the taxing and rule enforcing powers of the state (Evans et al., 1985; Mann, 1986).

The growth in state power that we document is one of the key facts of the last few centuries. The process of state building was often brutal and we view its results with a degree of ambiguity. On the one hand, it made possible the totalitarian nightmares of Nazi Germany and Soviet Russia. On the other hand, modern states bring many benefits, especially when viewed in comparison to their premodern predecessors.

Our argument is based on three claims. First, throughout history rulers have used religion to legitimize their power (Chapter 2). In medieval Europe, a partnership between a comparatively strong religious authority

and a weak state emerged that resulted in reliance on religious legitimation and the enforcement of identity rules to govern (Chapters 3–6).

Second, as rulers tried to raise more tax revenue, tensions grew between the existing identity rules based on religion and the ability of states to govern. These tensions were exacerbated by shocks such as the Black Death and the Reformation. The latter led to intense religious persecution (Chapters 7–9).

Finally, unable to restore the old partnership between religion and the state, many policymakers chose to resolve the tension between religious identity rules and state power by abandoning identity rules altogether. Instead, they developed systems of governance that ignored individual differences and subjected all to common sets of laws and regulations (Chapters 10 and 11). This last step, which reinforced (and was, in turn, reinforced by) developments in the intellectual sphere, laid the foundations for modern liberal states governed by rule of law.

The final part of the book focuses on the consequences of this transformation. In Chapter 12 we consider the relationship between Jewish communities and city growth. Chapter 13 studies how national identity came to replace religious identity in enforcing social order. Chapter 14 applies the argument to other parts of the world including the Middle East, China and Japan, and North America. Chapter 15 studies the rise of nationalism and the totalitarian interlude of the twentieth century. Chapter 16 concludes.

To establish these claims, we bring together new data on the persecution of minority groups throughout European history. This wealth of evidence allows us to systematically analyze the relationship between persecution and political development and to uncover underlying causal relationships.

Addressing the issue of causality requires counterfactual reasoning. Historians are often skeptical of such reasoning. For E. H. Carr, “a historian should never deal in speculation about what did not happen” (Carr, 1961, 127). Michael Oakshott described it as “a monstrous incursion of science into the world of history” (quoted in Ferguson, 1999).³ But understanding what causes what *requires* counterfactual reasoning. David Hume described as follows the meaning of cause: “an object, followed by another, . . . where, if the first object had not been, the second would had never existed” (Hume, 1748, Part II). Hume’s reasoning can best be understood in the context of a controlled experiment. Suppose a group of randomly selected patients are treated with a new drug while those in another randomly selected group are assigned a placebo. If the treatment and control groups were *ex ante* indistinguishable, then the difference between the outcomes for these two groups *is* the causal effect of the drug. The outcome for the control group provides the relevant counterfactual with which to assess the drug’s effect.

Scholars interested in long-run development and history can rarely run experiments; by and large, we are limited to observational rather than experimental data. Nevertheless, economists have developed tools that allow us to construct counterfactuals and thus to estimate the causal impact of, say, bad harvests or higher taxes. For example, in Chapter 5 we estimate the impact of economic stress on the probability that a Jewish community will be persecuted. To overcome the lack of accurate data on local economic conditions in premodern Europe, we use estimates of temperature constructed by climate scientists. Because this proxy for economic stress is exogenous – unconnected with other factors that might cause an economic downturn and increase the probability of a pogrom, such as war or political crises – we can use it to credibly identify the effects we are interested in. In so doing, we make a counterfactual argument: the chances of a persecution in the absence of a decline in average temperatures would have been 50 percent lower.

Similarly, in Chapter 12, we assess whether cities that tolerated Jewish communities experienced more rapid economic growth. We find a correlation between the presence of a Jewish community and subsequent city growth. But this correlation could be biased if, for instance, Jews either chose to settle in faster growing cities or if they were forced to settle in stagnating ones. We disentangle these arguments and provide evidence that tolerating a Jewish community did indeed increase city growth, at least from 1600 onward. Of course, the statistical tools we use have their limitations. For this reason, we supplement them with qualitative evidence about what contemporaries thought and said.⁴

To begin with, let us see how identity rules worked for one particular group and how they were eventually removed. We focus on the experience of one of the most important, and visible, religious groups in early modern Europe: Jewish communities.

1.1.2 Identity Rules and Their Removal: Jewish Communities in Central Europe

The experience of a member of the Jewish community of the Imperial Free City of Frankfurt-am-Main around 1600 is illustrative. From 1462 onward, Jews had been confined to the *Judengasse* – a single street, a quarter of a mile long and only twelve feet wide. They faced countless regulations that restricted their ability to leave the *Judengasse* (not during the night, on Sundays, or on Christian holidays). They were not allowed to bear arms, and their status was explicitly inferior to that of Christian members of the city. They were obliged to wear a yellow ring as a sign of their inferior status and required to doff their hats every time a Christian called to them: “Your manners, Jew!” (Magnus, 1997, 19).

By the same token, Frankfurt's Jews had a measure self-governance. The community had its own laws concerning fraud, debasement of the coinage, and religious practice. They elected religious and secular leaders to represent them (the Hochmeister and Baumeister).

During the Renaissance, the Jewish community in Frankfurt flourished. Between 1543 and 1613 the official population of the ghetto increased from 260 to 2,700 persons.⁵ The Frankfurt community also became a cultural and religious center. When a Rabbinical Synod brought together Jewish leaders from Mainz, Fulda, Cologne, and Koblenz in 1603, it was in Frankfurt that they met. Students went to Frankfurt to study under famous rabbis such as Akiva b. Jacob Frankfurter (c. 1530–1596). All of this reflected on the degree of religious toleration that was granted to the Frankfurt Jews within the confining walls of the *Judengasse*. Like hundreds of other Jewish communities across Europe, the Frankfurt community was able to live in relative peace, but at the cost of being a separate and inferior class of citizenry.

The cluster of identity rules that governed Frankfurt's Jews are an example of conditional toleration. Similar rules guided the treatment of other religious minorities in premodern Europe. The uneasy peace between Protestants and Catholics prior to the Thirty Years' War was another instance of conditional toleration. So was the treatment of Catholics in Stuart England, where the queen (Henrietta Maria, wife of Charles I) was a Catholic and permitted her retinue of priests and a chapel, but Catholics were officially prohibited from inheriting property and Jesuits liable to being hanged, drawn, quartered for entering the country.

Conditional toleration was ubiquitous because it reflected the political economy of late medieval and early modern Europe. Political authorities maintained social order by keeping groups with different beliefs legally, and often physically, separated. The maintenance of civil order through legislated separation and discrimination was part of the institutional structure of all European states, ingrained in law, politics, and the economy.

This equilibrium based on conditional toleration had more or less disappeared throughout Europe by the late nineteenth century. To see how this transformation took place, consider the policies of a ruler like Joseph II, Habsburg emperor between 1780 and 1790.⁶ Joseph II sought to centralize the Habsburg realms, refusing to submit to separate coronations in Hungary and Bohemia. He attempted to "Austrianize" the Hungarian nobility by bringing them to Vienna; halved the number of religious holidays and abolished 700 monasteries, pensioning off half of the monks and nuns; abolished torture and capital punishment; expanded public education; and divided the disparate Habsburg territories into standardized administrative units (Evans, 1991).

One of Joseph II's most important reforms was the Edict of Toleration or *Toleranzpatent* of 1782. This act granted civic rights to Jews on the proviso that they be integrated with the rest of the population as active citizens.⁷ Distinctive dress codes for Jewish communities, such as the wearing of yellow bands or the ban on carrying swords, were eliminated. The tax on Jews known as the body tax was suppressed. In return Jews had to attend secular schools and learn German. Joseph's reforms restricted the use of Yiddish and Hebrew to purely religious contexts. Jews were discouraged from engaging in their "characteristic and deceitful trade" of usury and, instead, pushed toward work in manufacturing, transportation, and agriculture. These reforms dismantled the institutions of conditional toleration.

The *Toleranzpatent* was not popular among the Christian majority, and within the Jewish community there was far from universal support for it. The usual interpretation is that these reforms represented greater toleration toward Jews. Above all, however, the reforms were aimed at eliminating the *differential treatment* of religious groups by the state. As such, they represented a serious invasion into the lives of Jews. Less than welcome changes included a general Justice Patent restricting the authority of rabbinical courts; a Marriage Patent in 1786 that intervened in traditional Jewish family law; and a law requiring a two-day waiting period before burial that hindered traditional funeral rites. In 1787 Jews were even forced to change their naming practices by adopting family names. Perhaps most striking was a series of regulations enacted between 1784 and 1787 that forbade the centuries-old practice of leasing monopolies (on lending money, trade, etc) to Jews. As we will see in Chapter 4, this last reform marked a fundamental shift in how the state dealt with Jewish communities. Though Joseph II's successors tried to partially reverse this policy, further acts of toleration took place across Europe following the French Revolution and the old system of separation and conditional toleration was brought to a close.

Joseph II sought to make the Jews the same as everyone else, rather than permit a distinct society within society. Furthermore, it was not just regulations concerning Jews that were altered. Across almost every dimension of society, reforms were introduced that standardized rules with the consequence that it gradually became more difficult to discriminate against individuals on religious grounds.

Jewish emancipation, for example, though initially pursued by autocratic rulers such as Joseph II, came to be a signature liberal policy in the nineteenth century. Religious freedom laid the groundwork for freedom of conscience and freedom of thought more generally and is therefore properly seen as a cornerstone of liberal freedom.

1.1.3 Conditional Toleration versus Religious Liberty

The rights possessed by Jews in Frankfurt were fragile, limited, and contested. Everyone at the time recognized that the Jews of Frankfurt could be expelled (as they temporarily were in 1614). Employing the word toleration to describe the treatment of Jews in the city of Frankfurt-am-Main is, therefore, fraught with difficulties.

Today, the word toleration is used in a fundamentally different way.⁸ It has come to embody both a commitment to individual freedom or autonomy to choose one's own beliefs and lifestyles and a commitment to equality of treatment regardless of beliefs: "The modern idea of tolerance is essentially permissive, allowing those with different beliefs and lifestyles to live together without any civil or economic disadvantage" (Scribner, 1996, 34).

But this was *not* the meaning of tolerance in the past. Its Latin root is *to bear*. To tolerate religious diversity was to accept the existence of something unpleasant. It was a practical, rather than a moral principle, and as such it was recognized as contingent and subject to revision. Episodes of de facto toleration often came about because the costs of enforcing religious conformity were too great. Thus toleration today did not preclude religious persecution in the future. Furthermore, as we have seen in the preceding examples, governments often maintained tolerance between the peoples they ruled simply by erecting barriers to limit interactions among groups with different beliefs. Toleration – or conditional toleration, as we refer to it – was based on group, rather than individual rights. As a group, Jews in Frankfurt were allowed to practice their religion. But as individuals, they did not have freedom of expression or freedom of worship. Any individual Jew could be sanctioned by his own community if he expressed unorthodox beliefs. He thus lacked religious freedom. A Christian who tried to convert to Judaism would be persecuted as a heretic.

In contrast to the conditional toleration of the premodern period, modern liberal states are committed to toleration as part of a wider commitment to individual freedom. We call this form of toleration "religious liberty."⁹ We use a broad definition of liberalism – one that is consistent with its use by thinkers such as Adam Smith and John Stuart Mill.¹⁰ The political philosopher Chandran Kukathas provides a suitably encompassing statement that can stand in lieu of a definition: "Liberalism does not care who has power; nor does it care how it is acquired. All that matters is that the members of society are free to pursue their various ends, and that the polity is able to accommodate all peacefully" (Kukathas, 2003, 253).¹¹ Liberal societies are justified by the principle first articulated by John Stuart Mill that individuals should be free to do whatever they choose so long as this

does not cause harm to others (Mill, 1859, 1989). The conditional toleration of the early modern period was incompatible with these goals of a liberal society since recognition of the authority of religious groups can clash with commitment to individual autonomy.¹²

Of course real-world societies fall short of this liberal ideal. And in practice many aspects of their commitment to religious liberty remain disputed – for example, in the discussions of religious schools in the United Kingdom, the separation of church and state in the United States, or the wearing of the hijab in France – but freedom of religion remains an ideal to which liberal democracies aspire (Rawls, 1971, 1993). It is a feature of liberal societies that these questions are continuously revisited.

This commitment to religious freedom is based on a form of egalitarianism that insists on equality of treatment. As T. M. Scanlon has observed, modern notions of toleration go beyond bearing the existence of other religions and lifestyles. It requires an acceptance of those other religions and lifestyles as deserving of equal treatment. Modern notions of toleration involve “accepting as equals those who differ from us” (Scanlon, 1996, 228). Intolerance denies this and insists that one particular religion or way of life should be predominant and receive favored treatment. In contrast, the system of conditional toleration was based on discrimination and systematic inequality.

This system of maintaining conditional toleration through the erection of formal barriers between groups was pervasive. Religious peace was maintained in a similar fashion in the Islamic Middle East.¹³ For example, a major institution in the Ottoman Empire was the millet system that assigned non-Muslims *dhimmi* status: they were free to practice their religion and had a degree of self-governance including the right to maintain their own legal system, but they were not allowed to proselytize to Muslims, had to pay additional taxes, and sometimes had to wear special, distinctive, clothing.¹⁴ Other celebrated instances of supposed religious toleration such as Islamic Spain operated on a similar basis.¹⁵ Legacies of this system survive in the Middle East today: in Lebanon and Iraq, for example, positions of authority are reserved for members of specific religious groups. Such forms of governance are inimical to liberalism.

Legal codes in premodern Europe were based on group as opposed to individual rights. In the kingdom of Aragon in the thirteenth and fourteenth centuries, for example, the Jewish community was governed by an assembly called the *aljama*, which had complete legal autonomy over each community within the kingdom. This enabled Jews to follow their own laws and customs. But it also meant that the *aljama* had the authority to punish those who violated Jewish law. In Barcelona in 1280, a Jewish youth who

was accused of criticizing the Jewish religion was tried and sentenced to death by the *aljama*. As the community lacked the capacity to enforce these laws, they were carried out by the Christian state (Pérez, 2007, 21).¹⁶ Religious order was important, not only for the Christian majority, but also for the Jewish minority. Rabbinical leaders wanted to preserve Judaism. To that end, they limited interfaith social interactions while maintaining the benefits of economic exchange with gentiles; the system of conditional toleration enabled them to do this.¹⁷

The discriminatory laws that characterized conditional toleration for religious groups in early modern Europe were mirrored in many other the institutions, such as those regulating inheritance or marriage. Europe was a society of orders whose legal systems treated individuals differently based on the class to which they belonged. In France, Germany, and Spain, the nobility either did not pay many taxes or were assessed at a lower rate of taxation than were commoners. Sumptuary laws determined what clothes could and could not be worn. Commoners and aristocrats were subject to different legal treatment and different punishment.¹⁸ Indeed, in many parts of Europe the nobility ran the legal system through seigniorial courts.

This was rule by law, but not rule of law. Equality before the law is a defining characteristic of modern liberal regimes. In medieval and early modern Europe, a common law did not apply to all; Jews, Protestants, and Catholics faced different treatment.¹⁹ General rules applicable to all were largely absent. And it is precisely the existence of general rules that is an important feature of rule of law as it is understood in modern liberal societies – rules that are stable, consistent, and applicable to all.²⁰ General rules are at the heart of the liberal ideal of a state that maximizes the scope of individual freedom and social cooperation because they provide the necessary stability and space for individuals to create such private spheres of activity.²¹

The system of identity rules restricted individuals' economic as well as their religious freedom. It directly prohibited certain types of contracts: Jews were not allowed to hire Christians, for example; lending at interest was prohibited as usury prior to the Reformation; and partnerships between individuals of different faiths could not be enforced in court. And it indirectly restricted trade by limiting social contact between different groups. The identity rules required by the conditional toleration equilibrium constrained the scale and the scope of the division of labor, which economists since Adam Smith have understood to be the font of increases in specialization, productivity, innovation, and ultimately economic growth.²²

A vital question, then, is how was the system of differential rules and restrictions that existed in the late Middle Ages transformed by 1850?

Furthermore, why did this transformation result in the shift in the ways in which religious minorities were treated?

1.2 The Rise of Modern States and the Birth of Religious Liberty

A modern state is a political entity that collects taxes and imposes general rules on its population within a fixed territorial space.²³ Two characteristics of modern states are fiscal capacity and administrative capacity.

Fiscal capacity refers to the state's ability to raise tax revenues. In particular, the ability of a state to directly collect taxes matters. A ruler faces a decision of whether to "make or buy" tax revenues. For a ruler to "make" or collect his own tax revenues requires investment in the organizational capability to obtain information on whom to tax and the enforcement capacity to collect it. For most of history, rulers overcame these costs, not by sending out their own well-informed collectors, but by relying on private individuals to do the job. Medieval states had relatively low fiscal capacity. They collected little in taxation and what taxes they did collect were often farmed out to private individuals. One of the main French taxes, the *Taille*, was collected in some regions by agents of the regional courts or *parlements*. The king would tell a region how much it owed (known as the *repartition*) and then local authorities in the region itself had a great deal of discretion on who would pay and how the payments would be collected. The crown was not, in this case, "making" the revenues in the sense of investing in the capacity to collect them on its own. Rather, it was, in a very literal sense, "buying" the revenues by offering each region independent control over fiscal policy in exchange for a cut of the proceeds.

The other critical feature of the modern state is administrative capacity. This refers to a state's ability to enforce rules in a consistent way. Premodern European states often relied on local elites to administer their territories and this resulted in a complex web of unequal rules and laws. In contrast, when we say a state possesses administrative capacity, we mean that the ruling coalition could impose a common set of rules on the entire population.²⁴

Political authority rests on legitimacy. Absent legitimacy a ruler only has resort to the threat of violence. The direct threat of violence alone cannot enforce obedience in a large-scale society. Today states largely rely on secular ideologies such as democracy and nationalism in order to legitimate their claims to authority. In contrast, in the medieval era, the social order was legitimated almost solely through religion. The allocation of worldly power was seen to reflect the ordering of heaven. Preservation of this order was the basis for political authority.²⁵

Reliance on religion in order to provide political legitimacy reflected both the tremendous influence of the sacred in premodern societies and the absence of alternative sources of political legitimacy. But it was also a function of the weakness of medieval and early modern states.²⁶ In the absence of a *quid pro quo* in which the populace paid taxes and the government provided valuable public goods, religion could be used to legitimize rule by making subjects more willing to comply with the taxes and laws of the government.²⁷ In turn, religious authorities benefited from this partnership with the state. They obtained wealth, power, and prestige but especially the backing of the secular authority in enforcing religious conformity. Secular rulers received in return the blessings of the church, including honorifics such as “Holy Roman Emperor,” “Most Christian King,” “the Catholic,” and “Defender of the Catholic Faith.”²⁸

1.2.1 The Rise of the Modern State

In the period after 1500, the size, scope, and capacity of European polities grew. In countries such as France, Spain, and later, Austria and Prussia, previously loosely governed feudal appendages were gradually fused into single, territorially contiguous, entities. These new states attempted, under an ideology that became known as absolutism, to subordinate their respective nobilities and centralized authority in the hands of administrators directly responsible to the ruler. In many respects, their claims to absolute authority should be viewed as corresponding to their ambitions and not the reality of their rule. The actual power of rulers such as Louis XIV was overestimated by earlier generations of historians and more recent scholarship points to the limitations that he faced.²⁹ But the increase in capacity was real and, by the eighteenth century, these states differed from their medieval predecessors across a range of dimensions.³⁰

Figure 1.1 traces the evolution of the tax-raising capacity of many European states. Civilian bureaucracies and military establishments grew, as did the ability of the state to extract tax revenues from the populace.³¹ Taxes were higher in Western Europe than in any other part of the world at that time. Taxes generally increased faster and were higher in economic success stories such as England and the Netherlands, which in the eighteenth century had both the highest tax burden per capita in Europe and the highest level of market integration. Other parts of Europe, such as Spain and Italy, did not experience such dramatic increases in per capita tax revenue.³² Furthermore, this increase in fiscal capacity came as part of a package that included legal and administrative standardization and greater market integration.

As the vast bulk of this additional tax revenue was used to fund wasteful wars, shouldn't it have retarded economic growth? Certainly, a case can be

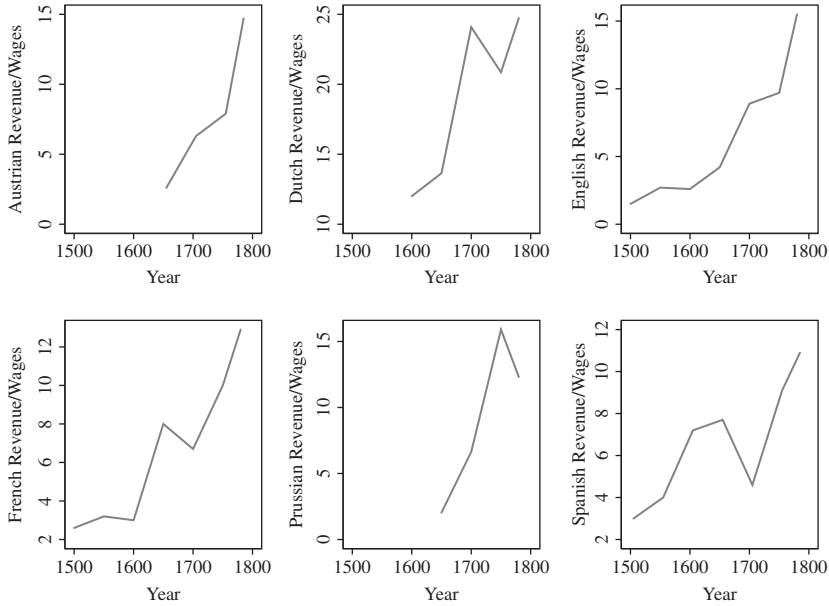


Figure 1.1 Tax revenues in relation to unskilled wages for Austria, the Dutch Republic, England, France, Prussia, and Spain between 1500 and 1800. Source: Karaman and Pamuk (2013).

made that the burden of high taxes and massive debts did slow growth.³³ However, in general, modern historical research indicates that the taxes that the new high-capacity states imposed, though often regressive, such as the excise tax in Britain, distorted the incentives facing private individuals *less* than had previous means of raising revenue. Therefore, as tax revenues rose, the deadweight loss per unit of tax revenue fell. Thus, though increased fiscal extraction did place burdens on European economies and credit markets, it did not prevent the expansion of markets and trade that occurred in the century before the Industrial Revolution.³⁴

Along with the rise in fiscal capacity, the early modern period saw states acquire the ability to enforce more general rules of behavior. For instance, in 1539 the French king, François I, issued the Edict of Villers Cotterêts. This proclamation mandated that official documents be written in the vernacular – French, rather than Latin – that Roman Canon Law be adopted for high crimes across the land, and that marriages be recorded in a consistent way across all jurisdictions. This was just one small step in the process of creating modern France, but it exemplifies the ways in which rulers sought to increase their administrative capacity.

The move away from conditional toleration and toward religious freedom required the development of modern states. We study how European

states changed from being narrow, particularistic, and patrimonial to being broad based and more or less committed to liberal principles by the second part of the nineteenth century.

1.3 A Conceptual Framework

Economists are pretty good at modeling market behavior. How the price of grain changes in the face of a drought – and who benefits or loses from this – is the type of question any undergraduate economics major can tackle. Once we move away from traditional markets, however, things become more difficult. Political and cultural interactions rarely create prices that we observe. Yet, politics and culture are important. We want to know how religion and the state interacted through history and what this implied for religious freedom. To address this, we need a framework for thinking about how these two sets of institutions – political and religious – interacted.

Following the work of Douglass North (1990), economists often think of institutions as rules: “the humanly devised constraints that shape human interaction” (North, 1990, 3). Viewing institutions as rules, however, suggests that the sources of institutional change are exogenous and does not leave room to consider the process of endogenous institutional change. Greif and Laitin (2004), by contrast, provide a way of thinking about endogenous institutional change. In their framework, a self-reinforcing equilibrium induces changes in underlying parameters that makes the equilibrium even more stable over time. A self-undermining equilibrium, by contrast, induces changes in underlying parameters that make the equilibrium less stable.

Conditional toleration is an outcome generated by an equilibrium in which weak states rely on identity-based rules to govern. The reason that it is self-reinforcing is that as states become more reliant on identity rules to collect taxes and administer justice, they also face lower incentives to invest in the fiscal and legal institutions that would increase state capacity. This, in turn, makes them more likely to rely on identity rules and less able to enforce general rules of behavior. Thus, low state capacity and identity rules are self-reinforcing. As shorthand, we call this equilibrium the conditional toleration equilibrium (Figure 1.2).

Consider the Jews in Frankfurt-am-Main during the sixteenth century. Formal governmental institutions were weak. The Holy Roman Empire was legally and fiscally divided and the Imperial Free City of Frankfurt-am-Main had a great deal of discretion over how to raise revenues or what rules to impose. The city, therefore, like the rest of the empire, used identity rules because they cost little to implement and generated revenue for

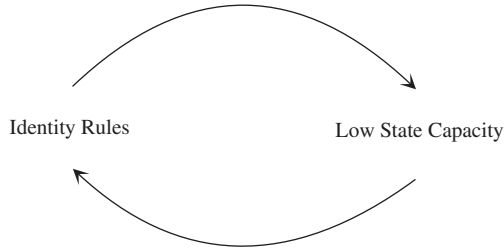


Figure 1.2 The conditional toleration equilibrium that prevailed in Europe prior to 1500.

the city through the creation of rents. The Jews possessed monopoly rights over certain activities such as lending money. The city also granted the Jews the autonomy to govern many aspects of their lives. In return, the Jews both provided revenues to the city (which were higher because they had monopoly rights) and social stability was maintained because contact was minimized between Jews and Christians. In this case, low state capacity and identity rules reinforced each other, and the result was conditional toleration for the Jewish community of the city.

In the case of Frankfurt, this equilibrium gave the Jews limited protection but also led to violence and persecution. In particular, two mechanisms were responsible for channeling economic or political shocks into outbreaks of religious violence. The first mechanism was the state's use of religious legitimacy to maintain legal and fiscal capacity. States that rely on religion as their main source of political legitimacy have an incentive to demonize religious outsiders. In Chapter 2, we explain how this relationship emerged in many societies as a result of a bargain struck between church and state. We show how periods of state building could give rise to intense religious persecution.

A second mechanism responsible for episodes of religious persecution was the dependence of political authorities on economic rents as a source of tax revenue. In economics, a "rent" refers to the returns over and above the normal return needed to keep a resource in its current use.

For example, Chapter 4 considers the example of how rulers granted Jews monopoly rights over lending money. The resulting monopoly profits were rents. Rulers extracted most of these rents in exchange for the promise of protection; for if necessary they could always resort to the threat of violence backed up by the antisemitic sentiment of the population. This equilibrium could easily break down when either the need for short-run revenue led rulers to expropriate the Jews outright or if the governing elites could not control the antisemitism of the population. When the government traded "protection" of religious minorities in exchange for tax revenues, there was always a chance that religiously motivated violence could break out.

Both the use of religious legitimization and the use of rent-seeking to raise revenues were important constituent elements of the equilibrium described by Figure 1.2. As states obtained greater taxing and administrative capacity, however, the self-reinforcing relationship in Figure 1.2 began to give way, and along with it, the prominence of both mechanisms diminished. As a byproduct, the persecution of religious minorities declined.

Beginning in the sixteenth and seventeenth centuries, two processes began to undermine the reliance on identity. First, as rulers found themselves searching for greater sources of revenue to finance ever more costly warfare, they also started to invest in fiscal and legal capacity.³⁵ Technological changes made warfare more capital intensive and economies of scale involved in running a state increased. This meant states that could invest in fiscal and legal infrastructure outcompeted and eventually replaced those that did not. Investing in fiscal and legal infrastructure meant standardizing taxes and regularizing the laws and regulations that governed economic activity. During the period between 1500 and 1800, the old regime, along with its baroque maze of obligations and rules, began to be reordered along centralizing principles.

The second development that undermined identity rules after 1500 was that, as rulers began to extend and solidify the territorial boundaries of their states, they were also confronted with more heterogeneous populations. This fact, combined with the pressures to homogenize fiscal and administrative institutions, made it more costly to rely on religion to legitimate rule.

As we discuss in Chapters 7–9, the costs of relying on religious legitimacy increased once the Reformation spread new ideas and religious beliefs across Europe. In France, François I and his successor Henri II (r. 1547–1559) initially attempted to repress religious heterodoxy. As Calvinism spread across France during the 1540s and 1550s, Henri II instigated a full-scale nationwide persecution of Protestants that resulted in thousands of executions. However, as we detail in Chapter 7, this proved too costly. And, after Henri's death, France passed the first laws that allowed for two religions to be practiced in the kingdom. Bloody civil war followed, but these principles would eventually be encapsulated in the Edict of Nantes of 1598. Similarly, in England the intense religious persecutions of Mary I's (r. 1553–1558) reign ended with the coming to power of Elizabeth I (r. 1558–1603), who pursued more moderate policies than her predecessors, required only superficial conformity to the new Anglican church, and did not mandate large-scale executions for the many who remained Catholic. These developments, modest as they were, represent the first stage that European states took on the road to religious freedom.

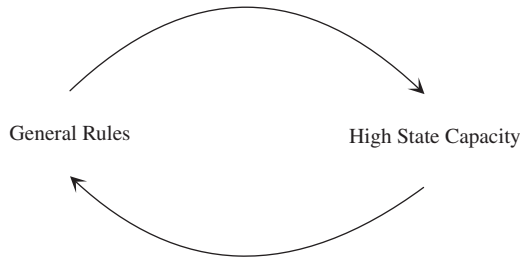


Figure 1.3 The religious liberty equilibrium that arose in many parts of Europe after 1800.

State building involved the expansion and standardization of fiscal and legal apparatus over a wider geographic expanse and more heterogeneous populations. This tended to weaken the reliance on identity rules for revenue collection and on religious legitimacy. We depict this institutional equilibrium in Figure 1.3.

There were important exceptions where religious liberty did not take hold (as in Spain and Portugal), or was faced with a serious setback. It was not the case that state building led inexorably to religious freedom. Rather, almost all movements toward greater religious liberty in the absence of states capable of enforcing general rules were unstable. Temporary episodes of toleration in Muslim Spain or early medieval Francia were just that, episodes that proved fragile in the face of changing economic and political circumstances. To explain why the move from identity rules and conditional toleration toward general rules and religious liberty in the West was permanent and stable we have to understand the changing nature of the state in the period between 1500 and 1800.

Massacres, religious violence, and large-scale expulsions were frequent outcomes of the state-building process. Spain expelled its Jewish population in 1492 in the aftermath of the conquest of Granada. Louis XIV (r. 1643–1715) expelled Protestants from France in 1685. Other less notorious events include the campaign against Anabaptists in the Tyrol and Switzerland, the expulsion of converted Muslims from Spain in 1609, and the War of Cévennes waged against Protestants in south-central France.

After 1700, however, the development of modern states capable of enforcing general rules in conjunction with the rise of markets and civil society became a self-reinforcing process. This process helped bring about the political institutions that we recognize all around us today.

As a consequence of this transformation in political institutions, the cultural environment became more sympathetic to religious freedom. The arguments of Spinoza, Bayle, Locke, and others found more fertile soil after 1700 than their predecessors had in prior centuries. An important reason that the Enlightenment arguments in support of religious toleration found

favor among rulers and elites in the latter part of the eighteenth century was that the political environment in which they wrote had changed decisively. The rise of more centralized states intent on governing through standardized rules, applicable to all, meant that the old system based on differential treatment was seen as cumbersome and inefficient.

Notes

1. Our use of the concept of identity rules draws on North, Wallis, and Weingast (2009) and Wallis (2018).
2. Building on North, Wallis, and Weingast (2009), ongoing work by John Wallis analyzes the significance of the transition from identity rules to a world in which contracts and relationships are enforced by general rules. Wallis stresses the ability of the state to recognize corporations and other impersonal organizations outside of the state as a crucial point in the transition from a closed to an open access order. He argues that this transition took place once it was evident to elites that they stood to benefit more from the economic opportunities created as a result of the shift to open access than they did from maintaining the old system of restricted access.
3. More recently, Eric Foner, for instance, is said to have found “counterfactuals absurd. A historian’s job is not to speculate about alternative universes . . . It’s to figure out what happened and why” (cited in Parry, 2016). Others have embraced counterfactual arguments. Ferguson (1999) notes that the rejection of counterfactual history by Carr and also by E. P. Thompson was rooted in a Marxian notion of historical inevitability but it is not confined to Marxist historians.
4. For accessible treatments of these methods and how they have helped to bring about a credibility revolution in many areas of applied microeconomic see Athey and Imbens (2017) and Angrist and Pischke (2010). For skepticism about reliance on these econometric approaches in economic history see Morck and Yeung (2011).
5. By the early eighteenth century, the population was 3,000. This resulted in crowding as the community remained confined to a single street. As a result, fires were frequent, and in the 1780s the mortality rate was 58 percent higher among the Jewish population than it was for non-Jews (Ferguson, 1998, 27–38). Their residency rights were always conditional. Although Frankfurt hosted the largest Ashkenazi Jewish community in Germany, when a group of Portuguese Jews asked to settle there, they were refused permission by the city (Israel, 1985, 54).
6. See Blanning (1970), Beales (1990), and Scott (1990). The Hapsburg crown lands were not the same as the lands of the Holy Roman Empire to which Joseph’s reforms did not extend, for reasons that will become apparent later on in the book.
7. The Edict did not grant Jews legal equality with Christians. Jewish settlement, in Vienna, for example, remained restricted and no public synagogues were allowed to be built (Katz, 1974, 163–164). These reforms nevertheless “clearly went far beyond what public opinion in his lands would have demanded” (Beales, 1990, 46) and Joseph’s detractors called him the “Emperor of the Jews” (Blanning, 1970, 171). Numerous new restrictions were placed on the Jews during the reign of Francis II (1792–1835). See Katz (1974, 163–164) and Mahler (1985, 3–10).
8. See the discussion in Scribner (1996, 34–39), Walzer (1997), and Laursen (1999, 1–8).

9. This distinction between toleration and religious liberty goes back to the work of Francesco Ruffini (1912).
10. This usage is more in keeping with its meaning in contemporary Europe than with its politicized usage in the United States.
11. This definition of liberalism is compatible with, but does not require, a specifically liberal theory of justice such as Rawls argues for in his *Theory of Justice* (Rawls, 1971, 523) (see, for a detailed discussion, Gaus, 1983). As Ryan (2012, 23–26) observes, there are many “liberalisms” encompassing both the classical liberalism of Smith (1776) and Hayek (1960) and the social democratic liberalism of Rawls. Or, as Tomasi (2012) notes, both classical liberal and high liberalism belong to the same intellectual family. Dan Klein has traced the evolution of the words liberal and liberalism in Western political discourse as part of his *Lost Language, Lost Liberalism* project (Klein, 2014).
12. For extensive discussion see Kymlicka (1996) and Kukathas (2003).
13. See Kuran (2004, 2006, 2010). Saleh (2018) discusses the case of Copts in Egypt.
14. See Braude and Lewis (1982). As Kuran (2010) has shown, this system had important implications for long-run economic development in the Middle East. It was also incompatible with the rule of law because it meant that different groups faced different laws depending on their religious status.
15. See, for example, Menocal (2002). The idea was made famous in the work of Américo Castro (see Wolf, 2009). Smith (2014) developed an economic analysis of religious toleration in medieval Spain. But the evidence demonstrates that the medieval *convivencia* celebrated by these historians was in fact a form of conditional toleration. It enabled Muslims, Christians, and Jews to coexist for centuries. But it should not be celebrated as an instance of religious freedom, for as Joseph Pérez notes, it is “wrong to refer to this era as a time when Jews, Moslems, and Christians lived side-by-side in mutual tolerance and respect”; rather, the situation of minority groups was governed by the self-interest of the ruling elite – Muslim and Christian rulers were willing to protect Jews when they saw them as useful (for instance, as doctors, moneylenders, or tax collectors), and willing to dispense with them once they were seen to be political burden (Pérez, 2007, 12). This perspective reflects a shift in the historiography away from the celebration of the medieval *convivencia* evident in the work of Américo Castro toward more nuanced views (see Ray, 2005, 2011 and Soifer, 2009). Fernández-Morera (2016) provides a polemical demolition of the notion that Islamic Spain was especially tolerant. We return to this topic in Chapter 8.
16. This practice continued until 1380, when Juan I removed the *aljama*'s right to pass death sentences on Jews who violated Jewish law. Further details on the structure of the *aljama* are provided by Assis (1997).
17. See the discussion in Ray (2005), who notes that the expansion of Christian society in thirteenth-century Spain made it harder for Jewish religious leaders to ensure that their communities remained religious and socially separated.
18. For more on the society of orders see Blum (1978) and Mousnier (1979). In England, for example, aristocrats found guilty of high treason were beheaded while commoners were hanged, drawn, and quartered.
19. In particular, see Blum (1978, 11–28 and 80–94) for a description of seigniorial privileges in early modern Europe. For the ways in which the old regime limited women's labor market opportunities see Ogilvie (2003).
20. See Dicey (1908, 198–199), Hayek (1960), Fuller (1969), and Hadfield and Weingast (2012).

21. See Hayek (1960, 1973, 1976, 1982), Buchanan (1975), and Tomasi (2012).
22. For a recent discussion see Boettke and Candela (2017).
23. The modernity of this form of state is contested. Fukuyama (2011) argues that the first modern state emerged in China in the third century BCE. Nevertheless, in a European context demonstrably modern states first emerged in the eighteenth and nineteenth centuries. The word “state” was not used in the medieval period. It first acquired its modern political meaning in the sixteenth century. As Michael Oakeshott put it “[t]he political experience of modern Europe began with an important addition to the European political vocabulary: the word ‘state’, *l’etat*, *stato* etc. It is a word for a new political experience” (Oakeshott, 2006, 361). Many scholars would add to our definition of a state a monopoly on legitimate violence and a well-developed bureaucracy (Weber, 1968).
24. See Greif (2007) and de Lara, Greif, and Jha (2008) for a related analysis of administrative power.
25. For a recent analysis see Greif and Rubin (2018).
26. These polities did not in general provide any public goods apart from defense. Tax revenues were spent almost exclusively on patronage and on warfare. See Brewer (1988), Félix and Tallett (2009), and Wilson (2009). As warfare was often seen as the “sport of kings,” the public goods component of much of this spending is highly questionable (see Hoffman and Rosenthal, 1997 and Hoffman, 2012).
27. A model of this is developed by Coşgel and Miceli (2009).
28. Respectively, the titles granted to Charlemagne (r. 768–814), Charles VI of France (r. 1380–1422), Ferdinand of Aragon (r. 1479–1516), and Henry VII of England (r. 1509–1548) and, in some cases, their successors.
29. France, Spain, and the Austrian Habsburg lands remained “composite states” in John Elliott’s words (1992). We discuss the extent of legal fragmentation in France in Chapter 11. The limits faced by the French monarchy are discussed in a large literature (see Moote, 1971; Beik, 1985; and Collins, 1988).
30. Conceptually, one indication that a transformation had taken place is that it became accepted that states had “interests” and that their purpose was to pursue policies and to make laws in order to further these interests. See Oakeshott (2006, 365–372) and Skinner (2009).
31. See Brewer (1988), Bonney (1999, 1995), and Dincecco (2009).
32. For British taxes in comparison to France see Mathias and O’Brien (1976) and more generally O’Brien (2011). Grafe (2012) discusses how fiscal fragmentation accounts for Spain’s inability to raise tax revenues. We discuss this in Chapter 8. For levels of market integration in England compared to continental Europe see Shiue and Keller (2007). For discussions of comparative levels of taxation in Europe and China see Ma (2013), Vries (2015), Ko et al. (2018), and Ma and Rubin (2017).
33. Economic historians have long thought that government spending on war and debt repayment crowded out private investment and impeded growth during the British industrial revolution. See discussions in Hartwell (1981), Williamson (1984), and Temin and Voth (2005). For the argument that British debt accelerated the switch out of agriculture and into industry, see Ventura and Voth (2015).
34. See Nye (2007) for a discussion of how the British state developed excise taxes to raise revenue on an inelastically demanded product, alcohol.
35. Historians describe these changes as part of the military revolution of the sixteenth and seventeenth centuries (see Parker, 1976). Also see Hoffman (2012), Voigtländer and Voth (2013*b*), and Gennaioli and Voth (2015). We discuss this in Chapter 7.

