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Review Essay

The Descent of Political Theory and the Limitations of Legal Tolerance

Charles W. Collier

For as long as anyone could remember, political theory had been "in the doldrums."¹ Everywhere, the general climate of opinion "seemed to have rendered hopeless the projects of political philosophers working in an older and grander tradition."² According to all the authoritative decrees, "avoiding the temptations of grand normative theory" was a philosophical duty.³ But then, suddenly, there emerged (out of nowhere) something that "[f]or many . . . marked the rebirth of the subject itself."⁴ Fortunately, this phenomenon can readily be dated: it coincides closely with the appearance in 1971 of *A Theory of Justice* by John Rawls. "Suddenly everyone had a view about justice; everyone had a set of principles they wanted to defend; and a theoretical model on which to defend them."⁵

Of course, a certain amount of academic folklore has always surrounded this telling of the tale. But to the extent that it captures something true, it also reveals important limitations of contemporary political theorizing. In particular, it reveals the historical and conceptual poverty of our current discussions of tolerance and perspective. In what follows I shall first sketch out the broad intellectual background to the problem of disagreement, with special reference to the varied meanings of tolerance in philosophy, political theory, and

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1. Stuart Hampshire, *Liberalism: The New Twist*, N.Y. Rev. Books, Aug. 12, 1993, at 43, 43 ("The study of the past masters of political philosophy was dutifully prolonged in universities, but without much hope of a new vision that would be likely to stir the interest of a wider public.").
2. John Gray, *Against the New Liberalism*, Times Literary Supp., July 3, 1992, at 13, 13.
3. Jeremy Waldron, *Justice Revisited*, Times Literary Supp., June 18, 1993, at 5, 5 ("political philosophers . . . were working mainly on analytical issues, cautiously unpicking the meaning of concepts").
4. John Gray, *Can We Agree to Disagree?* N.Y. Times, May 16, 1993, § 7 (Book Review), at 35, 35.
5. Waldron, *supra* note 3, at 5 ("In the discussion that ensued, it was as though philosophers, previously mute or reticent, had found their normative voice once more.").

law. I then consider these issues as they arise in the social and intellectual history of modern political theory, particularly as they illuminate the rise of pluralism and the subsequent failure of liberalism to address vital contemporary problems of intolerance.

The problem of intolerance, and the need for tolerance, arise out of the fact of disagreement. But conceptual or intellectual disagreements over matters of fact or opinion are themselves only a highly refined subset of more basic differences in points of view or perspective. "Differences of perspective"—understood informally, metaphorically—suggest and reveal differences of perspective in a deeper and more literal sense that encompasses, *inter alia*, our perception of the physical world. Differences of this sort are truly radical in scope and dwarf in importance mere differences of opinion.

Indeed, it is not immediately clear how we could even come to have different perspectives on something so basic as the physical world. And in fact an immense intellectual exertion and a lengthy historical development were required before even the conditions of that possibility were discovered, acknowledged, and eventually enshrined as the "subjective point of view." Before that development—which in the case of spatial perspective can be traced roughly to the representational art of the Renaissance, and in the case of temporal perspective to Kant's critical philosophy—the conditions for the possibility of radical, perceptual disagreement had not even been articulated. Instead, through long "prehistories" of spatial and temporal perspective, the novel idea that there even was, or could be, a "point of view" on the world only gradually emerged out of more or less "objective" conceptions of space and time.⁶

Once the idea of a radically perspectival point of view appeared in full force, however, it posed stunning problems for epistemology, political theory, and (eventually) law. Only the most serenely detached of philosophers could countenance the possibility that

just as one and the same city, looked at from different sides, appears entirely different and is as if multiplied *perspectively*; so also it happens that, as a result of the infinite multitude of simple substances, there are as it were so many different universes, which are nevertheless only perspectives of a single one, according to different *points of view*⁷

And only the most resolutely pessimistic of political theorists could calmly accept that

such is the nature of men, that . . . they will hardly believe there be many so wise as themselves; for they see their own wit at hand, and other men's at a distance. . . .

. . . For every man looketh that his companion should value him, at the same rate he sets upon himself: and upon all signs of contempt, or

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6. These issues will be elaborated in a forthcoming work tentatively entitled *The Prehistory of Tolerance in Literature, Art, and Philosophy: A "Deep Theory" of the First Amendment*.

7. Gottfried Wilhelm Leibniz, *The Monadology* § 57 (1714).

undervaluing, naturally endeavors, as far as he dares . . . to extort a greater value from his contemnners, by damage; and from others, by the example. . . .

....

. . . Hereby it is manifest, that during the time men live without a common power to keep them all in awe, they are in that condition which is called war, and such a war as is of every man against every man.⁸

Thus, the problems of radical differences in perspective urgently required resolution, usually by some means of "transcending" those differences. Ironically, the long and difficult recognition of the "point of view" led directly to its own transcendence, with the development of modern physical science being only the most prominent example.

The problems of transcending perspective in philosophy, political theory, and law present a converging series of ever narrower concerns. In philosophy, an array of transcendence theories suggest themselves: the view from *no* perspective ("the view from nowhere"⁹); the view from *all* perspectives (God's point of view?¹⁰); the view from *any* perspective (intersubjectivity and convergence¹¹); the view from "the place of the other";¹² and a principled, consistent *indifference* to perspective.¹³ One lesson Hegel derived from the difficult pre-history of perspective is that transcending a point of view cannot itself be a simple, one-sided negation, or the mere substitution of one perspective for another; to attain a more adequate viewpoint, one must also retain, subsume, and partially incorporate the core of truth in other perspectives. As Thomas Nagel has more recently, and repeatedly, insisted: "Reality is not just objective reality."¹⁴ There is an undeniable reality to the subjective point of view, as evidenced, for example, in the possibility of mistakes about one's own experiences and in the difficulty of conceptualizing a private language.

The problem of intolerance arises as one descends from the rarefied heights of philosophy to political theory. "Philosophical intolerance" is merely

8. Thomas Hobbes, *Leviathan: Or the Matter, Forme and Power of a Commonwealth Ecclesiastical and Civil* ch. 13 (1651).
9. See Thomas Nagel, *The View from Nowhere* (New York, 1986).
10. See Gottfried Wilhelm Leibniz, *Discourse on Metaphysics* § 14 (1686).
11. See Edmund Husserl, *Cartesian Meditations*, trans. Dorion Cairns, §§ 42–62 (The Hague, 1970); Charles Sanders Peirce, *How to Make Our Ideas Clear*, in 1 *The Essential Peirce*, eds. Nathan Houser & Christian Kloesel, 124, 138–39 (Bloomington, 1992); Stephen Toulmin, *Human Understanding: The Collective Use and Evolution of Concepts* 135–44 (Princeton, 1972); Karl R. Popper, *Objective Knowledge: An Evolutionary Approach*, rev. ed. (New York, 1979).
12. See Gottfried Wilhelm Leibniz, *La Place d'Autrui*, in *Sämtliche Schriften und Briefe, Vierte Reihe, Politische Schriften, Dritter Band* (1677–1689), ed. Akademie der Wissenschaften der DDR, 903, 904 (Berlin, 1986) ("Everything which we would find unjust if we were in the place of others, must seem to us to be suspect of injustice. . . . [T]he sense of the principle is: do not do or do not refuse lightly that which you would not like to be done to you or which another would not refuse to you."); cf. Immanuel Kant, *Groundwork of the Metaphysic of Morals* (1785).
13. This possibility was suggested to me by the audience at a lecture sponsored by Prof. Dr. Ralf Dreier, University of Göttingen (Dec. 1, 1993). "Indifference" may be a synonym for the forms of transcending perspective I discuss next, in the context of political and legal theory.
14. Nagel, *supra* note 9, at 26, 27.

a synonym for ignorance, theoretical willfulness,¹⁵ and unscientific methodology;¹⁶ political intolerance is a practical, and practically insoluble, problem.¹⁷ But where perspectives cannot be reconciled, may they not at least be "bracketed," so to speak? May they not be discounted—for purposes of argument, regarding urgent matters of mutual concern—and abstracted from? This is the main contention of Rawls and like-minded contractarian theorists; their project is to articulate a (generally acceptable) conception of social justice that does not depend on any specific, and thus divisive, notion(s) of the good life. This method amounts to transcending perspectives by abstracting from what is unique and particular about them; tolerance means transcending differences without necessarily resolving them.¹⁸

The "veil of ignorance" cannot, however, quite conceal what it obscures. Consider the following criticisms, from opposite ends of the political spectrum:

Because recent political philosophy in the Anglo-American mode remains for the most part animated by the hopes of the Enlightenment, above all, the hope that human beings will shed their traditional allegiances and local identities and unite in a universal civilization grounded in generic humanity and a rational morality, it can not even begin to grapple with the political dilemmas of an age in which political life is dominated by renascent particularisms, militant religions and resurgent ethnicities.¹⁹

Rawls' theory of justice fails because of its choice of disembodied abstraction as a mode of inquiry. . . . [F]eminist theory derived through consciousness

15. "[W]illful implies obstinate and perverse determination to follow one's own will despite influences, arguments, advice, etc. in opposition . . ." Webster's New World Dictionary, college ed., 1636 (Cleveland, 1966).
16. See Thomas Nagel, *Equality and Partiality* 98 (New York, 1991) ("When a theoretical discovery contradicts the appearances we simply allow it to overrule them . . . Deceptive appearances don't continue to demand our belief, unless we are superstitious. Personal desires, on the other hand, remain effective for the most part, and cannot be rendered inactive at will."). But see Thomas S. Kuhn, *The Copernican Revolution: Planetary Astronomy in the Development of Western Thought 192-95* (Cambridge, Mass., 1985) ("More than a picture of the universe and more than a few lines of Scripture were at stake. . . [E]xtrascientific issues . . . were integral parts of the controversy over Copernicanism."); Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 2d ed., 79, 147 (Chicago, 1970) ("[T]here is no such thing as research without counterinstances . . . because no paradigm that provides a basis for scientific research ever completely resolves all its problems. . . All historically significant theories have agreed with the facts, but only more or less.").
17. See, e.g., Nathan Glazer & Daniel Patrick Moynihan, *Beyond the Melting Pot: The Negroes, Puerto Ricans, Jews, Italians, and Irish of New York City* (Cambridge, Mass., 1963); Stephen Macedo, *Tolerance and Fundamentalism*, in *A Companion to Contemporary Political Philosophy*, eds. Robert E. Goodin & Philip Pettit, 622 (Oxford, 1993).
18. By analogy, the difference between the corpuscular and wave theories of light has been "transcended," in the sense that neither view turned out to be quite right. But the debate over the existence *vel non* of microorganisms was definitively "resolved"—with the help of the microscope—in favor of one side. Most cases in which tolerance is at issue cannot be resolved that easily or that definitively.
19. Gray, *supra* note 2, at 13; cf. John Gray, *Why the Owl Flies Late*, *Times Literary Supp.*, Oct. 15, 1993, at 10, 11 ("[T]he liberal ideals of the European Enlightenment project . . . of subjecting all human institutions to a rational criticism and of convergence on a universal civilization whose foundation is autonomous human reason . . . are taken as unproblematic, even axiomatic, in virtually all recent Anglo-American political philosophy.").

raising . . . includes multiple visions of human nature. . . . Rawls' assumptions about human nature drawn from his analysis of the "original position" fail to account for the richness of human experience, particularly that of disempowered groups.²⁰

These objections do not address the central claim that what is lost is worth the price, that the virtues of tolerance are advanced by raising rather than lowering the level of abstraction, and that bringing in "the richness of human experience" will only bring in its wake more (and more richly nuanced) differences.

So of course Rawls is not trying to "account for the richness of human experience" at all; quite to the contrary, that "richness" is itself the problem. Or is a *less* "generic" approach (perhaps *strengthening* "traditional allegiances and local identities"?) to the problems of "renascent particularisms, militant religions and resurgent ethnicities" likely to succeed, where the ultimate objective is some sort of (relatively) peaceful coexistence or at least an incremental lowering of the volume of warfare to the proverbial dull roar?²¹ These considerations have—in a climate of newly lowered expectations for consensus²²—increasingly driven political theorists to ask, not how specific, divisive, and intractable issues of public policy should be decided or conflicting private duties resolved, but how the basic institutions in a just society should be structured. Some sort of general agreement on the latter ought to be possible; as for the former sorts of issues, disagreement is, at worst, tolerable.

The legal problem of tolerance is even narrower than the (largely political) problems of social justice. It concerns the minimal acceptable rules and boundaries of social interaction, not the substance or content of even a neutrally (and in that sense "tolerantly") agreed-upon regime of distributive justice. Due process and the First Amendment circumscribe much narrower and more minimal considerations of tolerance than, for example, the claim that "individuals have a right to equal concern and respect in the design and administration of the political institutions that govern them."²³ Legal toler-

20. Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 Va. L. Rev. 461, 501 (1993) (annotating Mari J. Matsuda, *Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls' Theory of Justice*, 16 N.M. L. Rev. 613 (1986)); see also Bhikhu Parekh, *Superior People: The Narrowness of Liberalism from Mill to Rawls*, *Times Literary Supp.*, Feb. 25, 1994, at 11, 13 ("No way of life, however rich, can express the full range of human potentiality. . . . [N]o way of life, including the liberal, represents the last word in human wisdom.").
21. Gray himself notes elsewhere that the "conviction that cultural difference would, or at least could, cease to be a source of divisive social conflict as the species converged on a universal civilization . . . looks increasingly utopian toward the end of the 20th century." John Gray, *Why Things Fall Apart*, *N.Y. Times*, Feb. 13, 1994, § 7 (Book Review), at 9, 9.
22. See, e.g., Richard Sennett, *The Identity Myth*, *N.Y. Times*, Jan. 30, 1994, § 4, at 17; Haynes Johnson, *Divided We Fall: Gambling with History in the Nineties* (New York, 1994); Youssef M. Ibrahim, *Fundamentalists Impose Culture on Egypt*, *N.Y. Times*, Feb. 3, 1994, at A1.
23. Ronald Dworkin, *Taking Rights Seriously* 180 (Cambridge, Mass., 1977); cf. Parekh, *supra* note 20, at 13 ("The liberal is in theory committed to equal respect for persons. Since human beings are culturally embedded, respect for them entails respect for their cultures and ways of life.").

ance does not even connote "mutual recognition,"²⁴ much less "acceptance,"²⁵ and these limitations may explain some of its (limited) success in a largely intolerant world.²⁶ It is no accident that most legal and constitutional mandates are framed as prohibitions,²⁷ since it is much easier to insist simply that "Thou shalt not . . ." than to work out in any detail a system of affirmative rights and competing entitlements. Tolerance in the legal sense suggests only "a thin, procedural concept of justice,"²⁸ one that is familiar in discussions of process-based constitutionalism.²⁹ So long as the institutions to implement and regulate social and corrective justice meet basic but minimal standards of procedural fairness, legal and constitutional requirements have been met. This is perhaps the ultimate stage of "indifference" to differences in perspective.³⁰

John G. Gunnell's *The Descent of Political Theory*³¹ brings to this discussion a social and intellectual history of modern political theory, one that often puts contemporary concerns in a revealing old light. His account begins with the nineteenth-century German philosophy of the state (*Staatslehre*). The great attraction of that formal, abstract, juristic "state theory" was that it offered "something deeper and more transcendental than mere politics" (page 23). Already at this stage political theory sought to abstract from politics: not so much because politics was inherently divisive and made agreement impossible to secure, but because for political theory of this era politics was "somewhat unseemly and springing from aspects of human being that it hoped society would repress" (23). Along with familiar notions of dirty politics, Gunnell discusses various metaphors of "contamination" and "defilement." In the late

24. See, e.g., Guyora Binder, *Mastery, Slavery, and Emancipation*, 10 *Cardozo L. Rev.* 1435, 1440–41 (1989) ("The desire for recognition fundamental to individual identity requires us to affect and be affected by the desires of others. Hence, it is inconsistent with the mutual tolerance of and indifference toward the preferences of others that circumscribes the civic obligations of the citizen of any liberal society.").

25. See, e.g., Margaret O'Brien Steinfelds, Letter to the Editor, *N.Y. Times*, Jan. 16, 1994, § 7 (Book Review), at 35 ("No nation is one big happy family, least of all our own. Our genius has been to transcend family limitations to create a public space where all of us may interact, if only to agree to disagree. The entrance ticket is tolerance, not approval."). But see Bruce Bawer, *A Place at the Table: The Gay Individual in American Society* (New York, 1993) (arguing for acceptance, as opposed to mere toleration, of homosexuality).

26. See, e.g., Nagel, *supra* note 16, at 88–89 ("The institutions through which . . . constitutionally basic equalities are guaranteed owe much of their strength to the fact that their aims are limited.").

27. See, e.g., U.S. Const. amend. I ("Congress shall make no law respecting . . ."); amend. XIV ("No State shall make or enforce any law which . . .").

28. Stuart Hampshire, *Innocence and Experience* 137 (Cambridge, Mass., 1989).

29. See, e.g., John Hart Ely, *Democracy and Distrust* (Cambridge, Mass., 1980); Mark Tushnet, *Darkness on the Edge of Town: The Contributions of John Hart Ely to Constitutional Theory*, 89 *Yale L.J.* 1037 (1980); Laurence H. Tribe, *The Puzzling Persistence of Process-Based Constitutional Theories*, 89 *Yale L.J.* 1063 (1980); James E. Fleming, *Constructing the Substantive Constitution*, 72 *Tex. L. Rev.* 211 (1993).

30. These issues will be elaborated in a forthcoming work. See *supra* note 6.

31. *The Descent of Political Theory: The Genealogy of an American Vocation* (Chicago, 1993). (Subsequent parenthetical references are to this work.)

nineteenth century a professor who proposed a department of "History and Politics" at the University of Kansas was told by the regents that "the people of Kansas would not tolerate a Department of Politics within the University, as they had enough politics within the state already" (24). George Beard, one of the founders of psychoanalysis in the United States, attributed the ubiquity of mental illness and insanity in America to the "excitement and disappointment" of electoral politics. Clearly, politics was viewed as unsettling, undesirable, even pathological—something that (like religious revivals) "appeal[ed] mostly to the emotional nature of men, and [had] little to do with the intellect" (24). It was a disease of the body politic, to be quarantined off from any intellectual enterprise that aspired to "objectivity, dignity and the authority of science" (23).

Anticipating contemporary discussions in another way, traditional *Staatslehre* abstracted from the study of particular states in favor of "a universal conception of the State" that would precede such specialized studies. In its German philosophical incarnation the state was somewhat mysterious and metaphysical, a great national community, not to be identified with mere government. Johann Caspar Bluntschli, for example, argued that by studying the organic development of the state one could grasp the "common political consciousness of civilized mankind" and the "fundamental ideas and essentially common institutions" that revealed the general in the particular (33), the "homogeneity that lay beneath the often intractable but dynamic and proliferating pluralism of social and governmental forms" (59). For Bluntschli, the rise of the modern state "was rooted in a common human nature which implied the need for a universal state" (33).

The scientific study of politics, finally institutionalized in the late nineteenth century as the professional discipline of political science, faced "the dangers of a barren empiricism on the one side, and of a baseless speculation" on the other (52). In an era when the authority of academic studies rested on their claim to scientific objectivity, the methods of natural science seemed to offer privileged access to that form of objectivity. The first step in making political science truly "scientific" was to distinguish it sharply from politics; the second step was to demystify the idea of the state by identifying it with actual political institutions and the legally authorized organs of government.

In other words, the danger of "baseless speculation" seemed to outweigh the danger of "barren empiricism." "[S]peculation was not favored in general, and its role in science was even more suspect" (72). Speculative, metaphysical theory was no better than irrational, pathological politics. But it is instructive to consider, once again, what was thereby lost. The nineteenth-century search for the national political community had been "a search for something that was strangely missing in the *Federalist* and other documents of the founding generation," "a search for the people as something more than an abstraction from individuals or a reference to the sum of factions and interests" (59).

Around the time of World War I the already beleaguered German philosophy of the state plunged into a deep depression, precipitated by unseemly machinations on the world stage that provided ample warning of the dangers of nationalism. Against this background of the declining "monistic" state

theory of political science—in which the state was “the distinct, unitary, and absolute political association and sovereign organ of society”—emerged increasingly distinct normative, “pluralist” beliefs that the state should be limited so as to reflect the interests of various groups (106). Unlike academic politics (which are said to be so vicious because so little is at stake), the debate over pluralism had profound practical implications for the real world; at one time or another, pluralism has been implicated in the rise of communism, fascism, and liberal democracy.³²

Initially, the critique of sovereignty “attempted to reach the ‘realities’ behind the idea of the state” and to serve as a kind of “muckraking ‘realism’ that exposed the real economic interests that stood in the way of rational policy” (108–09). Carried to an extreme, and in the absence of any shared moral purposes or ideals, the autonomy and power of voluntary associations “opened up the door, in both theory and practice, to fascism by passing political power to subpolitical groups” (113). But it is not quite true to say, with one of the early theorists, that pluralism “offered no solution to the problem of competing interests” (106), though it perhaps redefined what counts as a “solution.” Instead of saying “Come, let us reason together,” pluralism says: “Come, let us bargain together.” The underlying premise is that we will never be able to persuade each other, through reasoned argumentation on the merits, to accept the substance of our different beliefs; the best—perhaps only—possible “solution” may be a negotiated compromise at the level of procedure. Beginning in the 1930s, political scientists thus emphasized that “democracy was grounded less in a set of substantive values than in certain institutional processes. What was emerging was a theory of liberal democracy in which order, consensus, and public interest were understood as a product of conflicts and compromises between group interests” (133). A “functional whole” behind the diversity of the parts was replacing the state as the preeminent unity behind diversity. “This was,” Gunnell adds, “increasingly presented explicitly as an alternative to totalitarianism” (133).

The twentieth-century point of reference for liberal principles has always been the Weimar republic and its tolerant constitution that “stood for nothing and permitted everything.” Indeed, the consistent inability of pluralistic liberalism to resist totalitarianism has seemed to many an “inherent defect” or “genetic limitation.” This raises again the question of state authority in preserving liberal values, and specifically the concern that “liberalism could not afford to allow its principles to provide a forum for illiberalism” (136). Pluralism tended to “lay the way open to a very disorganized and casual political organization,” which was a threat to both order and liberty to the extent that group interests superseded the sovereign community (106, 205). In times of social disintegration and mass politics, “[p]luralism and the loss of a distinct public realm had led to the decline of a public consensus that could defend and sustain liberalism” (241).

32. See generally John G. Gunnell, *The Declination of the ‘State’ and the Origins of American ‘Pluralism’* (forthcoming 1994).

Such concerns resonate perhaps only weakly today in the stable democracies of the West, preoccupied as we are with such weighty questions as whether patriotism is politically correct or not.³³ But there are plenty of lands—not blessed with “a distinctively American, distinctively Emersonian” sense of shared national identity (where it is therefore unlikely that “the ‘newness’ will come again”)³⁴—whose problems of intolerance tend to become our problems as well.³⁵ In many cases the difference between tolerance and intolerance is quite literally a matter of life and death—with a strong presumption in favor of the latter.³⁶ In our hopelessly pluralistic age, only an academic safely isolated and insulated from the real world could proclaim that “a sense of shared national identity . . . is an absolutely essential component of citizenship, of any attempt to take our country and its problems seriously.”³⁷ The urgent contemporary problems of intolerance begin precisely where such assumptions themselves cannot be taken seriously.³⁸ It may well be true that “Weimar fell because its pluralism was not based on an underlying community of values” (187), but a Weimar republic is not an option in much of the world today, if it ever was.³⁹

For these reasons I have argued above for a minimal, strictly “legal” concept of tolerance, one that limits itself to policing the outer boundaries of proce-

33. See Sennett, *supra* note 22, at 17 (“No”); Richard Rorty, *The Unpatriotic Academy*, N.Y. Times, Feb. 13, 1994, § 4, at 15 (“Yes”).

34. Rorty, *supra* note 33, at 15 (quoting Irving Howe).

35. See, e.g., Salman Rushdie, *One Thousand Days in a Balloon*, in *Imaginary Homelands* 430, 431 (London, 1992) (“Out there where you are, in the rich and powerful and lucky West, has it really been so long since religions persecuted people, burning them as heretics, drowning them as witches, that you can’t recognize religious persecution when you see it?”); Richard Bernstein, *Explosion at the Twin Towers: 4 Are Convicted in Bombing at the World Trade Center That Killed 6, Stunned U.S.*, N.Y. Times, Mar. 5, 1994, at 1, 28 (the case “seemed to play into broader fears that the tensions and bloodshed of the Middle East conflict were being imported into the United States”).

36. Consider the following reports, all from the same edition of the New York Times, Feb. 28, 1994: Clyde Haberman, *West Bank Massacre: Israel Orders Tough Measures Against Militant Settlers*, at A1 (“One million Arabs are not worth a Jewish fingernail,” Rabbi Yaacov Perrin said in a eulogy.); Robert D. McFadden, *Islamic Figure in New Tirade Against Jews*, at B1 (“[T]he Nation of Islam speaker who ignited a furor in recent weeks with a vitriolic attack on Jews, Catholics and others, has delivered a harsh new tirade against Jews, saying he prays ‘that God will kill my enemy and take him off the face of the planet earth.’”); Sam Howe Verhovek, *Questions Linger After 11 Cultists’ Trial*, at A14 (“Mr. Koresh had told his followers, ‘There [is] going to be a confrontation, a battle.’ Mr. Koresh . . . taught that ‘if you can’t kill for God, you can’t die for God.’”); Jury Sequestered in Murder Trial, at A13 (“Mr. Griffin is accused of first-degree murder in the shooting of Dr. David Gunn on March 10 as the doctor arrived for work at the Pensacola Women’s Medical Services clinic in the midst of an anti-abortion protest”). To save space, items on Bosnia, Lebanon, South Africa, and Northern Ireland are omitted.

37. Rorty, *supra* note 33, at 15.

38. See, e.g., Chris Hedges, *Egypt Loses Ground, to Muslim Militants and Fear*, N.Y. Times, Feb. 11, 1994, at A3; Chuck Sudetic, *U.N. Says Bosnian Serbs Press ‘Ethnic Cleansing’*, N.Y. Times, Mar. 19, 1994, at 4.

39. The current problems in Egypt, for example, are said to derive in part from “the authoritarian state, a state that is viewed as unjust and repressive.” Hedges, *supra* note 38, at A3 (quoting Abdel Qadir Kholeif). But what is the probable effect of liberal, democratic reforms on “the drive by the Muslim militants to create an Islamic state in Egypt”? *Id.*

dural fairness and does not even assume agreement on the basic institutions of government. Some such minimal notion of tolerance is practically a necessity if the problems of legitimacy, acceptability, and the "search for an unforced solution" are taken at all seriously. A supremely objective, impartially conceived ideal of tolerance is useless if it does not and cannot command the personal assent of those individuals who would be governed by it. "[W]e are looking for principles to deal with conflict that can at some level be endorsed by everyone," notes Nagel, "principles that will both motivate and command respect and that will therefore give authority to results which are reached in accordance with them, even if those results do not in themselves command unanimous support."⁴⁰ Obviously, everything turns on the phrase "at some level," and as I have suggested, that level may be very low (and thus very abstract) indeed. But enforced tolerance of minimally acceptable procedural principles may ultimately be more vital than even liberalism and democracy; or, rather, it may (since it does not promise much) be possible where they are not.

40. Nagel, *supra* note 16, at 23–24; cf. *id.* at 145 ("The only unanimity that makes sense must be based on a combination of such impartial and perfectionist values as it is reasonable to expect everyone to share, together with respect for those large differences in value and conception of life that inevitably remain.").