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INTRODUCTION TO THE CONFERENCE ON FUNDAMENTALISMS, EQUALITIES, AND THE CHALLENGE TO TOLERANCE IN A POST-9/11 ENVIRONMENT

Richard H. Weisberg

Thanks to a generous gift from Dr. Steven Floersheimer, the Center for Constitutional Democracy has been created at the Benjamin N. Cardozo School of Law. The Center intends to further discussion on pressing issues of constitutional law and policy, both domestic and international. For its inaugural conference in late April 2002, the Center turned its attention to the many intricate problems emerging from the tragic events still only 222 days old as the conference began.

Several hundred people gathered at Cardozo to discuss "Fundamentalisms, Equalities, and the Challenge to Tolerance in a post-9/11 Environment." This was one of the first major scholarly events designed to locate in the still raw wounds of September 11th the costs (and perhaps occasional benefits) to constitutionalism of a scarring (and scary-ing) series of responses by governments and others.

Co-directors Michel Rosenfeld and I wanted to assure a wide range of viewpoints and of topics. We succeeded at least in those aims. Our keynoters included the former Secretary of the Navy under President Clinton, Richard J. Danzig (whose seminal remarks on bioterrorism are published here) and Professor Abou El-Fadl, a distinguished law professor, whose plea for tolerance both within and towards the Islamic community established—alongside Danzig's speech—the tension between emergency and liberty that defined the Conference.

The four panels that followed launched a series of more specific waves that constitutional captains and crews, perhaps especially in the United States, are still navigating. The emerging issues ranged from the appropriateness of torture—with Alan Dershowitz suggesting a "torture warrant"—to the legality of

incarcerations on Guantánamo and various naval brigs States-side, to restrictions on speech and media access in wartime situations (then Afghanistan, now Iraq) or (conversely) the felt need to cabin a potentially intolerant and racist domestic speech reaction, and its concomitant in the racial profiling of a huge group of suspected “others.”

It became clear that the cautionary stories told on Day One of the Conference by Richard Danzig and Alan Dershowitz—and on Day Two by Ruth Wedgwood—were having an effect on such traditionally liberal panelists as Sanford Levinson, who has gone on to author an influential if controversially equivocal essay on torture.¹ But constant voices of traditional values also emerged and are published here. One of those, Michael Ratner’s, opposes strongly the tendency to bend quite so quickly and so far our understandings of constitutional norms.

Mr. Ratner’s speech joins with selections from each of the four substantive panels to give the reader a sense of the timeliness and complexity of the two-day discussion. Professor Rosenfeld provides a comparative constitutional perspective on hate speech, always a limit area for the liberal tolerance of free speech and particularly challenging when some see the world, and even communities within a single country, as clearly dividing along lines of ethnicity and religious belief.

The panel, *Postmodernism and 9/11* is published here in full. Geoffrey Hartman, Steven Mailloux, Edward Rothstein and I discuss and debate the tension in public discourse since 9/11 between what might be called the plain talk of good and evil and the more nuanced and often highly controversial words of some social critics. What effect (if any) do discursive strategies and interpretive theories bring to bear upon a community’s response to what Professor Hartman allusively evokes as “an event of destiny?”

Several articles have been selected for publication here from the two central panels, *Tolerance from the Religious Perspective* and *Fundamentalism from the Perspective of Liberal Tolerance*. Milner Ball adds to his excellent body of work on the intersections of law and religion by discussing tolerance within the traditions of the Protestant Reformation. He asks “insider questions” about the troubling perception that traditional religions have exacerbated more than actively opposed the ostracism of the “other,” and that (if true) a brand of religious triumphalism may

¹ See Stanford Levinson, *The Conduct of War Against Virtual States: The Debate on Torture in the Wake of September 11*, DISSENT (Forthcoming May 2003) (manuscript on file with author).

play out threateningly in the post 9/11 world. Leslie Griffin, extending the inquiry to Catholicism, reflects (with John Rawls and Michael Walzer as companions) about the potential for any allegedly "true faith" to adopt a discourse, much less a doctrine, of liberal tolerance. Just as, earlier in the conference, Abou El-Fadl had challenged Islam to see the tolerance within it, she asks for a catholic (and Catholic) discourse of consensus and open-ness especially during difficult times. And Adam Seligman, after identifying the illogicalities or reductionisms implicit in "tolerating" that which you detest, goes further by claiming that an understanding of the world post-9/11 requires an adjustment in the very premises of Enlightenment tolerance. Paradoxically, as groups further define themselves and others within "broad boundaries" of difference—rejecting the enlightenment project of minimizing or trivializing those differences wherever possible—Seligman sees the need to look *within religious foundations* themselves "to reinvent a language of tolerance" appropriate to the new environment.

The co-convenors of this inaugural conference have reason to believe that the Floersheimer Center for Constitutional Democracy will continue to establish its leadership in developing discourse and policy regarding the complex "post 9/11" world.