Tolerating extremism : to what extent should intolerance be tolerated?
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INTRODUCTION

I travel a great deal, domestically and internationally. Like anyone who spends significant time on planes (250,000 miles in 2011) it is my preference to tune out the world, particularly the person next to me; I do so thanks to BOSE headphones, listening to music my kids have gathered for me (I would not know how to download music if my life depended on it) and reading, working or looking out the window. Sometimes, however, the person seated next to me seems particularly interesting and relying on instinct I engage in conversation. If I am truly lucky, such a conversation can be extraordinarily engaging and thought provoking. This happened on a flight from Atlanta, GA to Augusta, GA. My partner in row 1 was a physician with a busy private practice in Augusta. After a quick exchange of pleasantries we, somehow, made our way to discussing religion and extremism.

I told him about my previous book, *Freedom from Religion*, and about this PhD project in the Netherlands[1] He was clearly intrigued and shared with me that he and his wife adopted a child because of their faith; he explained that as they have means it is their duty to share with others, less fortunate than them. In his own words, he is an evangelical Christian and faith is the most important guide in both his professional and personal life. It soon became clear to me that his morals were totally dependent on his religious convictions. His view was: no religion, no morals. Ethics could not be derived from anything else than his religion. I asked him how he resolves his deep evangelical faith with modern medicine; his response was a total surprise for me. Simply put, he does not believe in evolution viewing it as physiologically impossible. Apparently, his religious convictions were not only fundamental for his moral stances, but for his scientific views as well. Something that contradicted his religion could not be "true" in the sense of scientifically validated.

For him, creationism is the only possibility and all efforts to explain evolution are non-starters. I asked him how he resolves the tension, perhaps intellectual disconnect and profound contradiction are better terms, between modern

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[1] see Guiora, Amos, "Religious Extremism: A Fundamental Danger", in: *South Texas Law Review,* Vol. 50, No. 743, (2009), pp. 743-768; Guiora, Amos, "Vrijheid van meningsuiting: een terugblik en een blik vooruit", in: Afshin Ellian, Gelijn Molier, Tom Zwart, red., *Mag ik dit zeggen? Beschouwingen over de vrijheid van meningsuiting,* Boom Juridische Uitgevers, Den Haag 2011, pp. 117-139; Guiora, Amos, "Multiculturalism and Religious Extremism: Whose Human Rights Do We Protect?", in: Gelijn Molier, Afshin Ellian, and David Suurland, eds., *Terrorism, Ideology, Law, and Policy,* Republic of Letters Publishing, Dordrecht 2011, pp. 337-361.

science and creationism. His response was simple and clear: my job is to save people's lives and evolution plays no role in what I do. Simply put, it is God who decides. When I shared this conversation with physician friends their reactions ranged from bewilderment to apoplexy; many expressed regret they did not have the chance to directly engage him in a science based conversation something I am thoroughly incapable and incompetent to do.

The second part of our conversation related to his family and homosexuality. He shared with me that he and his wife have six children. One of his children is a bachelor in his mid-20's regarding whom we had the following exchange based on a hypothetical ---akin to a law school exam---that his son is a homosexual:

ANG: What would you do if that child were to inform you that he is a homosexual?

MD: My wife and I would seek to talk him out of it.

ANG: What would you do if your child wanted to bring his homosexual partner home?

MD: The partner would never step into our house.

ANG: Would you attend your son's homosexual wedding?

MD: (After looking wistfully into space for a few seconds) No, my wife and I would not attend and we would request that our other children also not attend.

ANG: But I thought you loved your son more than anything in the world.

MD: I do; but I love the Bible more than I love my son.

I found the conversation extraordinarily enlightening, perhaps painful and certainly candid. Especially the remark that you can love the Bible more than your son struck a note with me. After discussing it with friends and colleagues, and wrestling with what is the appropriate forum for sharing this exchange, I decided it is a relevant and powerful opening to this book. I do so carefully because the conversation was private; however given the rawness of its emotions and what it conveys regarding the depth of religious belief I decided to include it. There was one last exchange, which, for me, was of extraordinary importance.

ANG: Listening to you reminds me of conversations with deeply religious Jews and Moslems for both are convinced of the absolute rightness and truth of their faith and path.

MD: Correct, but there is a difference.

ANG: What is the difference?

MD: I know the truth.

ANG: Funny, because that is what they say.

MD: I know; but I am right.

Perhaps, more than any other dialogue this last exchange neatly summarizes how a person of deep religious faith articulates his worldview. I would not define this individual as an extremist[2]; however, his conviction that his truth is the absolute truth places him---whether he agrees or not-----in the same camp as religious extremists. Some of the things he said were familiar to me on the basis of my frequent contacts with religious extremists. Here I always found a similar pattern:

(1) Morals being completely dependent on religion;
(2) Religion also being primary when it contradicts scientific validation;
(3) Personal relationships subservient to religious revelation;
(4) Complete self-assurance when it comes the rightness of the worldview adopted.

While I assume my seatmate was not a man of violence, his refusal to accept that others may also believe they 'know the truth' and that their faith is as valid as his suggests that this educated physician is a religious extremist. Not violent, but unrelenting in absolute conviction of the rightness of 'my truth' and the total dismissal of others. In particular, I was struck by his conviction that he and his family not attend his son's hypothetical wedding.

Whether this is akin to 'hate the sin, love the sinner' in that he is proving his love to his son by not participating in his celebration is a valid question. Regardless of the answer, the father's faith trumps the son's hypothetical decision. This type of extremism, though, is not unique to religion and can also be found in the political arena. An example of this is seen in the defeat of six-term Senator Lugar in the Indiana Republican Party Senate Primary. In a statement shortly after his loss he

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[2] An issue discussed at length in this book.

explained what he believed caused his loss.

> Unfortunately, we have an increasing number of legislators in
> both parties who have adopted an unrelenting partisan viewpoint.
> This shows up in countless vote studies that find diminishing
> intersections between Democrat and Republican positions.
> Partisans at both ends of the political spectrum are dominating
> the political debate in our country. And partisan groups, including
> outside groups that spent millions against me in this race, are
> determined to see that this continues. They have worked to make
> it as difficult as possible for a legislator of either party to hold
> independent views or engage in constructive compromise. If that
> attitude prevails in American politics, our government will remain
> mired in the dysfunction we have witnessed during the last
> several years.[3]

Much like the stranger on the plane, it seems this extremism or conviction of
absolute rightness, at the complete dismissal of other viewpoints, has led to
ignoring discussion regarding the public interest focusing exclusively on what fits
a particular ideology. In other words, in creating a paradigm where extremism is
tolerated, risks to society and "at risk" individuals are given "short shrift".

My conversation with the physician-father, along with Senator's Lugar's words, is
a most appropriate background for the issues addressed in the pages that follow:
religious and secular extremism in a number of countries. Six countries –
Germany, Israel, the Netherlands, Norway, the United Kingdom and the United
States- - will be surveyed by examining specific examples from each country. The
project focuses on a myriad of issues including the US civil rights movement,
child endangerment in the context of religious extremism, soccer hooliganism,
public demonstrations against women singing, unbridled religious extremist
incitement, violent neo-Nazism, extreme right wing actions, multiculturalism, the
limits of free speech, tolerating intolerance and the social compact.

The dominant theme we shall explore is: to what extent should society tolerate
intolerance? This is, of course, a hugely important question. It is something Karl
Popper famously addressed when he wrote that "unlimited tolerance" must lead

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[3] Mike Zapler, *Lugar Unloads on 'Unrelenting' Partisanship*, POLITICO BLOG (May 9, 2012, 7:48 AM),
http://www.politico.com/blogs/on-congress/2012/05/lugar-unloads-on-unrelenting-partisanship-122891.html.

to the "disappearance of tolerance"?[4] Popper was writing against the backdrop of the rise of the Nazis in the 1930s of the twentieth century. Now we are faced with other extremist challenges. Nevertheless, the type of questions this confronts us with is similar. Addressing this question requires discussing to whom does government a duty and what is the harm caused by extremism. These issues will be our focus; in delving into these complicated and complex questions it is clear that the discussion will cause discomfort, if not controversy. That has been very clear to me in the course of my research; conversations with a wide-range of subject matter experts from different countries and distinct disciplines repeatedly reinforced this reality.

To effectively address "tolerating intolerance" requires examining disparate themes covering a broad mosaic. That is necessary to effectively answer complicated questions including: to whom is a duty owed, to what extent should society protect itself against an identifiable threat, how does the nation-state balance protections with freedoms and what should be the definition of extremism. After all, an overly broad definition of extremism will unnecessarily impinge on otherwise protected rights whereas a very narrow definition will grant protections to those who endanger society.

Comparatively-- different countries, distinct cultures, unique paradigms---- analyzing "tolerating intolerance " is intended to facilitate understanding the depth and importance of the query. The chapter "break-down" (see below) is intended to enhance the discussion; the comparative discussion will be interwoven into the issues addressed in each chapter. Important to emphasize that at its core the question regarding how much intolerance should society tolerate requires examining two over-arching questions: to whom does government owe a duty and when should government intervene, thereby limiting individual rights while protecting individuals.

This work reflects an eclectic approach to an age – old problem. I am not the first, nor the last to address extremism. It is, to be frank, an issue that has been "part and parcel" of human nature and history for thousands of years. It is safe to assume that extremism will continue to an integral part of the human existence in the years to come. In other words, extremism is a reality. The question, however, is whether extremism endangers society and if yes, to what extent and what can be done to mitigate the harm it causes. As discussed in

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[4] Popper, K.R., *The Open Society and its Enemies,* Volume 1, The Spell of Plato, Routledge & Kegan Paul, London and Henley 1977 (1945), p. 265; Rijpkema, Bastiaan, "Popper's Paradox of Democracy", in: *Think,* Volume 11, Issue 32, September 2012, pp. 93-96.

chapter one, I define extremism as a powerful combination of violence and ideology that must necessarily always be "correct" in the mind of its believers. For those believers their ideology is invariably "the truth" and must be defended at all costs. Think of the friendly physician I introduced earlier.

In undertaking this project my intention is to explore religious and secular extremism in a number of different countries. I do so because I am intrigued by a comparative approach, having adopted it in previous scholarship. I believe it an important, and effective, method to examine a particular topic, with the caveat that different cultures and societies have distinct nuances, subtleties and realities. In that vein, important to note there is a differential treatment amongst the surveyed countries reflecting the distinct values of each society relevant to the specific issues the project addresses.

While this project focuses on religious and secular extremism I am not engaged in "religion bashing". Although I will focus on some less pleasant aspects of religion, in particular extremist religion, this exercise should not be mistaken for atheist propaganda in the sense of New Atheism.[5] ; I find that to be uninteresting and vapid. I am, however, interested in exploring ways in which the state can more effectively protect itself against those who seek to harm individuals and society alike while protecting the freedom of speech of those who challenge society.

Re-articulated, my exploration focuses on the relationship between extremism and society, particularly how the latter can more effectively protect itself against the former. In doing so, I believe it essential to analyze, if not focus, on the relationship between tolerance and intolerance, particularly society's willingness to tolerate intolerance at the risk of "harm".

There is a triangular relationship between "tolerance", "intolerance" and "harm" for intolerance is not harm-free. In that vein, one of the most important questions is the extent of harm to individuals and society the state should tolerate regarding freedom of speech and freedom of religion. It is for that reason that the chapters ahead focus, in large part, on these two freedoms. While attention is paid to other issues relevant to a broader discussion regarding

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[5] see: Hitchens, Christopher, *The Portable Atheist: Essential Readings for the Nonbeliever,* Selected and with introduction by Christopher Hitchens, Da Capo Press, Philadelphia 2007; Stenger, Victor J., *The New Atheism: Taking a Stand for Science and Reason,* Prometheus Books, Amherst N.Y. 2009.

extremism, the focal point of this project is the freedom of speech and freedom of speech.

There is a direct link between extremism and national security, or what some define as public order. Regardless of the term, the point of departure in this project is inquiring to whom does the state owe a duty. In many ways, that question is essential to resolving the "limits of tolerating intolerance" query. In asking to "whom does the state owe a duty" my working thesis is that resolving this dilemma suggests it is legitimate for the state to minimize otherwise guaranteed rights. To that end, the two core questions are should the state minimize individual rights in the face of extremism and, if yes, "how"?

To address these two questions, I made a number of assumptions:

- That extremism exists (secular and religious alike);
- That extremism poses a harm to individuals and society alike;
- That the state owes a duty to protect;
- That the state must act proactively to protect;
- That minimizing individual rights to protect the "at risk" is a legitimate;
- That there are limits to how much intolerance can be tolerated;
- That extremists "push the envelope" in terms of "testing" society;
- That extremists effectively use social media and the internet;
- that incitement endangers society;
- That a comparative approach facilitates understanding how different countries address-confront these common (yet circumstance/culture/condition dependent) questions and challenges;

Answering these questions required I travel "in country" to the surveyed countries and meet with a wide-range of subject matter experts representing distinct disciplines, beliefs, perspectives and agendas. Needless to say, the subject naturally lends itself to distinct and contentious points of view, reflecting the enormous complexity of the questions posed. My approach was agenda "free"; nevertheless, I was well aware those interviewed articulated positions and perspectives reflecting their particular approach to the subject matter. The project incorporates distinct voices reflecting powerful and compelling disparate opinions, perspectives and values. I have made a deliberate and conscious effort to give wide space and latitude to those voices. Needless to say, the analysis and recommendations are solely mine and I bear exclusive responsibility for their interpretation.

As a condition to speaking with me, the overwhelming majority of individuals requested anonymity; while I agreed with their condition, I am aware of the possible discomfort such an approach may cause. Nevertheless, I felt---after careful consideration and much reflection----that not acceding to this request would deny me access and insight to thoughtful and reflective people whose thoughts were essential to my research. Needless to say, in accordance with academic rigor and standards, all articles and books I quote are cited in full. Furthermore, records of all communications----in- person interviews, emails and phone conversations---- are in my personal files. It is also important to note that the reasoning I develop in this thesis and the conclusions drawn are not dependent on anonymous sources. I do not invite the reader to assent to a view on the basis of an authority of whom I cannot reveal the identity. The reason that I engaged with many people is that they pointed out relevant material for study and they provided me intellectual sparring partners for my ideas.

Given the sensitivity and controversy of the subject matter I concluded that not respecting requests for anonymity requests would make this a distinctly different, and very limited, project. I am convinced were I not to include disparate, distinct and controversial voices the final product would be significantly distinct from the pages that follow. Were I not to respect these requests I would not be in a position bring "unfiltered voices" to the table; it is my belief that these voices are essential to truly understanding extremism. I am fully confident this approach significantly enhances the reader's insight to the issues at hand.

Naturally, meetings with senior national security officials in the surveyed countries were conditioned on a guarantee of anonymity. This, for me, was an obvious request; the same holds true for individuals who felt their personal security was "at risk" were their involvement in the project known. While "off the record" conversations with national security officials are, largely, a "given" the same may, understandably, not be readily apparent regarding subject matter experts from other fields. However, as I learned when researching and writing "Freedom from Religion" (first and second editions) the subject matter is sufficiently controversial to elicit repeated requests for anonymity. Important to add that in agreeing to this demand I imposed on myself to be the readers' "eyes and ears" requiring that I be both an honest reporter and objective analyst.

Regarding the methodology of the chapters a few words are in order: each chapter could, literally, be a book onto itself. To that end, the chapters "read" differently, some very detailed, others less so. Similarly, different topics and different countries reflect disparate levels of treatment. The chapters are neither equal in length nor equal in treatment; they are not intended to be so. Some are intended to provide a "window" on a particular issue whereas others present a specific issue in greater depth and intensity. In that vein, some chapters are very analytical, others more descriptive. Important to recall that in addressing the questions posed above my goal was to create the "groundwork" for the final chapter. The significance of this "build-up" cannot be sufficiently emphasized; from a methodological perspective the first six chapters are intended to create the groundwork for the recommendations that are the essence of the last chapter.

Similarly, there is a difference between how free speech in the US is analyzed in comparison to the other surveyed countries. That reflects both the historical richness of US case law and my familiarity with relevant Supreme Court decisions. There is another reason, though, why the case law on free speech in the US is treated much more elaborately than in the chapters on Norway and the Netherlands. This is – it is important to emphasize – not a book on the freedom of speech in the countries mentioned. This thesis is not aimed to be a contribution of comparative constitutional law or comparative human rights law.[6] The aim is to present an informed reflection on how to deal with extremism. So the comparative approach does not suggest, directly or indirectly, equal treatment amongst all surveyed countries; the intention is to provide the reader with sufficient information to draw comparisons and consider distinct approaches to similar paradigms. To that end, the approach I have adopted does not claim to address each country equally nor provide equal "space" to each issue; that is neither my purpose nor interest.

One of the important discussion points in the tolerance/intolerance debate is multiculturalism. It is, understandably, an issue that causes discomfort amongst readers with some questioning its relevance to this project. I decided to incorporate a chapter regarding multiculturalism because of its deep---albeit uncomfortable----relationship to extremism. The multiculturalism debate, far more prevalent in Europe than in the US, highlights powerful tensions between

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[6] see: Fraleigh, Douglas M., Tuman, Joseph S., *Freedom of Speech: in the Marketplace of Ideas,* St. Martin's Press, New York 1997; Barendt, Eric, *Freedom of Speech,* Second Edition, Oxford University Press USA, New York 2007.

"traditional" European society and that of "immigrant" Europe. Numerous professional and personal visits to Europe, particularly in the Netherlands, Norway and UK, highlighted the centrality of the multiculturalism debate in the context of the domestic political debate.

This was very much on the lips of a wide range of individuals with whom I met; while recognizing the importance of the topic, many articulated hesitation, if not discomfort, in the discussion. However, because of multiculturalism's profound connection to both intolerance/tolerance and extremism it is essential to the broader discussion. There is, needless to say, concern the multiculturalism discussion is a thinly veiled "finger pointing" exercise aimed at immigrants in accordance with deep concerns raised by the European political far-right. Wide-ranging discussions with subject matter experts from different fields and disciplines emphasized the importance of immigration to Europeans.

A clear connection was "drawn" between immigration, security and extremism; in that vein, the question oft posed was how, and to what extent, does society protect itself against the "outsider". The irony, needless to add, was that the "outsider" was a member of society though distinct culturally, religiously and ethnically from "traditional" society. As European leaders weigh their individual and collective responses to events both in Europe and beyond its borders sensitivity--the extent is unclear----is necessarily paid to the possible reactions of relevant immigrant populations. In that spirit, chapter five is heavily descriptive for addressing contemporary social tensions in the context of this project requires focusing on a number of issues, particularly the economy, immigration and gender issues relevant to religion.

By analogy: the Boston Marathon bombers encompass a significant number of "stories within the story" relevant to this project, reaching far beyond the bombing itself. Whether Tamerlan Tsarnaev was radicalized in a mosque or self-radicalized, religious extremism, as a motivating factor is essential to understanding the actions of the Tsarnaev brothers. Similarly, the issue of assimilation and acculturation is relevant to understanding the relationship between immigrants and the society they have chosen for their new home. This question is of particular importance given the politically charged debate both in the US and Europe regarding immigration. In this vein, the discussion must include analysis of integration, immigration and extremism. In many ways, the

three are directly related to security concerns and considerations, both domestically and internationally.

The multiculturalism chapter (chapter three) proposes measures intended to facilitate more effective protection of the "at risk" population. My concern regarding that population is predicated on an assumption both that this category exists and is worthy of enhanced protection.[7] I am aware that the proposed "protection paradigm" minimizes otherwise protected rights. I am similarly aware that some topics and my treatment of them causes discomfort; that is both legitimate and not surprising given the issue addressed in this book. Perhaps for that purpose, the tone I have adopted for this project is more informal than formal, more conversational than academic. That is the manner I feel most honestly reflects the voices of those interviewed. However, the tone in the chapters addressing questions of law, particularly regarding freedom of speech, is appropriate to a legal analysis of extraordinarily important judicial decisions.

Regarding the countries chosen a word of admission: I commute between the US and Israel and spend significant time in the Netherlands. As a result of this project, I travelled to the UK and Norway. I am not an expert on British or Norwegian society; however, because of the range, depth and scope of "in country" interviews I conducted I feel comfortable in writing about both countries. It goes without saying that were it not for the murderous act of Breivik on July 22, 2011 I would not have included Norway in this project.

The reaction of Norwegian subject matter experts with whom I met reflected acknowledgment, albeit with a "heavy sigh", that Breivik's actions placed Norway "on the map" of extremism. More than one interlocutor began our conversation by suggesting that "if not for Breivik, you would not be visiting Norway". They were, of course, correct.

However, the terrible tragedy of July 22, 2011 *must* be included in this project. One can but hope that Breivik's actions will not lead, directly or indirectly, to "copy cat" attacks. However, there is little doubt his murderous rampage raises

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[7] For similar approaches see: Moller Okin, Susan, *Is Multiculturalism Bad for Women*? With Respondents, edited by Joshua Cohen, Matthew Howard, and Martha Nussbaum, Princeton University Press, Princeton, New Jersey 1999; West, Patrick, *The Poverty of Multiculturalism,* Civitas: Institute for the Study of Civil Society, 2005; Alibhai-Brown, Yasmin, *After Multiculturalism,* The Foreign Policy Centre, London 2000.

yellow flags of caution regarding extreme right-wing political opinions held by traditional (i.e. white) Europeans in the face of threats they perceive immigrants (read, multiculturalism and tolerance of intolerance) pose to *their* society. The week I spent in Oslo shed much light both on Breivik personally and the dangers emanating from a committed and radicalized lone-wolf actor; precisely because Breivik was ruled sane (the initial psychiatric evaluation concluding he was insane notwithstanding) his actions cannot be "brushed aside". To do so (while arguably "convenient") is dangerous and self-defeating; Norwegian society must engage in painful self-reflection and the intelligence services must thoroughly re-assess their understanding of "threat posed". To that end, not incorporating Norway would be to ignore a traumatic specific event that sheds powerful light on the complicated, and obviously fraught with tension, relationship between extremism, immigration and multiculturalism.

Regarding the Netherlands: I have been professionally engaged with Holland for almost a decade and have been extraordinarily fortunate to spend significant time with a wide-range of individuals. While I do not speak Dutch (nor Norwegian) I have never found that to be an issue in the context of preventing open and frank discussions. Regarding Norway, Holland and the UK there is always discomfort----if not a certain danger----in the outsider commenting on a society that is not his. I am well aware of this because of my own reaction to much of what I read regarding Israel, often times scratching my head at what I consider to be ignorance of the outsider. However, as discomforting as that read may be, its importance must not be instinctively dismissed. While nuance may be missed, the perspective of the visitor can shed interesting light on what the insider assumes to be the truth. To that end, I can but hope that my insights regarding the UK, Holland and Norway will be read in that spirit.

The importance---and relevance----of Chapter Five (Contemporary Social Tensions) is that it brings to light many of the circumstances and conditions that enhance, if not facilitate, an environment of extremism. While the chapter is descriptive (rather than analytical) its inclusion is essential to explain circumstances relevant to the extremism discussion. That is, without this descriptive discussion it would be difficult to understand the background for the broader extremism analysis. Given the centrality of the freedom of speech analysis to this project, understanding the circumstances that accentuate the danger posed by incitement is essential.

That is, the discussion in Chapter Five focuses on significant tensions confronting the Netherlands, Norway, the UK and Israel; those tensions create an environment where extremist speech finds a more willing audience than otherwise. The deep concern, if not outright opposition, regarding immigrants and the "dangers" they pose to "mainstream" society are a critical aspect of the broader extremism discussion. Similarly, the powerful----and arguably dangerous----increasing extremism of Israel's orthodox community is particularly relevant to the freedom of speech/freedom of religion analysis. To that extent, to understand the power and influence of rabbinical incitement it is necessary to understand the complicated "lay of the land".

This, then, is an eclectic project incorporating distinct perspectives and issues; its primary focus-----while weaving different themes---is on the "at risk" population to whom government owes a duty of protection from extremists. That protection as analyzed in the chapters ahead implies minimizing rights of those who pose harm; needless to say, the "rights minimization" paradigm is not met with sanguine responses across the board. That is legitimate and understandable; however, the "duty to protect" requirement is an equally profound obligation not instinctually dismissible in the name of protecting otherwise guaranteed rights. I chose to focus on the relationship between "freedom of speech" and "duty to protect" because it highlights the tension between powerful competing rights at the heart of the tolerating intolerance discussion.

The vile and incessant hatred orchestrated by the Israeli religious right wing prior to the assassination of then Prime Minister Yitzhak Rabin was virulent, unrelenting and unforgiveable.[8] His assassination, in retrospect, should have come as no surprise. What was shocking was the utter failure of state agents to take seriously the unmitigated incitement and the incompetence of the State Attorney General to prosecute those responsible for inciting Rabin's assassin, Yigal Amir. I lived in Israel during those terrible days; like many others I was aghast at the unrelenting hatred but did not entertain the thought that a Jew would kill the Prime Minister.

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[8] see: Guiora, Amos, N. Freedom from Religion: *Rights and National Security* (First and Second Editions, 2009, 2013); Freedom of Speech and Incitement Against Democracy, Martinus Nijhoff (2000), David Kretzmer and Francine Kershman Hazan, ed.; Thiel, Markus, The 'Militant Democracy' Principle in Modern Democracies, Ashgate, 2009; "BOUNDARIES OF FREEDOM OF EXPRESSION BEFORE AND AFTER PRIME MINISTER RABIN'S ASSASSINATION", in R. Cohen-Almagor (ed.), Liberal Democracy and the Limits of Tolerance: Essays in Honour and Memory of Yitzhak Rabin (Ann Arbor: University of Michigan Press, 2000).

On one occasion I attended a meeting with Rabin and recall being struck by the paucity of security surrounding the Prime Minister. His assassination was a turning point in Israeli society, culture and history. The collective failure of "all of us" to recognize the threat posed by religious extremist incitement and our collective inability to protect the Prime Minister is a stain on society. In many ways, it motivates this project precisely because I understand----as a citizen of Israel----the dangers posed by unrestrained free speech and the significance of institutional weakness to protect the "at risk".

Similarly, I was raised in an intellectual environment where "words matter"; my father, a psycholinguist, emphasized the primacy of language and its powers. In addition, as a law professor who teaches criminal procedure and writes about the limits of interrogation, operational decision-making and the limits of state power I am extremely sensitive to the power of words. Simply put, "words kill". That is why this project focuses on free speech and the need to limit words that incite. This is an extraordinarily complicated balancing act that requires society's full engagement and attention. It is in that spirit that the discussions I conducted-----and the voices I present in the chapters that follow---bring to life the complexity of the free speech, tolerance/intolerance and protection discussion.

In that vein, it is important to emphasize clearly what this book is, and therefore what it is not. The book reflects an interdisciplinary effort to ask, answer and propose practical resolution to the concerns reflected in the subtitle. While I do discuss, and examine, freedom of speech issues it is in the broader context of the tolerance/intolerance debate. In that sense, while addressing freedom of speech questions it is broader than a casebook focused exclusively on that remarkably important topic. What is important, with respect to the theme this book addresses, is examining the freedom of speech in the tolerance/intolerance discussion.

Re-articulated, the focus of this book is an analysis of social policy ---in a number of different countries—which requires a freedom of speech discussion but not a focus. To that end, this work is not focused solely on the law; rather it is multi-disciplinary predicated on a comparative approach. The primary intention is to foster, perhaps engender is a better word, debate and discussion regarding the question to whom does government owe a duty. Answering that query requires stepping beyond a legal analysis exclusively; while the law is germane to the discussion, it cannot be the exclusive focus.

As I write these lines, I am involved in an extraordinarily complex, complicated and controversial judicial matter where one of the critical questions is to whom does the state owe a duty in the context of harm caused by religious extremism. The relevance of the matter to this work is that it highlights the practical nature of the question this project seeks to answer. Re-articulated: as will be discussed in the pages ahead, the question of government intervention in the face of extremism is of extraordinary importance, not to mention controversy and dilemma. In many ways, its resolution requires addressing, and hopefully resolving, the balancing of individual rights with state rights. After all, both are legitimate, yet the harm posed by extremism requires determining to what extent certain freedoms will be curtailed, if not minimized. In many ways, at the heart of this discussion is the freedom of speech.

That is the responsibility of government; to that end, I propose government does not have the "luxury" to hide behind clichéd mantras that guaranteed individual rights are immutable, not subject to careful review and, therefore, when justified, must be curtailed. Advocating limiting individual rights for the sole purpose of protecting society and "at risk" individuals alike will strike some as unnecessarily excessive. However, a cost-benefit analysis suggests failure to do so facilitates harm. Needless to say, solutions are neither easy nor controversy free; that, however, does not justify refraining from posing the difficult question. After all, the solution requires identification of the problem with the understanding that an answer is not easily at "arms reach". Nevertheless, that must not deter us from conducting the inquiry while seeking to propose answers that will facilitate public discussion providing concrete recommendations to decision makers.

The chapters that follow are aimed to facilitate discussion regarding when government should intervene when confronted with extremism. The discussion particularly focuses on two distinct issues: limiting extremist incitement and minimizing harm caused by extremism. Addressing both requires recognizing that extremism causes harm and that incitement is essential to extremism. Conversely, those uncomfortable with either or both assumptions will suggest that while extremism undoubtedly challenges democracy, it reflects a necessary cost. Those advocating tolerance of extremism, what I refer to as tolerating intolerance, have suggested to me that democracy is strengthened by this challenge.

While an interesting argument it is, I suggest, fraught with danger primarily

because of the harm caused by extremism. It is, then, harm that drives much of our discussion; addressing harm requires recognizing its existence, discussing its sources and impacts and then asking how can it be mitigated in the context of protecting individual rights. Re-articulated: I am of the belief that extremism---secular and religious alike---causes harm and that the responsibility of government is to confront extremism in order to minimize harm. That is, there is a limit to the tolerance of intolerance.

To address these issues, the book is divided into the following chapters;

- Chapter One: Defining Extremism;

- Chapter Two: The dangers extremism poses to society;

- Chapter Three: Multiculturalism;

- Chapter Four: Religious Extremism: Causes and Examples of Harm;

- Chapter Five: Contemporary social tensions

- Chapter Six: What limits should be imposed on free speech?

- Chapter Seven: Looking Forward

Dean (then Professor) Martha Minow's article[9] is the intellectual background for the discussion ahead. No other law review article has so significantly shaped my thinking; I have read it innumerable times and include it in my seminar, 'Global Justice'. After all, in discussing extremism, the key questions are: to whom is a duty owed and what are the limits of intolerance that are to be tolerated? Answering these questions requires examining limits and rights; analyzing them in the context of extremism is the 'core' of this book. While freedom of speech and freedom of religion are vital to democracies, the freedoms are not unlimited. Where to draw the line between permissible and impermissible is complicated. Doing so in the extremist paradigm significantly exacerbates that complexity; lines are starkly drawn because extremists and extremism pose threats. The public must determine to what extent it protects itself from extremists while ensuring that extremists' rights are not violated. Addressing this tension is essential; it is, to coin a phrase, where the book is 'going'.

The basic theme that will be woven is that religious and secular extremists pose dangers to society and individuals alike; the question I will seek to answer is to

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[9] *See* Minow, *Tolerance in an Age of Terror*, 16 USC Inter. L.J. 453 (2007).

what extent should, and does, society protect itself against a readily identifiable threat. Whether society chooses to 'see' that threat is essential to the discussion; examining why the threat is minimized, at best, and ignored, at worst, is a classic example of history repeating itself.

Undertaking this examination requires determining how to balance competing rights; complicating the analysis is the 'sacred veil' that protects religion and hinders candid discourse regarding dangers posed by religious extremism. Addressing the immunity oft-times granted religion can pierce that veil, if not lift it. Secular extremism does not enjoy similar protection; nevertheless, line drawing between protected and illegal secular conduct is no less complicated than tackling the dangers posed by religious extremism.

In addressing the dangers posed by religious and secular extremism, I hope to highlight their impact on society and individuals. Simultaneously, I include recommendations for specific measures that will facilitate the nation state's ability to protect itself while ensuring protection of those posing that danger. That is, to what extent does the nation state protect freedom of religion and freedom of speech to those who would minimize freedoms for and of others? 'To what extent should intolerance be tolerated', the question posed by Dean Minow and by Karl Popper,[10] shall serve as our guide precisely because it is the most pressing query in the contemporary era; it may well be the question our children will similarly struggle with.

The question is whether threats to national security and public order justify minimizing free speech. In some ways, American history has demonstrated a ready willingness to answer in the affirmative. The costs, as repeatedly demonstrated, are significant with respect both to First Amendment principles and on a human, individual basis. However, disregarding legitimate threats to national security is *also* dangerous. The dilemma, then, is determining the seriousness of the threat and public order and ascertaining whether limiting free speech will mitigate that threat and at what cost to individual liberty. The risk in finger pointing is extraordinary; there is always a danger in identifying the 'other' as posing a threat to society.

In many ways the 'tolerating intolerance' paradigm espoused by Professor

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[10] See Cliteur, Paul, & Rijpkema, Bastiaan, "The Foundations of Militant Democracy", in: Afshin Ellian & Gelijn Molier, eds., *The State of Exception and Militant Democracy in a Time of Terror*, Republic of Letters Publishing, Dordrecht 2012, pp, 227-273.

Minow is directly 'on point' with respect to the limits of free speech. That is, do religious and secular extremists pose a sufficient enough threat to society that *their* freedom of speech protections need be re-defined? There is, clearly, danger in raising this question; it suggests deliberate identification of a specific group as worthy of special attention in the context of establishing a rights minimization paradigm. The risk in this proposal is significant; similarly, the possible risk to public safety and individuals alike in failing to recognize the possible harm posed by religious and secular extremists is also fraught with danger.

2013 marks eighteen years since the Murrah Federal Building bombing, twelve years since 9/11, five years since the coordinated attacks in Mumbai and two years since the attack in Norway that killed 77 Norwegian's. Each serves as a tragic reminder of the extraordinary power of extremism, religious and secular alike. Clearly, extremism is not a new phenomenon; however, because it continuously confronts society on a daily basis it is essential to study, understand and define it. Narrowly defining extremism is essential; otherwise the danger of recklessly castigating, much less punishing for mere thought alone is a distinct possibility.

One of the specific goals of this book is to propose a narrow, carefully crafted definition of extremism. Arthur Miller's powerful play, "The Crucible'[11] brilliantly articulates the dangers of extremism when it is used to justify harming otherwise innocent individuals. It must be recalled that 'The Crucible' depicts not only the horrors of the Salem Witchcraft Trials but also the "darkness at noon"[12] of McCarthyism.

To that end, both the iconic phrase, "round up the usual suspects" made famous in Casablanca and Justice Jackson's seminal warning regarding the 'unfettered executive'[13] serve as powerful reminders of the requirement to balance legitimate individual rights with equally legitimate national security rights. While extremism poses a danger to society there is equal danger in casting an arbitrary, capricious net in an effort to protect society. The responsibility and burden confronting decision makers regarding this tension is, literally, overwhelming and

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[11] Miller, Arthur, *The Crucible: A Play in Four Acts,* Penguin Books, London 2000 (1953).

[12] Koestler, Arthur, *Darkness at Noon,* Penguin Books, Harmondsworth 1982 (1940). Crossman, Richard, ed., *The God that Failed,* Ayer Company, Publishers, Inc., Salem, New Hampshire 1984 (1949).

[13] Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

fraught with danger. One of this project's goals is to both address the tension candidly and to recommend mechanisms resolving its seemingly intractable conundrum.

There is an interesting paradox to be noted: while history is replete with examples of over-reaction in the face of crisis, contemporary society has demonstrated a startling inability to clearly recognize an obvious threat. In addressing extremism from the balancing perspective, the primary question is whose rights are to be protected and how the tension between individual rights and national security rights is to be resolved. In addressing this question the assumption is both are legitimate and must be protected.

Clearly extremism is not a new phenomenon; any effort to limit its scope and impact must be done with sensitivity and respect for otherwise guaranteed rights. After all, the right to free speech is essential to democratic societies and culture. That said, the extremism confronting contemporary society is exacerbated both by the tone of the current political climate and the power, speed and reach of the Internet. The blogosphere, social network and Internet dramatically impact how the message of extremism is conveyed. One of the great challenges confronting decision makers is how to respond to the Internet's facilitation of extremism while respecting individual and civil rights. In other words, the challenge is determining what degree of extremism can be tolerated---in the context of freedom of speech----before determining that extremists pose a clear and present danger.

A research project of this scope significantly benefits from direct outreach to a broad range of experts, commentators and observers; to that end, a questionnaire was sent to academics, security officials, policy makers, thought leaders and religious leaders in Germany, Israel, the Netherlands, Norway, the United Kingdom and the United States. Given the dangers posed by extremism and its ramifications for society and individuals alike, wide spectrums of experts and thought leaders must participate in the discussion regarding extremism.

Respondents to the questionnaire were asked to address the following issues.

a. The definition of the term 'extremism';
b. The dangers extremism poses to society;
c. The differences between secular extremism and religious extremism;
d. The causes/motivations for extremist movements (secular and religious);
e. The role of religion in fomenting/encouraging extremism (historically and currently);
f. The power of the internet and social media in facilitating extremist movements and ideas;
g. Contemporary social tensions (i.e. economic crises, breakdown of traditional family structure);
h. Measures and methods to minimize reach/power of extremism/extremist leaders (secular and religious;
i. The power of 'hate speech' and what, if any, limits should be imposed on free speech in the context of extremism.

The book 'tracks' these questions as reflected in the chapter headings. That is, the book's flow largely mirrors the questions posed in the questionnaire. Interspersed throughout the book are specific examples that highlight a particular issue. As an example, the trial of the Dutch Member of Parliament, Geert Wilders, acquitted of five counts of hate speech and discrimination,[14] is an important 'case study' addressing whose speech should be protected in the context of public discussion regarding religious extremism. As was made clear in the Wilders case, *how* to resolve this complex dilemma raises profoundly important questions regarding values and principles of contemporary society.

The chapters, individually and collectively, are based on scholarship from different disciplines including law, sociology, religion and political science; analysis of court cases from different jurisdictions; significant in-country research. The in-country research, proceeded by significant study intended to enhance familiarization with the six surveyed countries, emphasized conversations with subject matter experts from distinct fields including national security experts, academics, faith leaders, people of faith, politicians, individuals previously convicted of extremist related crimes, members of the media (traditional and non-traditional) and thought leaders. Rigorous effort was made

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[14] *Geert Wilders acquitted on hate speech charges*, TELEGRAPH, June 23, 2011, http://www.telegraph.co.uk/news/worldnews/europe/netherlands/8593559/Geert-Wilders-acquitted-on-hate-speech-charges.html.

to ensure that the book not reflect one of the disturbing, if not frightening, characteristics of extremism: the echo chamber. That is, I met with a wide range of experts representing and articulating disparate viewpoints on issues relevant to this project.

One reader of an earlier draft commented that the book has innumerable spin-off possibilities. That is relevant in the following context: the subject matter of extremism is both enormously complicated and hard to fit into a 'neat' category. By its very nature it is interdisciplinary; that was consistently reinforced in meetings with thoughtful subject matter experts representing distinct disciplines. To that end, this book both paints on a wide canvas while focusing on specific issues; that is, addressing both what is extremism and what dangers does it pose requires a two-step process. The first step is the larger picture; the second step is a narrower focus. In that sense, spin-offs are a correct suggestion because of the large number of issues deserving further treatment, whether from the perspective of the law or from a distinct approach.

Defining extremism and determining the limits of tolerable extremism is essential to framing the discussion that drives this book. While some might suggest definitions are problematic, the need to determine limits of lawful, tolerable behavior outweighs concern regarding definitions that arguably suggest limits on free speech. Undoubtedly that is a valid concern; nevertheless, both those 'pushing the envelope' and those potentially harmed must know the limits of lawful conduct.

Arguably the philosophical approach that "one man's terrorist is another man's freedom fighter"[15] would be preferred by those who shy away from definitions and the inevitable limits they impose on individual liberty and freedom. However, respecting the rights of individuals to articulate principles seemingly 'outside the box' while ensuring those comments stay within boundaries society can tolerate justify imposition of a definition. In writing my previous book on this topic, Freedom from Religion: *Rights and National Security*[16], I chose not to define religion while proffering a definition of religious extremism. This decision---criticized by some---was based on a conviction, after consulting with respected theologians and academics engaged in the study of religion, that defining religion is, frankly, all but impossible. It is, in many ways, whatever an individual chooses

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[15] GERALD SEYMOUR, HARRY'S GAME 62 (Overlook 1975).

[16] AMOS GUIORA, FREEDOM FROM RELIGION: RIGHTS AND NATIONAL SECURITY (Oxford 2009).

it to be; in other words, to quote the colloquialism, 'whatever works for you'.

However, while defining religion is an issue that I chose to 'shy' away from,[17] narrowly defining religious extremism was necessary. The reasons are two-fold: because the harm religious extremists potentially cause is significant and measures implemented by the nation state to minimize the impact of religious extremism potentially impact civil and political rights. Religion, when practiced by people of moderate, mainstream faith, is largely concerned with man's relationship with God and provides positive social and faith exchanges for people either on an intra or inter faith basis.

For that reason, moderate, mainstream religion does not pose a threat to civil, democratic society; accordingly, the state need not engage in a discussion how to 'limit' faith[18]. That is in direct contrast to religious extremism that entails, as defined in Freedom from Religion, a willingness to harm another individual in order to bring glory to God**.** That reality—*the very real possibility of harm*— justifies government imposed limits on the practice of extremist religion because the primary responsibility of government is to protect the civilian population, specifically children,[19] from harm, whether external or internal. That obligation imposes on government the responsibility—and the right—to impose limits on how religious extremism is *practiced*; similarly, it justifies imposing limits on the *free speech* of religious extremists. By extension, then, the same principle applies to secular extremism.

Nevertheless a 'yellow card' is in order: there is danger in identifying threats to society. History has repeatedly shown that casting aspersions and collective punishment can have tragic results. However, the danger to society in not clearly defining potential threats----and failing to take pro-active measures to minimize possible harm---is no less dangerous. To that end, the tension is obvious: do we restrict otherwise guaranteed protections or do tolerate intolerance. Re-stated: is there harm to adopting a leniency paradigm regarding extremism and intolerance. As I suggest in the pages that follow the answer is "yes", tolerating intolerance is a model that unnecessarily and unjustifiably endangers individuals and society alike.

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[17] See: Boyan, Stephen A. Jr., "Defining Religion in Operational and Institutional Terms", in: *The University of Pennsylvania Law Review,* No. 116, 1967-1968, pp. 479-498.

[18] With the exception of separation of church and state.

[19] Amos N. Guiora, *Protecting the Unprotected: Religious Extremism and Child Endangerment*, 12 J. L. & Fam. Stud. 391 (2010).

The wide-ranging responses to the questionnaire question 'how do you define extremism' reflect an extraordinary lack of uniformity and agreement; nevertheless there are certain basic similarities in the definitions offered. What, in broad strokes, the definitions suggest is that extremism is an explicit rejection of existing societal norms and mores. The extremist in addition to taking the law into his own hands unequivocally rejects restrictions and limitations imposed by society intended to preserve civil and social order. As discussed in chapter one, I define extremism as a powerful combination of violence and ideology that must necessarily always be "correct" in the mind of its believers. For those believers their ideology is invariably "the truth" and must be defended at all costs.

That reasonable minds can reasonably disagree is one of the most treasured values and principles of democratic society; in many ways, it defines liberal society where discussion and debate represent an ideal. Highlighting extremism, then, potentially paints those who 'think outside the box' negatively punishing those deemed unconventional, free spirits who push the envelope while living on the edge. Those qualities, while perhaps causing discomfort, do not, inherently, pose a danger to society. The human race has undoubtedly benefited from the contributions of individuals deemed 'extremist' by their societies' mores, norms and conditions.

The litany of such individuals is lengthy; obvious examples include Jesus, Newton, Copernicus and Galileo. Conversely, others *also* considered extremists have caused unimaginable harm both to their own people and to the larger international community. The roster whose short list includes Hitler, Stalin, Pol Pot and Mao reflects the true evil of unbridled extremism facilitated by what Daniel Goldhagen correctly identified as 'willing executioners'.[20]

Therein lies the tension in undertaking an examination of extremism: is the reference to Galileo or to Hitler; after all, the former was perceived by his society to pose an extraordinary danger for he was challenging basic, long-held convictions. It must be recalled that Galileo was seen as undermining society questioning the basic relationship between man, God and the universe; not by chance was he forced to recant his views and remain under house arrest until his death[21]. Arguing that Hitler was an extremist whose actions killed millions is all

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[20] *See* DANIEL JONAH GOLDHAGEN, HITLER'S WILLING EXECUTIONERS: ORDINARY GERMANS AND THE HOLOCAUST (1996).
[21] Richard Owen & Sarah Delaney, *Vatican recants with statue of Galileo*, Mar. 4, 2008, http://www.timesonline.co.uk/tol/comment/faith/article3478943.ece.

but universally accepted as correct[22]; however, in that vein, it would be wrong to ignore public opinion polls in Russia which suggest 21%[23] of the population longs for Communism believing it preferable to Putin's 'managed democracy'.[24] Perhaps it is not too much of a stretch to suggest similar opinions will shortly be articulated in Iraq regarding Sadaam Hussein.

There is, then, risk in highlighting extremism; some individuals, defined as extremists, have made extraordinary contributions to mankind.[25] However, given the polarized age in which we live, failure to both address extremism and explore how to effectively, yet legally, curtail the influence of extremists is more dangerous. The burden, then, is to engage in a narrow discussion regarding individuals that directly threaten both society (in general) and vulnerable group particular or individual specific members of society while neither unduly nor unjustifiably limiting rights of those who 'push' society within the bounds of the law. Hyperbole is the great danger in this discussion; both from the perspective of those who argue that limiting freedom of speech is inherently unlawful and those who argue that broadly limiting free speech is the most appropriate recourse in the face of non-conformity.

Mere thoughts cannot---and should not---be subject to limitation; however, words and actions are subject to scrutiny in order to determine whether they pose a threat. Without doubt, the margin for error demands this demarcation line is clear; otherwise basic rights will be violated in an arbitrary and capricious manner devoid of due process. However, while society must be protected against potential harm, determining whether it is ephemeral or concrete requires careful examination. Otherwise, striking a balance between individual rights and government obligation to protect the public is exceptionally difficult.

Nevertheless, ignoring threats is akin to 'putting one's head in the sand'; it is a risk society cannot tolerate. Deliberately denying or underestimating risks posed to society because of concerns ranging from 'political correctness' to concerns regarding violating otherwise protected rights to inexplicable dismissal of harm are unacceptable alternatives. Equally dangerous, as the pages of history make clear, is over-reaction, collective punishment and unjustified violations of civil and political rights.

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[22] The exceptions are Holocaust deniers, neo-Nazi's and Nazi sympathizers
[23] *Income Gap Reaches A Dangerous Level*, Mar. 8, 2005, http://www.sptimes.ru/index.php?action_id=2&story_id=2950.
[24] *Id*; While differences clearly exist it would be wrong to ignore public opinon polls in Russia.
[25] Examples of this are clealy seen in Galileo and Martin Luther King Jr.

These contours serve as our guide in examining extremism in six different countries; while the bookends are, perhaps, clear the gray zone is just that, amorphous, vague and complicated. However, because of the danger posed by extremism and the concomitant combination of over-reaction and under-reaction in the face of risk this uncomfortable discussion is essential. Perhaps, that, more than anything else drives this book. In that vein the insightful words of are of particular importance "the narrower question of the relationship between religious liberty and national security has only rarely been explored".[26]

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[26] Samuel Rascoff, *Establishing Official Islam? The Law and Strategy of Counter-Radicalization*, 64 STANFORD L. REV. 125 (2012).