



Educating for Democracy

THE TAUBE DISCUSSION SERIES
ON TEACHING AMERICAN VALUES

Dr. Donna E. Shalala
Prof. Erwin Chemerinsky
The Hon. Sandra Day O'Connor
Prof. Sara Lawrence-Lightfoot

Edited by Philippa Strum



Educating for Democracy

THE TAUBE DISCUSSION SERIES
ON TEACHING AMERICAN VALUES

Dr. Donna E. Shalala

Prof. Erwin Chemerinsky

The Hon. Sandra Day O'Connor

Prof. Sara Lawrence-Lightfoot

Edited by Philippa Strum





© 2013 Woodrow Wilson International Center for Scholars, Washington, D.C.

One Woodrow Wilson Plaza
1300 Pennsylvania Avenue NW
Washington, DC 20004-3027

www.wilsoncenter.org

ISBN 978-1-938027-15-4

THE WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS,

established by Congress in 1968 and headquartered in Washington, D.C., is a living national memorial to President Wilson. The Center's mission is to commemorate the ideals and concerns of Woodrow Wilson by providing a link between the worlds of ideas and policy, while fostering research, study, discussion, and collaboration among a broad spectrum of individuals concerned with policy and scholarship in national and international affairs. Supported by public and private funds, the Center is a nonpartisan institution engaged in the study of national and world affairs. It establishes and maintains a neutral forum for free, open, and informed dialogue. Conclusions or opinions expressed in Center publications and programs are those of the authors and speakers and do not necessarily reflect the views of the Center staff, fellows, trustees, advisory groups, or any individuals or organizations that provide financial support to the Center.

The Center is the publisher of *The Wilson Quarterly* and home of Woodrow Wilson Center Press, *dialogue* radio and television. For more information about the Center's activities and publications, please visit us on the web at www.wilsoncenter.org.

BOARD OF TRUSTEES

Joseph B. Gildenhorn, *Chairman of the Board*

Sander R. Gerber, *Vice Chairman*

Jane Harman, *Director, President and CEO*

Public members: James H. Billington, Librarian of Congress; John F. Kerry, Secretary, U.S. Department of State; G. Wayne Clough, Secretary, Smithsonian Institution; Arne Duncan, Secretary, U.S. Department of Education; David Ferriero, Archivist of the United States; Fred P. Hochberg, Chairman and President, Export-Import Bank; James Leach, Chairman, National Endowment for the Humanities; Kathleen Sebelius, Secretary, U.S. Department of Health and Human Services

Private Citizen Members: Timothy Broas, John T. Casteen III, Charles Cobb, Jr., Thelma Duggin, Carlos M. Gutierrez, Susan Hutchison, Barry S. Jackson

Wilson National Cabinet: Eddie & Sylvia Brown, Melva Bucksbaum & Raymond Leary, Ambassadors Sue & Chuck Cobb, Lester Crown, Thelma Duggin, Judi Flom, Sander R. Gerber, Ambassador Joseph B. Gildenhorn & Alma Gildenhorn, Harman Family Foundation, Susan Hutchison, Frank F. Islam, Willem Kooyker, Linda B. & Tobia G. Mercurio, Dr. Alexander V. Mirtchev, Wayne Rogers, Leo Zickler

Contents

3 Introduction and Acknowledgements

Philippa Strum

7 American Democracy and Citizen Participation

Donna E. Shalala

17 Rights and Responsibilities of Citizens in the Age of Obama

Erwin Chemerinsky

33 Our Courts

Sandra Day O'Connor

43 Respect: Nourishing Goodness in Education

Sara Lawrence-Lightfoot

Introduction and Acknowledgements

Philippa Strum

Senior Scholar, Woodrow Wilson International Center for Scholars

What defines the American democracy? What values underlie it?

Scholars and others may disagree about the answer to these questions. Is liberty the key concept? equality? capitalism? individual rights? the rule of law? There is nonetheless a consensus that at the least, American democracy means, as Abraham Lincoln proclaimed in the Gettysburg Address, “government of the people, by the people, for the people.”¹

Government “by the people” presumably entails active participation by citizens in the political life of the nation. Some may run for office, some may involve themselves in political campaigns, some may write about politics and policies; but for the overwhelming majority, “participation” will mean chatting about the issues of the day with family and friends, following the news on television or the Internet—and, importantly, voting.

“Majority” in this context, however, does not mean 51 percent of the people. In 2008, only 71 percent of Americans qualified to vote were registered, and only 63.6 percent turned out for the 2008 presidential election.² That means that over a quarter of American adults were not even registered to vote. In 2012, only 66 percent of young people 18–24, those who presumably are completing or have recently completed their formal education, were registered.³ Perhaps most alarmingly, only 36 percent of adults 18–29 whose education stopped with high school voted in the 2008 presidential election—as opposed to over 70 percent of those with a bachelor’s degree.⁴

The statistics make it clear that a substantial number of Americans are not participating in their democracy. Some, to be sure, may stay away from the polls as a protest against “the system” or the candidates of the moment. Most, however, are simply not helping to make democracy work.

The American public school system was established in the belief that an enlightened and involved electorate was a precondition for a vibrant democracy. “Enlightened,” of course, means “educated.” But “educated” did not imply only citizens who were taught well in school. It meant citizens who were taught in school and who as a result remained educated—informing themselves throughout their lives about the pressing policy issues of the day, so that they could choose wisely among the people seeking to represent them. In that sense, an educated electorate and an involved electorate are two sides of the same coin.

The large number of uninvolved citizens raises the question of how well they understand the values that underlie our democratic nation. And that, in turn, raises the query of how effectively the nation’s schools are communicating those values to its young people.

Concerned that the schools could be doing a better job, the Taube Philanthropies and the Woodrow Wilson International Center for Scholars organized a series of lectures designed to define American values and suggest ways of informing its younger citizens about them. Beginning in 2008, in Washington D.C., Tempe, Arizona, and San Francisco, California, a group of four leading American thinkers presented their ideas about the meaning of American democracy and the way to ensure that young Americans will understand it.

The first task was to identify core American values. Donna Shalala, the president of the University of Miami and former Secretary of the United States Department of Health and Human Services, highlighted the American legacy of political courage, and the need for young adults to feel ownership of the political process. Dr. Shalala underlined the importance of the concepts of individual rights and checks and balances in the American political system. Erwin Chemerinsky, founding dean of the School of Law at the University of California-Irvine and a frequent advocate before the United States Supreme Court and other federal courts, spoke of the way both rights and responsibilities lie at the heart of the American constitutional system. Professor Chemerinsky emphasized the Founding Fathers’ concern for the protection of private property as well as their fear of government power.

The series then turned to the subject of how best to convey these values to students. Sandra Day O’Connor, retired Associate Justice of the United States Supreme Court, is also the progenitor of the iCivics

website, designed to teach students about their political system. She spoke of the need for interactive and technologically sophisticated civics education both inside and outside the classroom, particularly about individual rights and the role the judiciary plays in defining them. Sara Lawrence-Lightfoot, Emily Hargroves Fisher Professor of Education at Harvard University, stressed respect for others both as a core human value and as a key component of successful teaching. To Professor Lawrence-Lightfoot, respect in the classroom implies dialogue and the creation of a meaningful relationship between teacher and student—not merely the imparting and assimilation of knowledge.

Together, these lectures highlight the nation’s rich heritage of democratic values and suggest that there is a wealth of creative thinking about how to impart them in our classrooms. We reproduce the lectures here, in the hope that they will contribute to the ongoing discussion about how best to prepare our young citizens for participation in their democracy.

The first two lectures in this series were organized by Philippa Strum, then Director of the Wilson Center’s Division of U.S. Studies; the second two, by Professor Sonya Michel of the University of Maryland, then Director of the Center’s United States Studies program. The Center’s thanks go to the many discussants and commentators who participated in the series: Moses Boyd, Principal, Integrated Solutions Group of the Washington Group; Peter Levine, Director of The Center for Information and Research on Civil Learning and Engagement (CIRCLE); Judge Frederick P. Aguirre, Superior Court Judge, State of California; Peter H. Irons, professor of political science emeritus, University of California, San Diego; James Foreman, Jr., Professor of Law, Georgetown Law Center; Molly Kervin, social studies teacher, Palo Verde Middle School, Phoenix, Arizona; and Ernesto Castanon, Andrew Gover, Hector Jaramillo and Nicole Rademacher, then students of Ms. Kervin. We are also grateful to Amanda Breau, Events Coordinator at Arizona State University-Tempe. Susan Nugent deserves special thanks for transcription and for helping to edit the entire publication; and Lianne Hepler and Kathy Butterfield, for designing it.

Above all, the Wilson Center wishes to express its gratitude to the Taube Philanthropies for its generous grant to the Division of United States Studies to support the Taube Discussion Series on Teaching American Values.

NOTES

1. Gettysburg Address, November 19, 1863.
2. Thom File and Sarah Crissey, "Voting and Registration in the Election of 2008" (U.S. Census Bureau, July, 2012), <http://www.census.gov/prod/2010pubs/p20-562.pdf>, p. 13.
3. Samuel Best and Brian Krueger, "Dispelling Myths About the 2012 Election," *The Huffington Post Blog*, November 12, 2012, http://www.huffingtonpost.com/samuel-best/dispelling-myths-about-th_b_2105166.html.
4. Surbhi Godsay, Kei Kawashima-Ginsberg, Abby Kiesa and Peter Levine, "That's Not Democracy: How Out-of-School Youth Engage in Civic Life & What Stands in Their Way" (CIRCLE, August 2012), http://www.civicyouth.org/wp-content/uploads/2012/08/CIRCLE_ThatsNotDemocracy_WebFinal.pdf, p. 13.

American Democracy and Citizen Participation

Donna E. Shalala

October 16, 2008

Woodrow Wilson Center, Washington, D.C.

Let me tell you a story. I first read it in a book called *The Making of Americans*, by Gertrude Stein.¹ Seems there was a son dragging his father down the road by the hair. The father kept yelling “stop,” and the son kept dragging him. Finally, in fury and outrage, the father cried, “Stop! I didn’t drag my father beyond this tree.” The story is, of course, a metaphor. Hold that metaphor!

It has something to do with the dialectic of democracy in this restless republic of ours. Sometimes it has to be pulled by the hair to go forward—and it is often a generational pull. Seldom is it easy.

Now add that to what we know about George Mason, Virginia’s delegate to the Constitutional Convention some 220 years ago. He didn’t sign the Constitution and he opposed its ratification because he believed it didn’t sufficiently oppose slavery or safeguard individual rights. History vindicated him when the United States enacted the Bill of Rights.

What they shared and held dear is an understanding that freedom is indivisible: the only way to defend it is to permit it, even and especially at times like these, when war, anxiety and fear are in the air. When liberties and words start being watched, that’s usually a prelude to a crackdown on other rights and liberties.

Sure enough, starting seven years ago, an American president moved to restrict our rights because of a fear of terrorism. The American people and the Congress quietly let that pass like the dog that didn’t bark in a Sherlock Holmes story.

This trimming of rights ought to enrage our citizens. But after the despicable attack of September 11, 2001, the state of our democracy

seemed frail—subdued—timorous. We collectively lost the noise, buoyancy and confidence of a healthy democracy. Our citizenry was so spooked that most college campuses had no anti-war demonstrations over the next years, even when polls showed widespread discontent with the Iraq war.

As we anticipate a new page in the nation's story, let's identify hurt parts in our body politic, places that need some shoring up. If they were here today, our friends Gertrude Stein and George Mason would say, "The making of Americans is not a part-time job."

"Let America be America again/Let it be the dream it used to be," wrote the poet Langston Hughes.² I would add only that America can only be America again when we start acting more like Americans.

Joining Stein and Mason at an imaginary table of past greats are two authors of political classics: Alexis de Tocqueville, the French author of *Democracy in America*, and President John F. Kennedy with his famous *Profiles in Courage*.³ Then there is a personal favorite of mine, Margaret Chase Smith, the Lady of Maine who was the first senator, the first politician to speak out against the rising tide of McCarthyism in 1950. More about her later.

In this context, I think it's well to remember that for Americans, freedom of speech, of religion, the right to assemble or petition the government to redress our grievances, and of the press are not privileges—or benefits granted and capable of being rescinded. They are rights, guaranteed by the Constitution, in a free society.

De Tocqueville's travels across a burgeoning young nation gave rise to his outsider's observations on how American democracy was inventing itself before his curious eyes. In vivid detail, he recorded its distinguishing characteristics in *Democracy in America* in almost an Aristotelian manner. He studied our Constitution in both senses of the word—the 1787 federal document—but also our unwritten constitution: our habits, customs, and traits as political animals. The New England town meeting was a source of amazement to him, perhaps the heartbeat of democracy and self-government in its purest form. At its heart was participation, the very thing we seek today as kind of a holy grail.

He was quick to see how the checks and balance of power operated in practice. As he shrewdly noted, the individual rights championed by George Mason and others had some teeth right at the start, in the early 19th

century. And the power of courts of justice to strike down a law as unconstitutional was “one of the most powerful barriers that have been devised against the tyranny of political assemblies,” de Tocqueville reported.⁴

De Tocqueville was also way ahead of his time in praising a social class that was, on paper, powerless in America: “If I were asked...to what the singular prosperity and growing strength of that people ought mainly to be attributed, I should reply: To the superiority of their women.”⁵

Alexis and I are old friends.

Finally, he admired the optimistic view of the future he saw in us, our faith in human “perfectibility.”⁶ Let’s not lose sight of that kind of sturdy innocence as we walk forward through a few other chapters of our history.

President Kennedy also held up the 19th century republic to close scrutiny and he too was fascinated by the minority versus the majority. The era he examined with discerning insight was primarily the Civil War period, when the nation was splitting at the seams and was then sewn up again. As he was a senator at the time that he wrote *Profiles in Courage* in the 1950s, his imagination was naturally caught by elected officials—senators, as it happened—those who stood up to waves of pressure and fury from their fellow senators, their own party and larger forces from outside the Capitol chamber.

There were not a whole lot of them. And they were not always on the right side of history.

Kennedy profiled eight courageous senators. One was the orator Daniel Webster of Massachusetts; another was the colorful Sam Houston of Texas, who also served as a governor. Each man flew alone in the face of overwhelming opposition that came not from his enemies, but from friends and constituents.

On the seventh of March 1850, Webster ruined his reputation at home and all over the North by joining with Henry Clay’s famous (or infamous) Compromise.⁷ Abolitionists and other Northerners deplored it as strengthening the arm of slavery with a reviled Fugitive Slave Law. In Webster’s aging eyes, as he neared death, less liberty equaled more Union and he was willing to pay that price. Webster went down in New England history and lore as a disgraced statesman who sold his own anti-slavery views down the river.

Sam Houston was much like Webster in cherishing the Union at whatever cost in the 1850s. Yet the old Jacksonian Democrat swam in a sea of

secessionist fervor in his new state of Texas and he himself was a slaveholder. Go figure. The contradictions are rich and Kennedy commented that the country's cross-currents and turmoil seemed to be contained in his swaggering soul.

"I know neither North nor South; I only know the Union," said Houston, denouncing the sectional divide in the face of mobs and threats.⁸ Texans were in no mood to listen. At a convention they voted to secede and quickly got rid of Governor Houston over that last lonely stand—"the love of our common country"—months before the Civil War broke out.⁹

Consider the third man, a little-known Edmund Ross from Kansas. In the heat of binding up Civil War wounds and the still-simmering sectional divide, quiet Edmund Ross saved the presidency of Andrew Johnson by voting against his impeachment. From the beginning of Johnson's besiegement by Radical Republicans in 1867, Ross told a Northern senator he was committed to "as fair a trial as an accused man ever had." He was hounded day and night, mercilessly investigated and told all day long by Kansans and the madding crowd that his political life was over if he voted to acquit the president of high misdemeanors and thus keep Johnson in office.¹⁰

Ross did just that and as he told the story, "I almost literally looked down into my open grave" on the Senate floor and saw his friendships, position, fortunes "about to be swept away."¹¹

He was about right. The impeachment vote fell just one vote short of conviction in 1868. Accused of being a Judas-like traitor to his own Republican party, scorned as a "poltroon" by the press, the shunned Ross returned to Kansas after serving his term and died in near poverty.

Whether he ever got a thank you note from Andrew Johnson, we don't know, but Kennedy's graceful portrait serves as one for the ages. Ross never regretted his vote and act of conscience. There is a school of thought that a single vote saved the United States from falling apart all over again.

Impeaching a president, as we know, can roil a republic even on a good day.

All three of these men—Webster, Houston and Ross—put the national interest ahead of their own.

There are no constitutional protections for lawmakers alone against the crowd inside the "political assemblies" de Tocqueville warned against.¹² Unlike individual dissenters and minorities in civil society,

they are pretty much on their own to suffer the rough justice of colleagues and voters back home.

That's why President Kennedy's book on courage is short and spare. Senators and members of Congress tend to be gregarious "team players," not loners. One single-standing vote of conscience remains a rare moment in an institution more apt to compromise, the traditionally American art of democracy.

Moving ahead to the 20th century, the chapter of Japanese-American internment camps in the 1940s and the McCarthy era in the 1950s are not just history lessons. They are actually blueprints.

President Roosevelt, otherwise a wise beloved leader, signed an executive order in 1942 after Pearl Harbor. By fiat, the internment experience for more than 100,000 men, women and children went on until 1945: three years of a World War II shadow on the home front that arose out of fear and will live in infamy. Critics there were all too few. A Supreme Court decision upheld the order.¹³

Cycles of fear in the 1940s continued to churn and started breaking again when the Cold War started. Fear of a clear enemy abroad is one thing, but an insidious fear of an invisible enemy in everyday life is quite another.

That is the place where we Americans get scared easily and the time when we have been most willing to tailor our freedoms. Not just those belonging to others, but those belonging to ourselves. That's what I meant about freedom being indivisible. What you lose today, I will lose tomorrow. And that is far scarier than being dragged down the road by your hair.

By the 1950s, the "enemy" had changed to the bear of the Soviet Union and suspected sympathizers and subversives here and there. Anywhere, in fact, especially among the elite: universities, New York and Hollywood writers and the State Department. That was the way Senator Joseph McCarthy worked, just by naming "Un-American" names, holding hearings where his accusations were aired in millions of homes and claiming the existence of conspiracies to undermine the safety and security of the United States. The power of insinuation let loose a kind of hysteria in Washington. Blacklisting became all the rage.

Here is where Senator Margaret Chase Smith, a Republican, rides into the story. She figured out the sham of McCarthyism before almost any

other public figure. She spoke out on June 1, 1950. That day she gave her Declaration of Conscience speech on the Senate floor. McCarthy sat there to hear her every word—in utter astonishment.

In her opening remarks, Senator Smith went straight to the heart of “a national feeling of fear and frustration that could result in national suicide and the end of everything that we Americans hold dear.” Specifically, she said the right of independent thought was in danger, along with the right to criticize, hold unpopular beliefs and protest. The American people were “sick and tired of being afraid to speak their minds lest they be smeared as ‘Communists’ or ‘Fascists,’” she said. In a flight of eloquence, Senator Smith added that she did not wish to see her party ride to victory on the “Four Horsemen of Calumny—Fear, Ignorance, Bigotry and Smear.”¹⁴

Those are the kind of words that our young people need to hear, read and understand to elevate not only test scores, but their understanding of our democracy and its perils.

For the record, McCarthy was finally censured in 1954—that was four long dark years for the Senate and nation to catch up to Senator Smith’s Declaration of Conscience. Her words did not stop his deeds. But yet sometimes all we have to go by is the light of a single clear conscience when our civil liberties are under siege.

The 21st century has not been the best of times. Again, we wavered at a critical juncture and constitutional rights and freedoms were casualties, too, of the terrorism attacks in 2001. Is it fair to say that terrorism is the new communism?

September 11, 2001 scared the bejesus out of people. In September a “war on terrorism” was declared by the president, and in October the so-called “Patriot Act” was quickly enacted. The atmosphere was so electric with shock and charged with grief that nary a word of dissent was expressed. We as a people were very easily led. By its very name, the Patriot Act suggested that those who opposed it were not loyal trustworthy Americans—the oldest trick. It became the law of the land after passing the Senate 98-1.¹⁵

Yes, one. Senator Russell Feingold of Wisconsin was in good company with himself. As he explained his vote, the Founders wrote “an explicit Bill of Rights to protect liberty in times of war, as well as in times of peace.” Citing some of the same episodes, such as the 20th-century

internment and blacklisting, he said, “We must not allow these pieces of the past to become prologue.”¹⁶

See, there’s always one vote or voice—a George Mason, a Margaret Chase Smith—in the march of civilization. And I know I’m asking a lot when I ask the new generation of young people to emulate them. So be it. I feel very comfortable asking a lot, especially from this new Millennial generation.

Democracy in America, after a sustained assault on liberty, is languishing. It’s frankly more frail and vulnerable to vicissitudes than we ever learned or taught in school. Yet as a university president I have reason to hope for our democracy recovering its vitality. I sense a yearning out there for a re-invention and re-claiming of American democracy. There are hints in the voter turnout of young people, who were barely in their teens on September 11, 2001. They are starting to understand that they can and must take some ownership of the process to influence it. The election cycles of 2006 and 2008 saw sharp increases in the youth voter turnout rates. Even better, compared to 2004, young adults’ turnout tripled in the 2008 Iowa caucuses and nearly tripled in the New Hampshire primary that year. With the Internet and texting as new ways to invigorate the youth vote, the Obama campaign stirred and invigorated participation among young people. In turn, young Democrats were his strongest supporters in the primary season. He clearly captured their imaginations with different ways of communicating—like telling supporters first that “Barack” had chosen Senator Joseph Biden as his running mate through a late-night text message, instead of through the press.

In general, young Americans are increasingly likely to be engaged politically and as recently as 2006 started shifting their votes in favor of Democrats. That said, most young adults still profess a moderate ideology rather than liberal or conservative. Young Democratic voters are the most racially and ethnically diverse voting bloc. Gender differences are clear in this cohort: the turnout rate of young women was nearly seven percentage points higher than that of young men in recent presidential elections.

An MTV-CBS poll found that the economy is by far the most important issue to the group, worried as they are that they face declining job prospects. Heartening for the mainstream media, most in the polls said

they still get most of their news from newspapers or television news. The Iraq War, education, health care and global warming are also high on the list of young voters' concerns, according to the Center for Information & Research on Civic Learning and Engagement (CIRCLE).

We are talking about 44 million eligible voters between the ages of 18 to 29 who could get into the game—though they are not equally energized across all states. There was one state (Tennessee) where only three in a hundred young people bothered to show up for a presidential primary in 2008.

I learn a lot from teaching and am optimistic about this new generation and new media. As long as there is free speech and communication in the public square, then the form it comes in is secondary. As long as dissent is not silenced and as long as everyone feels entitled to speak his or her piece, we should welcome it as a vital sign.

As a professor, I have student chat rooms and blogs in my courses. I wonder what de Tocqueville would make of that kind of participation? Here's a guess. He wrote, "America is a land of wonders, in which everything is in constant motion and every change seems an improvement." True, and he also said, "They admit that what appears to them today to be good, may be superseded by something better tomorrow."¹⁷

We like to think that rosy optimism applies to American democracy, but that would be wrong. Democracy, like a garden, needs fresh infusions to stay vibrant. It needs more than a brave few to tend and defend it in all seasons, when we are told there is a war at home or an enemy within.

The perennials of American constitutional rights and civil liberties are too precious to let the light go without a fight, to be here today and gone tomorrow. For let me remind you:

What you lose today, I will lose tomorrow. What I lose today, you will lose tomorrow.

Democracy requires great and courageous individuals, but in the end it is a collective act. Unlike Europeans or Russians, we Americans have no history of kings, or czars, or tyrants, or autocrats—authoritarian rulers who claim to take care of us and control us in the process. In American democracy, we take care of ourselves, which means we must take care of one another.

We Americans are a political nation, built not on an ethnic or even a linguistic heritage, but on a foundation of rights. Those rights make

us who we are. But if we can't use them, then we will lose them. And we need them more when we are anxious and afraid than when we are certain and secure. That is my message for this new generation and for all of us to remember.

NOTES

1. Gertrude Stein, *The Making of Americans* (Dalkey Archive Press, 1995).
2. Langston Hughes, *Let America Be America Again and Other Poems* (Vintage Books, 2004); <http://www.poets.org/viewmedia.php/prmMID/15609>.
3. Alexis de Tocqueville, *Democracy in America*, was originally published as *De la démocratie en Amérique* in two volumes, in 1835 and 1840. There are many hard copy editions. The entire text is at <http://xroads.virginia.edu/~HYPER/DETOC/>. John F. Kennedy, *Profiles in Courage* (Harper & Brothers, 1955).
4. *Democracy in America*, vol. I, ch. 6, "Judicial Power in the United States and its Influence on Political Society," at http://xroads.virginia.edu/~HYPER/DETOC/1_ch06.htm.
5. *Democracy in America*, vol. II, ch. 12, "How the Americans Understand the Equality of the Sexes," http://xroads.virginia.edu/~HYPER/DETOC/ch3_12.htm.
6. *Democracy in America*, vol. II, ch. 8, "How Equality Suggests to the Americans the Idea of the Indefinite Perfectibility of Man," http://xroads.virginia.edu/~HYPER/DETOC/ch1_08.htm.
7. Among other provisions, the Compromise of 1850, passed in September 1850, required runaway slaves to be returned to their owners.
8. Quoted in *Profiles in Courage*, p. 104.
9. Op. cit., p. 112.
10. Op. cit., p. 134.
11. Op. cit., p. 139.
12. *Democracy in America*, vol. I, ch. 6, "Judicial Power in the United States and Its Influence on Political Society," http://xroads.virginia.edu/~HYPER/DETOC/1_ch06.htm.
13. On the internment of Japanese-Americans during World War II, see Peter Irons, ed., *Justice Delayed: the Record of the Japanese American Internment Cases* (Wesleyan University Press, 1989). The court case is *Korematsu v. United States*, 323 U.S. 214 (1944).
14. Margaret Chase Smith, "Declaration of Conscience," June 1, 1950, *Congressional Record-Senate*, 82nd Congress, 1st Session, August 20, 1951, p. 10336; <http://www.senate.gov/artandhistory/history/resources/pdf/SmithDeclaration.pdf>.
15. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub.L. 107-56.

16. Russ Feingold, "On Opposing the USA PATRIOT Act," address to the Associated Press Managing Editors Conference, Oct. 12, 2001, <http://www.archipelago.org/vol6-2/feingold.htm>.
17. *Democracy in America*, vol. I ch. 18, "The Present and Probably Future Condition of the Three Races that Inhabit the Territory of the United States," http://xroads.virginia.edu/~HYPER/DETOC/1_ch18.htm.

Rights and Responsibilities of Citizens in the Age of Obama

Erwin Chemerinsky

February 25, 2009

Hastings College of the Law, San Francisco, California

Not long ago I was on a panel to discuss Proposition 8, which amended the California constitution to say that marriage is between a man and a woman.¹ One of the people in the audience said to me, “Why isn’t the lawsuit being brought challenging it under the Declaration of Independence? Because the Declaration of Independence embodies natural rights, people should sue to challenge this initiative under it.” Obviously the speaker was fairly knowledgeable about law and yet I found it difficult to explain what it is that makes the Constitution law but does not make the Declaration of Independence law. And then as I thought about it, I realized that underlying this person’s question was the recognition that the Declaration of Independence is quite explicitly founded on natural law and natural rights, whereas the Constitution never alludes to natural law and natural rights. This came to mind as I was trying to figure out how to address the broad topic of rights and responsibilities.

The reality is that most legal rights and responsibilities have nothing to do with the Constitution. Certainly the law—non-constitutional law—is very much concerned with rights and responsibilities. Tort law, for example, provides us with rights from infringement of person and property. It creates responsibilities to all not to infringe the persons and property of others. Much of criminal law really is about responsibilities and rights. We have a responsibility not to do certain things; we face punishments if we do. Criminal law indirectly takes rights from each of us.

Many other statutes are ultimately about protecting rights. Take labor law—the rights of employees to organize and unionize—or all of the civil rights statutes. There are many other instances of laws that concern

responsibilities. We have the responsibility, enforced by statute, to pay taxes. We have the responsibility to serve on juries. None of this, however, involves the Constitution.

I worry, in talking about the role of the Constitution with regard to rights and responsibilities, that I am looking at only a corner of the picture. Yet the Constitution is so much the framing of the picture as well that I thought it would be appropriate to examine what the Constitution says with regard to rights and responsibilities. I want to divide my remarks into three parts.

First I want to talk about the framers' conception of rights. Second, what was inadequate with regard to the framers' conception of rights? Third, the nature of responsibilities under the Constitution. And finally to get to the topic that I was assigned today—what is likely to happen in the context of the Obama Administration with regard to rights and responsibilities?

To start then: what was the framers' conception of rights? Many describe the framers as believing deeply in natural law and natural rights. After all, as I have already said, the Declaration of Independence used the language of natural law and natural rights. There is strong evidence that the framers were the generation that believed that there was a natural law and that people had rights under it, just because they were human beings.

Blackstone, the influential English legal commentator, spoke of the natural rights that people possessed. He believed that the common law and the natural law were coextensive, that the common law was the law that God gave in common to all people. And yet if you look at the Constitution, especially the part that deals with individual rights, you see no mention of natural law, no allusion to natural rights.

As I have researched this, I find no evidence that the framers meant to have natural rights embodied in the United States Constitution. In fact, their conception of rights was very different than the one held by others who believed in natural rights at the time, and certainly very different from ours today. They saw the Constitution as being about constraining government. They believed they could limit government adequately through the checks and balances inherent in separation of powers, and through federalism, as it divided power between the federal government and the states. They did not think it was necessary even to enumerate rights, because they thought that the structure of the government they would create would be sufficient to do so. When ultimately there was pressure to add a Bill

of Rights to the Constitution, the rights that were drafted and adopted were all about limiting the power of the federal government. It is what the Constitution was oriented to do: limit government power. If you read the text of the Constitution and the Bill of Rights from this perspective, I think you see four fears of government animating the framers.

First, they were very afraid of the government's ability to undermine property rights. Scholars in earlier generations talked about how the framers were preeminently concerned with property rights. Now we tend to lose sight of this. In post-1937 constitutional law, property rights are very much subordinate to civil liberties and civil rights, but that was not so for the framers. If you read the text of the Constitution, you see that Article I, Section 9 and Article I, Section 10 include protection of certain property rights.² Article I, Section 10, for example, says "No state shall...pass any...law impairing the obligation of contracts." The framers were very afraid of debtor relief laws, especially in times of economic crisis. We cannot forget that the framers were intent on protecting the property rights of slave owners. The fugitive slave clause in Article IV of the Constitution stated that a slave who escaped from a slave state to a free state had to be returned to the owner.³ It was one of the preeminent protections of property in the text of the Constitution. The Third Amendment to the Constitution says that the government cannot force people to quarter soldiers in their home.⁴ This is in essence about property rights. I believe the Second Amendment, which protects the right to keep and bear arms, is really much more about property rights than anything else.⁵ The Fifth Amendment, that says that the government cannot take property or life or liberty without due process of law, or that if the government takes private property for public use it must pay just compensation, is another example of this.⁶ Put these together and what you see is a real concern about, a fear of, the government jeopardizing private property rights.

A second fear that the framers had was the power of the government with regard to criminal law. So many of the rights in the Constitution are animated by their concern about the enormous, awesome, power of the government over life and liberty. When you read the main text of the Constitution, you find in Article III a guarantee of trial by jury, as well as protection of those who are accused of treason.⁷ Many of the Bill of Rights' provisions are about safeguarding individuals from the government in the area of criminal law. The Fourth Amendment requires that

searches and seizures be based on warrants based on probable cause; the Fifth Amendment requires a grand jury indictment before somebody is tried; the Sixth Amendment guarantees a speedy and public trial and a trial by jury; the Eighth Amendment's language about no cruel and unusual punishment, excessive fines or excessive bail, is all about this.⁸

Third, I think the framers were very concerned about the ability of the government to jeopardize freedom of thought and freedom of conscience. Many provisions, some in the text of the Constitution and more in the Bill of Rights, can be understood best for their unifying concept: the importance of freedom of conscience and freedom of thought. The Constitution says there cannot be religious oaths for public office, making sure the government cannot limit those who hold public office to those who are of a particular religion.⁹ If you look at the seemingly disparate provisions of the First Amendment, I think they could be unified as ultimately about freedom of thought and freedom of conscience.¹⁰ Certainly the assurance of free exercise of religion is about this. I think the framers did not want establishment of religion because they knew once the government became aligned with religion, there was tremendous pressure on individuals, overt or subtle, to conform to the religious beliefs that are favored by the state. I think the framers saw freedom of speech, and for that matter freedom of the press and freedom of assembly, as about safeguarding freedom of thought and freedom of conscience. How do we form our beliefs? We use what we hear from others; the conversations we have among us, even our speech.

And finally, I believe the framers were very afraid of the ability of the government to interfere with autonomy and privacy. Now as we all know, privacy is nowhere mentioned in the text of the Constitution or in the Bill of Rights, but though Justice William O. Douglas' opinion in *Griswold v. Connecticut* is much ridiculed for speaking of the penumbra that stems from the Bill of Rights and therefore protects the right to privacy, I think it is historically accurate.¹¹ I think that many of the provisions of the Bill of Rights have as an underlying basis a concern for privacy. The Third Amendment, that says the government cannot quarter soldiers in people's homes, is really about privacy as well as property. The Fourth Amendment, which protects against searches and seizures without warrants for probable cause, is about privacy. I would say provisions of the First Amendment, like the free exercise of religion, are also ultimately about privacy.

One thing that is so easy to forget as we catalog these provisions is how much everything in the Constitution and the Bill of Rights was a reaction to what preceded them. The rights that the founders chose to include were not based solely on philosophical writings. They were based on the abuses that had been suffered by the colonies. If we were to sit down today and draft a new Bill of Rights, we would never imagine including a third amendment that protects people from having soldiers quartered in their houses. It is there because it was a response to the abuses that the colonists suffered. Every provision in the Constitution and the Bill of Rights with regard to individual civil liberties is there for that reason. And that is why I say I do not think the rights in the Constitution are founded on natural law and natural rights. They are based on a fear of government power.

The second thing I want to talk about is what is inadequate in this conception of rights. The framers wrote for a radically different society: a late eighteenth century agrarian slave society. What about this is inadequate for a modern world? I could spend hours talking about this. It is why I believe that there has to be a “living” constitution. The Constitution, in John Marshall’s words, was meant to be adapted and endure for ages to come.¹²

Let me identify several things that are inadequate about this conception of rights. First, there is no mention of equality. This is not surprising. The Constitution came into existence because northerners who favored the abolition of slavery were willing to accept slavery and write it into the fabric of the Constitution in order to get southern states to be part of the deal. I am currently teaching a freshman seminar on the civil rights movement and the very first day, we began with the framing of the Constitution. I asked the students whether, if they were northerners deeply committed to the abolition of slavery, they would have agreed to a constitution that had the provisions that this one does that protected the institution of slavery. Would it have been better for the North not to have a union with southern states, rather than accept a constitution that built slavery into its very existence? The reality is that a constitution that institutionalized slavery could not easily have a provision with regard to equality.

In *Dred Scott v. Sandford*, the United States Supreme Court held explicitly that when the Declaration of Independence said that all men are created equal, it did not mean to include those of African descent—those who were slaves or descendants of slaves.¹³ The framers’ conception of equality was even more limited than that. It did not include women, of course, and it did

not include anyone who did not own property. So when they said “All men are created equal,” they really meant men and they really meant only white property-owning men at that. It was only after the Civil War, in 1868, that the Fourteenth Amendment was adopted, providing that no state shall deny *any* person equal protection under the law. It actually was not until 1954, in *Bolling v. Sharpe*, that the Supreme Court got around to saying that the equal protection clause of the Fourteenth Amendment applies to the federal government as well as to the states, through the due process clause in the Fifth Amendment.¹⁴

A second problem with the framers’ conception of rights is that it focuses only on the government. Nothing in the Constitution, as drafted in 1787 and amended by the Bill of Rights in 1791, deals with private power centers. It is only the Thirteenth Amendment, added in 1865, that deals with private action at all, saying that people cannot be or own slaves.¹⁵ Now it is understandable from the framers’ perspective why the rights in the Constitution apply only to the government. The Constitution, as I said, was about constraining government, protecting people from government. The framers weren’t focusing on protecting people from private power. Also, at the time, it was thought that the common law protected people from injuries from others, that state constitutions would protect people from injuries from state and local governments, and that the United States Constitution would then protect people from the federal government.

Over time, however, there were developments that made this view anachronistic. Private power increased tremendously. The nature of corporate power, in our modern society, would have been unthinkable in the agrarian world of the late eighteenth century. Also, constitutional rights developed but common law didn’t develop in parallel fashion. Many rights came to exist under the Constitution which are not protected by the common law from private infringement.

So we can think of all of the rights that exist under the Constitution where there has never been common law protection. Take free speech. Government cannot punish people because of their speech unless it has an adequate justification for doing so. Private entities, however, can fire people for their speech. IBM can fire people for their speech. There is no safeguard in the common law from that whatsoever. Some states, such as California, have statutes that provide some protection from private power, but generally there is none. Many of the privacy rights, with regard to reproductive

autonomy, for example, are similarly not protected from private infringement. The constitutional safeguards have no analog in the common law. If the government were to fire a woman on learning that she had an abortion, she could certainly sue successfully. But if a private employer were to fire a woman upon learning that she had an abortion, there would be no common law protection. (Maybe some sex discrimination law would apply in that circumstance.) So the Constitution, in its focus on government, omits the need to safeguard people from injuries inflicted by private power centers. And the reality is, if you work for IBM, or are a student at a private university, their ability to punish you for your speech has every bit as much of a chilling effect on expression as anything the government can do to you.

A third inadequacy in terms of the framers' conception is that it focuses primarily on negative liberties, not affirmative rights. Isaiah Berlin, in a famous essay, demonstrated that what we think of as rights in this country are primarily negative liberties—prohibitions on what the government can do—but we have very little in the way of affirmative duties requiring the government to provide us with certain things.¹⁶ The government *cannot* infringe freedom of speech without an adequate justification; the government *cannot* abridge free exercise of religion; the government *cannot* adopt a law respecting the establishment of religion; the government *cannot* search or arrest without a warrant of probable cause; the government *cannot* impose cruel and unusual punishment; the government *cannot* deny life, liberty or property without due process of law.

Affirmative duties of the government, however, are relatively minimal under the Constitution. I think the best illustration of this is *DeShaney v. Winnebago County Department of Social Services*, a case decided by the Supreme Court in 1989. Joshua DeShaney was a four-year old boy who was severely beaten by his father and suffered irreversible brain damage. Joshua's guardian sued the county's Department of Social Services, saying its failure to respond to complaints of child abuse over a two-year period caused Joshua's liberty to be violated without due process of law. The Supreme Court, in an opinion by Chief Justice William H. Rehnquist, ruled against Joshua. The Court's opinion said that "the State had no constitutional duty to protect Joshua against his father's violence," and added that the government generally has no *constitutional* duty to protect people from privately inflicted harms.¹⁷ The Constitution is about negative liberties, not affirmative rights.

At the same time, I think this traditional conception of the Constitution overstates the matter. There are parts of the Constitution that do deal with affirmative duties of the government. The government *must*, for example, go and get a warrant before it searches. The government *must* provide an attorney to a person who is facing criminal charges if prison time is a possible penalty. The government *must* provide a fair trial with an impartial jury. The government *must* provide for appeal from a criminal conviction, including transcripts and counsel on mandatory appeal.

So I think those who see the Constitution as consisting only of negative liberties are overstating the situation somewhat but, unlike the constitutions of many countries in the world, no parts of our Constitution guarantee entitlements. There is no constitutional right to food, shelter, or medical care. Just this morning, one of my undergraduate students came to see me. She is just completing law school in Italy, and is spending some time at the University of California at Irvine to finish up and get some credits. She said she was very surprised to learn that the United States Constitution, unlike the Italian Constitution, has no assurance that the government will provide basic entitlements.

Now I believe that the Warren Court, had it lasted just a few more years, would have found some rights to basic entitlements in the Constitution, and I could point to the decisions of the Warren Court that seem to suggest this: decisions that said that poverty is a suspect classification; decisions that limited the ability of the government to deny welfare, and so on.¹⁸ But one of the things that changed as a result of the election of Richard Nixon was the appointment of four Republican justices between 1969 and 1971. Was there then any possibility of a Supreme Court that would find affirmative entitlements in the Constitution?

A final inadequacy in terms of the framers' conception of the Constitution is that it does not focus at all on what justifications are sufficient for infringing liberties. Look at the First Amendment. It says there can be no law abridging the free exercise of religion, and no law that interferes with the freedom of speech or freedom of press or assembly. All of us know that that is unrealistic. Of course there have to be laws in some instances that interfere with free speech, or free exercise of religion. Perjury laws punish speech, and yet everyone accepts that there have to be perjury laws. Laws that proscribe the ritual sacrifice of human beings may interfere with the free exercise of religion, and yet we all accept that they must exist. The question is,

what justifications are sufficient to permit the interference of these liberties? There is nothing in the framers' conceptions of the Constitution or the Bill of Rights that gives any guidance here. Ultimately that is what so much of constitutional law has to be about.

Let me talk a bit about responsibilities under the Constitution. As I mentioned earlier, the Constitution really is not the source of responsibilities. Now I do not mean that there are no responsibilities under the law, as I already indicated. Tort law creates responsibilities. Criminal law creates responsibilities. The government can create responsibilities by things like tax laws or laws mandating jury service. And there can be a military draft—that is a responsibility. Focusing only on the law with regard to responsibilities is far too narrow an approach. Social norms impose responsibilities. Freedom of speech may be protected but that does not tell us when it is wise to exercise that speech. There are areas of responsibilities where the law is silent. So to focus only on the law with regard to responsibilities really is too narrow.

But I want to talk about the Constitution and responsibilities, since the Constitution is my focus here. This is something worth thinking about: why do you not find anything in the Constitution about responsibilities? As I mentioned earlier, if you read the entire document, the only thing that is even remotely about responsibilities is the Thirteenth Amendment, which says that people cannot be or own slaves, so we can infer a responsibility from that provision. Maybe you can say that once the Constitution creates a right to trial by jury and the right to grand jury indictment, that implies a responsibility of citizens to serve on juries, but certainly that is not found in the Constitution.

There are some easy explanations and there are some less obvious explanations of why this is so. Based on what I've said, if you believe that the Constitution is the protector of rights, that it is concerned with limiting government power, it is easy to see why there would not be responsibilities. If you believe that other sources of law create responsibilities, then you do not need the Constitution to do so. The framers knew that even though the First Amendment protected speech, defamation law existed. Defamation law creates a responsibility to speak responsibly. If you fail to do so, you face the possibility of civil liability.

I want to suggest that there is another reason the Constitution does not speak of responsibilities, and this reason has much more relevance to modern times. I think it would be wrong to have the Constitution speak about additional responsibilities. Whenever the government imposes

responsibilities on individuals, it limits individual liberty and individual freedom. This does not mean the government can never do anything; it just means that we have to be aware that any responsibility enforced by law takes away some freedom.

Tax laws certainly take away some of our freedom. Tax laws are essential if the government is to deal with the needs of a modern society, and we have a constitutional amendment permitting the individual income tax. We can think of other examples of laws that also constrain freedom and liberty but are necessary. Laws that require jury service limit the individual's freedom, but they are necessary to meet the constitutional responsibility of trial by jury. Our society has thought at various times in our history that the draft was necessary to protect national security. The draft is a significant limit on freedom, but it was thought to be essential to our country's survival.

I am very concerned about other efforts to expand responsibilities by law because inevitably they do curtail freedom and liberty. So I want to make sure that any future efforts to limit or impose responsibilities, thereby to limit freedom, really are necessary to achieve a compelling interest, that any effort of the government to impose responsibilities by law would meet strict scrutiny.

Let me give you some examples. There are proposals that say we should require all adult citizens to vote. The notion is that part of our responsibility as citizens is to participate in the electoral process. I would use that rhetoric. I would agree that we have the responsibility to vote, but I would strongly oppose a law that required voting because just as freedom of speech implies the right not to speak, so does the right to vote include the right not to cast a ballot. You have a right not to cast a ballot as a form of protest, or because you are unconcerned about the outcome. You have a right not to cast a ballot because that is part of your liberty and freedom as a citizen.

Another example: There has long been a proposal that we should have a compulsory national service law, that we should require all individuals between, say, ages 18 and 20, to spend two years of their lives doing service. It is thought that this would promote a more communitarian spirit and get people to recognize their obligations to the entire society. I would be strongly opposed to such a proposal on the grounds of liberty and freedom. You are taking away two years of people's lives from what they want to be doing, and saying they must do something else. Now I strongly believe that we all have an obligation to use our time and our talent to make society

better. But I would not want to make it mandatory and obligatory even if I could be persuaded there is a compelling need for whatever the labor could be used for. I do not believe that this is the necessary means. I would favor inducements such as tuition remission, loan repayment, tax credits, and anything else to induce people to do socially good things. I think it would be too much of a curtailment of liberty to make it mandatory.

Let me conclude with three thoughts about what is likely to happen in the Obama era with regard to rights and responsibilities. First, I think the ideology of the Supreme Court is unlikely to change in the next four or even eight years, and so I do not think we are going to see a substantial expansion of individual liberties and individual rights in that time. Why do I say that? Think about when the vacancies are likely to come on the Supreme Court, from January 20, 2009 until January 20, 2013. John Paul Stevens will turn 89 years old on April 20, 2009. He is in good health and as vibrant as ever, but it does not seem likely that he will still be on the Supreme Court at age 93 in 2013. We all know that a few weeks ago, Ruth Bader Ginsburg was diagnosed with pancreatic cancer. By all accounts it was caught at the earliest stage and she is likely to have a full recovery. Maybe because she is frail in appearance, there is always speculation that she might step down. There is a widely circulated rumor that David Souter wants to retire and go home to New Hampshire. Until Justice Ginsburg's illness, the conventional wisdom was that Justice Souter would announce his resignation at the end of June or the beginning of July at the completion of this term of the Supreme Court.¹⁹

Now think of the other side of the ideological aisle. John Roberts turned 55 years old last month in January. If he remains on the Supreme Court until he is 88, the current age of John Paul Stevens, he will be Chief Justice until the year 2043. Samuel Alito is 58 years old. Clarence Thomas is 60 years old. Antonin Scalia and Anthony Kennedy are 72 years old. I think the best predictor of a long life span is being confirmed for a seat on the United States Supreme Court. That means that none of these five justices is going anywhere, in all likelihood, in the next four to eight years, and maybe not even in the next decade.

With regard to individual liberties, it is unlikely that these five justices, whomever they are joining with, will be a majority for creating new individual liberties. Did you know that since the mid-1970s, the Supreme Court has not recognized any additional fundamental rights for suspect

classifications? It has not recognized any additional liberty to be fundamental and entitled to strict scrutiny, nor has it recognized any additional type of discrimination that should receive more than a rational basis review.²⁰ Even in the landmark case of *Lawrence v. Texas* in June of 2003, where the Supreme Court said the government cannot punish private consensual homosexual activity, the Court did not use the language of fundamental rights for strict scrutiny.²¹ Even in *Romer v. Evans* in 1996, when the Court for the first time struck down a law that discriminated on the basis of sexual orientation, the Court did not use the language of suspect classification or strict scrutiny. Justice Kennedy's opinion for the majority used the rational basis test.²²

There is no Supreme Court case since the mid-1970s holding any additional liberty to be fundamental and entitled to strict scrutiny, nor finding that any additional type of discrimination should be subject to more than rational basis review. It is hard to imagine that we are going to see anything else with these five justices on the Supreme Court.

Second, I think there is the possibility of major legislative action, of a civil rights statute to expand individual liberties. One thing that really goes beyond the scope of my remarks this afternoon is that a number of Supreme Court decisions in the last decade or two, and particularly in the last couple of years, have interpreted federal civil rights statutes very narrowly and have limited tremendously the ability to sue under them.²³ We have already seen one statute adopted to overturn a narrow Supreme Court decision. Right after President Obama took office, Congress passed and President Obama signed a law to overturn *Ledbetter v. Goodyear Tire & Rubber*, which is a very narrow interpretation of the statute of limitations for pay discrimination claims under Title VII of the Civil Rights Act of 1964.²⁴

There is the opportunity for a substantial majority of Democrats in the House and the Senate and with a Democrat in the White House to have a civil rights restoration act of 2009. I think it is essential that the Democrats act quickly in this regard, as I think it is essential that they act quickly to fill federal judicial vacancies. I remember when President Clinton took office on January 20, 1993, and everyone thought he would have eight years to fill judicial vacancies and to get civil rights laws adopted. Then in November 1994, Republicans took control of both houses of Congress, tremendously limiting what President Clinton could do in filling judicial vacancies. It made it impossible to get new civil rights statutes

adopted. It is so important that action be taken now to adopt the civil rights statutes that Congress can pass.

Third, I think where we will see a real difference with regard to rights under the Constitution is the attitude of the executive with regard to individual freedom and the structure of the Constitution. I believe that historians will look back at the Bush Administration as the one above all in American history that ignored the ideas of checks and balances, that did more to compromise the rights in the Constitution than any other. No other administration in American history had ever systematically adopted policies to permit torture, and that led to the torture of innocent people. Lest you think this hyperbole, you should read Jane Mayer's *The Dark Side*, which describes just what I said, talking about how the Bush Administration adopted a systematic policy that provided for the torture of innocent individuals.²⁵ No other administration in history engaged in the massive warrantless wiretapping of Americans that went on during the Bush Administration. No other administration in history had ever claimed the authority to detain individuals, even American citizens, without rudimentary due process. No other administration in American history claimed the authority to be immune from judicial review and any checks and balances. I think here, the Obama Administration is most different with regard to individual rights and liberties.

As I think of the last eight years and we look ahead to the future, I am most reminded of some words of the late Justice Louis Dembitz Brandeis, and they are the words I conclude with. Justice Brandeis said that the greatest threat to liberty will come from people who claim to act for beneficial purposes. Justice Brandeis said people born to freedom know to resist the tyranny of despots. He said the insidious threat to freedom will come from well-meaning people of zeal with little understanding of what the Constitution is about.²⁶ Now he never knew John Ashcroft, or Donald Rumsfeld, or Alberto Gonzales, but he could not have picked better words if he had.

NOTES

1. Proposition 8 was passed by California voters in 2008 as an amendment to the state constitution. Titled the "California Marriage Protection Act," it read, "Only marriage between a man and a woman is valid or recognized in California." It overturned a

California Supreme Court decision striking down a similarly worded statute. *In re Marriage Cases*, 43 Cal. 4th 757 (2008).

2. Article I, Section 9: "The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person....No Capitation, or other direct, Tax shall be laid...."
3. Article IV, Section 2: "No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due." This section was effectively repealed by the ratification of the Thirteenth Amendment. *See* note 15.
4. Amendment III: "No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."
5. Amendment II: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."
6. Amendment V: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
7. Article III, Section 2: "...The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed." Section 3: "...No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."
8. Amendment IV: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Amendment V: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..." Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." Amendment VIII: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

9. Article VI: "...no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."
10. Amendment I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
11. *Griswold v. Connecticut*, 381 U.S. 479 (1965). Speaking for the Supreme Court, Justice Douglas held that although the word "privacy" does not appear in the Constitution, various guarantees within the Bill of Rights create penumbras, or zones, that establish a right to privacy. These included the First, Third, Fourth, and Ninth Amendments. (Amendment IX: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.")
12. "We must never forget that it is a constitution we are expounding." *McCulloch v. Maryland*, 4 Wheat. 316, 407 (1819). Cf. Marshall in *Cohens v. Virginia*, 19 U.S. 264, 387 (1821): "...a Constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it. Its course cannot always be tranquil. It is exposed to storms and tempests, and its framers must be unwise statesmen indeed if they have not provided it, as far as its nature will permit, with the means of self-preservation from the perils it may be destined to encounter."
13. *Dred Scott v. Sandford*, 60 U.S. 393 (1857).
14. *Bolling v. Sharpe*, 347 U.S. 497 (1954).
15. Amendment XIII, Section 1: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."
16. Isaiah Berlin, "Two Concepts of Liberty," in Isaiah Berlin, *Four Essays on Liberty* (Oxford University Press, 1969).
17. *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 202 (1989).
18. In *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), the Supreme Court held that a poll tax is an unconstitutional violation of the equal right to vote. *King v. Smith*, 392 U.S. 309 (1968) held that a single woman-headed family could not be deprived of Aid to Families With Dependent Children funds because an unrelated man, whom the state deemed a "substitute parent" in spite of the fact that he did not contribute to the family's income, occasionally cohabited with the mother.
19. Subsequent to Dean Chemerinsky's lecture in February 2009, Justice Souter retired (June 29, 2009). Justice Stevens retired on June 29, 2010.
20. If the Supreme Court deems a category such as race or gender to be a "suspect classification" and any laws based on it therefore subject to "strict scrutiny," it becomes the obligation of the government to show that the object of the law is legitimate and could not be achieved in a less restrictive manner. This shifts the burden of proof from the plaintiff challenging the law to the government, and it becomes much harder for the government to prove its case than it would be if the standard used by the Court is the lesser "rational basis" test (basically, whether a

rational person would agree that the law is one possible way for the government to achieve a legitimate objective).

21. *Lawrence v. Texas*, 539 U.S. 558 (2003).
22. *Romer v. Evans*, 517 U.S. 620 (1996).
23. In *Alexander v. Sandoval* (532 U.S. 275 [2001]), for example, the Supreme Court held there cannot be civil suits to enforce the regulations of Title VI in the 1964 civil rights act. Title VI says that the recipients of federal funds cannot engage in race discrimination.
24. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007). The law effectively overturning the Court's decision—but not making that retroactive—was the Lilly Ledbetter Fair Pay Act of 2009 (Pub.L. 111-2, S. 181).
25. Jane Mayer, *The Dark Side: the Inside Story of How the War on Terror Turned into a War on American Ideals* (Anchor Books, 2009).
26. *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, dissenting): “Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding.”

Our Courts

The Honorable Sandra Day O'Connor

January 20, 2010

Tempe, Arizona

I am particularly happy to be speaking at the Sandra Day O'Connor College of Law. I often tell people that I never expected to serve on the Supreme Court, but I certainly never dreamed that one day someone would name a law school after me. Statistically, the law school honor was arguably less likely than the Court appointment. Of all the lawyers in the history of this nation, 111 of them have served on the Supreme Court, but only a small handful have had law schools named after them, and many times the lucky lawyer had already passed away by the time his or her name was put on the law school. To the best of my knowledge, all of the lawyers selected to join the Supreme Court were still alive at the time.

While growing up I never expected to become a lawyer at all. I grew up in the far eastern part of Arizona on a remote cattle ranch, and all I wanted to do was be a cattle rancher. But in college, I took a class taught by a law professor, and he was the most inspiring teacher I had ever had. I thought that part of what made my inspiring teacher so effective was his legal training and his logic. Because of his effect on me, I decided I would apply to law school and become a lawyer.

When I made up my mind to become a lawyer, I had no idea about the almost total lack of opportunities for women in the legal profession. In 1952, when I graduated from law school, law firms didn't want to hire women lawyers. Only one firm would even speak to me about a job, but the man who interviewed me said, "This firm has never hired a woman lawyer, and I don't see the day when we will." Then he asked me how well I could type, and said that he might hire me as a secretary.

Luckily, I had heard that the District Attorney of San Mateo County in California once had a woman lawyer on his staff, and I persuaded him to give me a job as a deputy. It took some doing. I had to write him a long

letter telling him all the things I could do for him if he would hire me. I had to agree to work for free, and offer to share an office with the secretary. But that's how I got started. Throughout my career as a lawyer, I never thought I could ever be a Supreme Court justice. The whole nation was surprised when President Reagan nominated me to serve on the Court in 1981, but I was the most surprised of all.

I bet that the law firm that wanted me only as a secretary was surprised, too, but they were good sports about it. They invited me to speak there a few years after I joined the Supreme Court, and I accepted. I told them this story, and I also told them that one of their former partners, who was then attorney general of the United States, called me in 1981 to ask whether I would go to Washington, D.C., to discuss a position there. Naturally, I assumed it was a secretarial position. But, I asked, was it Secretary of Commerce or Secretary of Labor?¹

In 2006, I retired from the Supreme Court to take care of my late husband, who was suffering from Alzheimer's disease. Retirement also gave me more free time, and it wasn't long before I started looking for new challenges. Initially, I wanted to focus on improving judicial independence. Our nation's founders believed it was crucial to insulate the federal judiciary from political influences so that it could apply the law fairly and without prejudice. Two of the primary grievances that the colonists listed against King George in the Declaration of Independence concerned the absence of judicial independence in colonial America. The Declaration charged that the King had "obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers" and had "made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."

To safeguard against such abuses, the Founders ensured that our Constitution provides judges with life tenure during good behavior, and a salary which cannot be diminished. And when, at the Constitutional Convention, a delegate proposed that federal judges might be removed by a more expedient means than impeachment, he was shouted down by the other delegates because, as one delegate said, it was "fundamentally wrong to subject judges to so arbitrary an authority."²

An independent judiciary does not mean that it is somehow improper to criticize judicial decisions. To the contrary, it is a healthy sign for democracy that the public is engaged with the workings of the judicial system. But

in recent years, the judiciary has been subject to escalating attacks that go beyond productive criticism and instead threaten our nation's tradition of judicial independence. Disagreement with judicial decisions has led to calls for the impeachment of federal judges and the recall of state judges. The ubiquitous "activist judges" who "legislate from the bench" have become central villains on today's domestic political landscape. Elected officials routinely score cheap points by railing against the "elitist judges," who are purported to be out of touch with ordinary citizens and their values. Tragically, some of these attacks even lead to threats and violence. A 2009 Department of Justice Report found that threats and inappropriate communications to federal judges, U.S. Attorneys, and Assistant U.S. Attorneys more than doubled between 2003 and 2008.³

When I left the Supreme Court, I decided I would work to strengthen judicial independence by helping Americans recognize that our judiciary must be an independent check on the politically elected branches of government, and by urging that we stop politically motivated attacks on our nation's judges. But I soon realized that my own lectures about the importance of an independent judiciary could go only so far. After all, I can speak directly only to those already willing to listen. And some people might not be persuaded by a former judge advocating for what they might think, mistakenly, is simply a way of giving judges more power.

I concluded that we cannot ensure an independent judiciary until we tackle an even more fundamental problem. Americans cannot fully appreciate the value and necessity of judicial independence unless they first understand the checks and balances of our three branches of government and how they define the role of the judiciary. A 2007 survey by the Annenberg Public Policy Center revealed that those who are less knowledgeable about the judiciary are more likely to believe that judges are biased and less likely to believe that the courts act in the public interest.⁴ They are almost certainly less likely to believe that judicial independence is important. It quickly became clear to me that before the public can appreciate the need for judicial independence, citizens need a much better understanding of our government in general.

Democracy is a sustained conversation among our citizens about how best to govern, but Americans cannot participate in that discussion if they don't understand the topic of conversation. We can't have a knowledgeable, participatory population, one that is aware of and able to defend its

rights, if we don't teach every generation about what our system of government is. The task of educating our citizenry about government has traditionally fallen to our nation's school system. The public school system was founded to help create citizens with the knowledge, skills, and virtues to sustain and strengthen democracy. Before she became first lady, Eleanor Roosevelt wrote that the true purpose of education was good citizenship, and for America to have effective leaders, it "must also have a vast army of men and women capable of understanding and following these leaders intelligently." Roosevelt added that "citizens must understand their government from the smallest election district to the highest administrative office." She concluded that "on the public school largely depends the success or the failure of our great experiment in government 'by the people, for the people.'"⁵ Eleanor Roosevelt was right: public education about civics is the only long-term solution both to preserving an independent judiciary and to maintaining a robust constitutional democracy.

For many years, public schools served this role well. As late as the 1960s, the typical U.S. student was offered courses in American history, in government, and in civics to learn about citizenship and the rights and responsibilities that come with it. Admittedly, we should be careful not to romanticize the quality of civics instruction in the past. It often sugarcoated American history and idealized the development of our nation's government, while omitting many of our country's darker moments. Teaching techniques also have greatly improved in the last half century. But even the flawed civics teaching of the past is better than what we have now, where civics has all but vanished from the public school curriculum. Almost half the states no longer make civics material a requirement for high school graduation. In middle school, only three of the states include a separate civics course as part of their standards.

One reason for this dramatic recent decline in civics teaching is an unintended consequence of the No Child Left Behind laws.⁶ The intentions behind these laws were noble enough: we had tested American high school students, along with those of about twenty other Western nations, and our students came in near the bottom in math and science. The President and Congress thought that was frightening, so they provided federal money to public schools to be distributed on the basis of test scores in those subjects. But they did not tell schools to test for civics, for history, or for government. Understandably, many public schools started giving short shrift to these topics

in favor of those subjects that could generate more federal funding. No doubt there are other causes of this decline in civics education, which dates back to before the No Child Left Behind law. But identifying precisely the reasons for the change in civics emphasis is less important than recognizing that we are now failing to impart the basic civics knowledge that young people need to become effective citizens and leaders in our democracy.

An entire generation of American young people who were not taught civics has now grown up, and the results from our neglect of civics education are as dismal as they are unsurprising. Only about one in seven Americans knows that John Roberts is Chief Justice of the Supreme Court, but two-thirds of Americans can name at least one judge on “American Idol.”⁷ Barely one-third of Americans can name the three branches of government—much less say what they each do, but two-thirds can name at least two of the Three Stooges. What’s even worse is that three-fourths of the public cannot distinguish the role of a judge from that of a legislator. They think that judges are just politicians in robes, and it’s no wonder that Americans who hold that belief are not terribly concerned about keeping the judiciary independent from the political branches. It’s not just that Americans lack this basic civic information; it’s that cynicism tends to fill these gaps in knowledge. Statistics show that there is a very strong correlation between ignorance and distrust of our government.

I decided that we must reverse the trend of removing civics from our schools before cynicism begins to suffocate our democracy. I had a tough task ahead of me. I know something about the judiciary and judicial independence, but I had much less experience with education. So I talked with teachers, students, and education experts about what can be done on this issue. I learned that to improve their civics teaching, our schools need to increase the amount of time spent teaching civics, update the civics curricula, and tailor teaching methods to match the learning styles of today’s students. It’s hard for teachers to find more class time, which must be divided among many worthy school subjects. That means we must update the curricula and teaching methods so that, in the little time that can be devoted to civics education, students gain the core citizenship skills they need. The students, teachers, and the outside experts all agreed on one thing: civics education needs a makeover. We need to bring it into the 21st century. Today’s civics curricula are too often seen as dry, boring, and irrelevant to students’ lives. Study after study shows that civics is students’ least favorite

subject in school, and that's partly because we've failed to provide students with quality civics lessons. Civics curricula often lack interactivity and relevance to the lives of their audiences. They do not convey to young people that civics is about who we are as a people and how we can have an impact on the issues that we care about. And civics is an active subject—it is about getting out in the community and making a difference through the political process or through other forms of engagement. The subject, however, is usually taught by having students read a textbook. The nation's best-selling civics textbook is 844 pages—that's longer than the size of an average textbook in college!⁸ No middle school student wants to read that.

Today's students are growing up in the digital age. They have far more avenues of learning than just reading textbooks and completing paper worksheets. A recent study found that children spend 40 hours a week using media; whether it is computers, television, video games or music.⁹ That is more time than they spend in school or with their parents. We can take a big step in the right direction if we capture just a little bit of that media time or direct some of that enthusiasm for technology toward getting students thinking, learning and engaging in civic life. It seems that every few months we learn of another innovation in digital media, and each new way of communicating provides another method of possible civic engagement. To make civics relevant to students, our teaching tools must be aligned with these methods.

To address this challenge, I teamed up with experts in education and technology at Arizona State and at Georgetown Law School to design a way that students can use their technological skills while learning civics. Professors Charles Calleros, Liz Hinde and Nancy Haas have helped since the beginning. Together we launched the Our Courts website, at www.ourcourts.org, which features free, interactive online games about civics targeted toward middle school students. Two Our Courts games have been up and running since the fall of 2009. In "Supreme Decision," students play a law clerk to a Supreme Court justice and help their Justice decide whether a student can be suspended from school for wearing a t-shirt of his favorite band. By observing conversations between Justices, students learn that First Amendment protection is a complicated issue, depending in part on the type of speech and the environment in which that speech is expressed. They also learn, by studying a real Supreme Court case, that students in school do in fact have free speech rights but that schools have some power

to restrict student speech. Students who demonstrate through the game that they understand these issues earn the chance to help write the majority opinion for the Supreme Court.

In another Our Courts online game, “Do I Have A Right?,” students run a constitutional law firm and advise clients about freedoms protected by the Constitution and Bill of Rights. Students have to manage a steady stream of clients before the clients become frustrated and leave the firm. They have to decide if each client’s concern is protected by a constitutional amendment, or if instead the client is complaining because, for example, she thinks the Second Amendment’s right to “bear arms” allows her to wear a sleeveless t-shirt no matter what her mother says. As students advance in the game, their law firm grows and they must handle more and more clients and understand more constitutional amendments.

In January, 2010, we launched our third game, “Argument Wars,” in which students play a lawyer arguing famous Supreme Court cases and must choose the right legal arguments to win. Of course, there’s a lawyer for the other side too, and students must differentiate opposing arguments that are reasonable from those that have absolutely no relevance. All of the Our Courts games are really fun to play, and I encourage everyone to try them, or to show them to your children, especially if they are in middle school.

The Our Courts project offers more than just online games. The website has special resources for teachers, including civics lesson plans designed specifically for interactive learning and entire civics units that can be integrated with our online games. Our Courts also offers online videos and information for students and gives students a chance to post comments or ask me questions about a rotating civics topic.

We’ve gotten a fantastic response to the Our Courts games from teachers and students. In the fall of 2009 an outside consulting firm formally evaluated the Our Courts content. The firm presented the Our Courts games and their corresponding lesson plans to hundreds of students across the country, frequently from Title I schools with large low-income student populations.¹⁰ It tested the students on civics concepts covered by the games both before and after they were introduced to the Our Courts games and lessons. From this, we learned that students showed significant improvement in their understanding of civics concepts after playing Our Courts games and being taught from the corresponding lesson plan. That’s great news, but what’s even more exciting is that the students called the games

“fun,” “cool,” and “addicting,” and they said that the Our Courts games are much like the “real” video games they play at home. We also learned that around half of the students who were taught a game during the evaluation went home that night and, without anyone telling them to, played that game on their own free time. And students are still playing the games, even when they don’t have to. More than eight thousand people played Our Courts games during the traditional winter break period of 2009–2010, including more than 500 on Christmas Day. Students who played the game at home during the evaluation showed higher improvement in the evaluation testing. This is amazing news, and it tells us that when students could be playing any video game they want, thousands are choosing to play Our Courts games and are learning civics outside of school.

All of this information tells us that the Our Courts games are fun and that students learn from them the more they play them, and so we’re making many more games that will cover all three branches of government and help students learn more about the Constitution. We’re adding social networking features to allow students to compare game scores or discuss civics issues with other Our Courts users across the country. We are developing features that will allow teachers to see their students’ game scores and track their improvement. There is much more we can add to the Our Courts website, and I’m sure there are many ways we can improve what we already have. I am always eager to hear from teachers and students, because what I have to say is unimportant unless they are learning and having fun in their classrooms and at home.

In Arizona, Palo Verde Middle School has joined a growing number of schools throughout the country that have already started using Our Courts, and the Deer Valley School District in Glendale will be adopting Our Courts in its middle schools as part of a district-wide commitment to make civic responsibility, community service, and American history cornerstones of its curriculum. But to really impact civics education nationally, we need even more teachers, school administrators, and state leaders to recognize the importance and the promise of this new way to teach civics. At Georgetown Law School, we are assembling a team of law student volunteers to go into middle school classrooms and teach an Our Courts game, which takes only a few class periods.

We have a long way to go to rejuvenate our nation’s commitment to building strong citizens. The Our Courts project is just one example of

what's possible for civic involvement in this new digital age. The new experts of digital media, the ones who hold the key to all its potential, are the youth of our nation. Now that is an exciting prospect, but it also comes with a responsibility for us to ensure that our children and grandchildren have the information and skills they need to use the tools of their generation wisely. By understanding how our government works, by knowing its strengths and weaknesses, and by sharing ideas and solutions, young people can use what's right with America to fix what is wrong.

NOTES

1. The Attorney General was William French Smith.
2. Gouverneur Morris, quoted in James Madison, Notes of *Debates in the Federal Convention of 1787*, August 27, 1787, available at http://avalon.law.yale.edu/18th_century/debates_827.asp.
3. U.S. Department of Justice, *Review of the Protection of the Judiciary and the United States Attorneys* (December 2009), available at <http://www.justice.gov/oig/reports/plus/e1002r.pdf>.
4. Annenberg Public Policy Center, *Public Understanding of and Support for the Courts: 2007 Annenberg Public Policy Center Judicial Survey Results*, http://www.annenbergpublicpolicycenter.org/Downloads/20071017_JudicialSurvey/Judicial_Findings_10-17-2007.pdf.
5. Eleanor Roosevelt, "Good Citizenship: The Purpose of Education," 31 *Pictorial Review* (April 1930) p. 4, available at <http://www.gwu.edu/~erpapers/documents/articles/goodcitizenship.cfm>.
6. Public Law PL 107-110, the Elementary and Secondary Education Act (No Child Left Behind Act of 2001).
7. A survey by FindLaw.com in 2006 found that few Americans could identify any Supreme Court justice. "Most Americans Can't Name Any Supreme Court Justices, Says FindLaw.com Survey," available at <http://www.prnewswire.com/news-releases/most-americans-cant-name-any-supreme-court-justices-says-findlawcom-survey-53384777.html>. Even after the 2012 much-publicized health care and immigration decisions, FindLaw noted that only 20% of Americans could identify Chief Justice Roberts. "FindLaw Survey: Most Americans Can't Name Supreme Court Justices," August 23, 2012, available at http://blogs.findlaw.com/official_findlaw_blog/2012/08/findlaw-survey-most-americans-cant-name-supreme-court-justices.html. This was the same figure reported two years earlier by the Pew Research Center for the People and the Press, "Political Knowledge Update," July 15, 2010, available at <http://pewresearch.org/pubs/1668/political-news-iq-update-7-2010-twitter-tarp-roberts>.

8. William A. McClenaghan, *Magruder's American Government* (Pearson/Prentice Hall, 2009). The average college textbook is about 715 pages.
9. Kaiser Family Foundation, "Daily Media Use Among Children and Teens Up Dramatically From Five Years Ago," Jan. 20, 2010, available at <http://www.kff.org/entmedia/entmedia012010nr.cfm>. See also Andrea Gordon, "Kids Average 40 Hours a Week in Front of TV, Computer," *Sway*, April 26, 2011, available at <http://www.thestar.com/parentcentral/family%20health/article/980105--kids-average-40-hours-a-week-in-front-of-tv-computer>.
10. Title I of the Elementary and Secondary Education Act of 1965 (Public Law 89-10), "Improving The Academic Achievement Of The Disadvantaged," provides federal funds to enhance the education provided by schools with a large population of disadvantaged students. It is now part of the No Child Left Behind law.

Respect: Nourishing Goodness in Education

Sara Lawrence-Lightfoot

March 25, 2010

Woodrow Wilson Center, Washington, D.C.

This afternoon—surrounded by the soaring spirit of Aretha Franklin—I would like to talk to you about RESPECT. “R-E-S-P-E-C-T. Find out what it means to me. Show me just a little respect.”¹ I believe that respect is the most powerful ingredient in creating authentic relationships, in nourishing good and productive school cultures, and in building healthy communities. It is a core American value, embraced by all of us, animating our personal and professional relationships, deserving to be at the center of a rich discourse in this distinguished lecture series, so generously supported by the Taube Philanthropies. For those of us who are educators, respect is a beautiful and crucial concept. We hear it in our rhetoric; we map it into our metaphors; we witness it in our relationships; we embroider it into our pedagogy; we build it into our curriculum; we try to be vigilant in practicing it; we recognize its pragmatic, philosophical, and spiritual dimensions. And respect extends from local neighborhoods to global communities. It is the core of a thriving democracy and a civilized world.

Never has a dialogue about respect, demanding our engagement, commitment, and attention, been more timely and provocative than now. Let’s reflect on just the last decade. It has, in fact, been impossible to have any conversation that focuses on teaching and learning, that speaks about human rights, that refers to social justice without our minds being flooded by bloody, horrific images: the tragic, cataclysmic events of September 11; the murders of innocent mothers and children in Afghanistan; the brutal bombings and attacks in Israel and Palestine and the volatile border conflicts between India and Pakistan; the genocide and raping of women and girls in the Sudan; the uncovering of child abuse and pedophilia by priests

and bishops of the Catholic Church; the terrifying and protracted war in Iraq; the devastating flooding of the Gulf Coast and the obscenely inept response of the federal, state, and local governments that for years ignored all the warnings of imminent danger; the ugly nooses that hung from the trees outside a Louisiana high school reverberating with the most horrifying symbols of slavery; the violent Wall Street crash following the unleashed greed, deceit, and corruption by a whole host of corporate giants, underscoring the vast abyss between the privileged few at the top and the marginalized many at the bottom; the home foreclosures, spiking unemployment, rising homelessness, and devastating losses of middle-income people who never expected to see life on the streets; the rancor, rudeness, retaliation, and now death threats that have poisoned and distorted the recent health care debates—and on and on.

The symbolism and reality of these assaults, taken individually or collectively, make us feel helpless, vulnerable, and victimized. Our tears express our deepest anguish, fears, confusion, and rage. Our democratic values and civil rights seem to be crumbling around us as we work to find our moral and spiritual anchor. In our adult confusions and impotence, we struggle with finding the right words to support and guide our young people. During these last several years of acute anxiety about our fragile and troubled world, we educators—our society's *public* adults—have felt a particular challenge and responsibility to take care of the children and young people in our charge, to help them come to terms with these awful, cruel events and their aftermath, to find a precarious balance between mourning and moving on, between revenge and reconciliation, between grieving and getting busy.

During these times of terror I have, of course, felt my share of rage and anguish; I have had my share of horrifying nightmares. But on my best days, I know that I must find a way to work more intensely, wisely, and generously; that I must cut through the trivia and the distractions of my everyday life and do things that have purpose and meaning, that will make an imprint, that will “give forward” to the next generation. More than ever I have felt committed to enacting our democratic values. For example, I have been devoted to supporting the co-existence of educational excellence *and* educational equality; joining diversity with high academic standards *and* outcomes for all. If we are to live in this world that grows smaller and smaller, we educators must recommit ourselves to building schools that are truly inclusive. We must develop rigorous standards and goals for *all* our students *and* provide

the support that they will need in order to be successful in reaching them. We must develop relationships with our students that will inspire their trust and challenge their intellects, and that will have mutual respect at their center.

We have said these things for a long time, with the best of intentions. Over the years, however, our rhetoric about justice and respect has begun to sound stale and over-rehearsed, much too facile. The shadows of darkness and violence that have preoccupied us recently compel us to recognize how very precious and fragile are our democratic principles, how very hard it is to sustain and nourish respect, and how complex the work of authentic inclusivity turns out to be.

These themes, of educational achievement and social justice, have been central preoccupations in my life and my work. I have also worried a lot about how difficult those goals are to accomplish, both institutionally and interpersonally; about the great distance between our expressed values and our daily habits; and I have worried about finding new ways of addressing our chronic laments and our tired rhetoric. The opportunities and casualties of our dual quests for excellence and diversity, then, have been resounding notes in my siren song, particularly as I have explored in my research and writing the contours and dimensions of respect; as I have tried to shape a reconstructed view of this beautiful term.

I remember feeling the power and majesty of respect—and the deep connections between respect and justice—at an unforgettable moment of grace. It was April of 1986, at the burial and requiem for my father Charles Radford Lawrence II. My brother Chuck was giving the eulogy, his intimate and loving view of a very public man. Chuck's voice cracked as he recalled one of our father Charles' loveliest qualities.

Our father Charles had a natural air of authority about him. He commanded respect without ever asking for it. In high school, my rowdiest friends—the guys who stole hub caps and crashed parties—were perfect gentlemen in my father's presence. They'd stand and say 'Yes, sir, Dr. Lawrence,' and answer his many questions about school and home and where their parents and grandparents were from. It was much later that I realized Dad's secret. He gained respect by giving it. He talked and listened to the fourth grade kid in Spring Valley who shined shoes the same way he talked and listened to a Bishop or college president. He was seriously interested in who you were

and what you had to say. And although he had the intellectual and physical tools to out-muscle a smaller person or mind, he never bullied. He gained your allegiance by offering you his strength, not by threatening to overpower you.

In my brother's words I heard the recovery of rich meanings of respect. Through my tears, I heard the lovely symmetry and reciprocity, not the static hierarchy. I heard the tender transfer of authority, not the power plays. I heard the deep curiosity—the need to know, the urge to understand, not the arrogance of knowing enough or knowing it all. And I heard the beauty in the ordinary, daily gestures, not the drama and glory of great, public moments. My brother's words of gratitude and loving farewell have burned their way into my heart, fueled my interest in respect, and shape the way I understand and interpret its meanings.

As a researcher and educator, I have also seen the power of respect in schools and classrooms; seen the ways in which respect is crucial in nourishing and sustaining relationships between teachers and students. In the last thirty years, for example, I have visited literally hundreds of schools—from city schools in poor communities to affluent suburban schools; from remote rural schools to elite preparatory academies—and in all of them I have asked students to identify their good teachers; and to tell me why they think they are good. The students' answers, across all of these diverse settings, are always the same. "Why do we think Mrs. Brown is a good teacher?" they ask me incredulously, as if I should know the answer. "Because she *respects* us." I push further, trying to discover what they mean by respect. Again, there is no reluctance or ambivalence in their responses. They feel respected by teachers who make them feel visible and worthy, who are demanding, who hold high standards for them, who insist that they learn; and they feel disrespected, or "dissed," by teachers who never bother to get to know them, who let them off easily, who do not take them seriously or believe that they can be successful. Respect grows in relationships of expectation, challenge, and rigor. It is diminished by inattention, indifference, and empty ritual.

In *A Gathering of Gifts*, a beautiful book by my sister Paula Lawrence Wehmiller, a masterful and compassionate educator, an Episcopal priest and a wonderfully poetic writer, Paula recalls the weeks of grueling anticipation before her first day of kindergarten, and speaks about the primal fears that we all experience when we enter new communities. Her story

rehearses the raw feelings of vulnerability and the yearning for visibility and voice—the desire to be known.

It is 1951, and summer has come to a steady, hot, quiet hum late in August. A healthy amount of boredom in the air begins to let the summer end, making way for anticipation of my first day of kindergarten, the beginning of school. My brand new first-day-of-school dress hangs on the mirror over my bureau. Red plaid, I think, with a white collar. New cotton undies and slip and soft white ankle socks are folded on the bureau. And in an open shoe box, with white tissue paper unfolded enough to see them, are my new red school shoes. (My mother had told the salesman “something sturdy in a school shoe.” I had been picturing bright red patent leather party shoes and was crestfallen when “sturdy” signaled the salesman to bring out brown shoes with a tie.) Mom and I must have persevered, each with her own image of what my first school shoes would be, because I ended up with oxblood red leather with a double strap and double buckles—pretty but sturdy—“handsome” was my father’s peacemaking word for the compromise shoes. Every end of August night before going to bed, I would carefully lift the shoes out of the crisp paper, smell the fresh, new leather, put them on the floor next to my feet and think, “I am going to school. I’m going to step up the big high steps onto scary Mr. Gurky’s scary big school bus where I’ve heard that the big kids chant, ‘Kindergarten baby, stick your head in gravy’ when the little kids get on. I’m going to real school in a strange new place. *Will anybody know who I am?*”²²

The big question: “Will anybody know who I am?” For teachers and students across the developmental spectrum—from kindergarten through graduate training—the question is the same and respect is a potent, omnipresent concept. It is on our tongues and embedded in our rhetoric; it is central to our value frameworks and institutional missions; and it shapes our daily actions and interactions. It is, therefore, both practical *and* prophetic.

By now I am sure you gather that my view of respect challenges traditional conceptions of the term. Let me tell you briefly what I mean by respect, identify what I think are its key dimensions, focus on a quality of respect

that I find one of the most surprising and generative, and look at the work and wisdom of one practitioner of respect who embodies this quality. I will close with eight challenging lessons for those of us who want to join theory and practice; for those who want to join the practical and the prophetic; and for those of us who want to build families, communities, and school cultures animated by respect.

Respect is commonly seen as deference to status and hierarchy. Usually respect is seen as involving some sort of debt due people because of their attained or inherent position, their age, gender, class, race, professional status, accomplishments, etc. Whether defined by rules of law or habits of culture, respect often implies required expressions of esteem, approbation or submission. By contrast, I focus on the way respect creates symmetry, empathy and connection in all kinds of relationships, even those, such as parent and child, teacher and student, doctor and patient, employer and employee, commonly seen as unequal. Rather than looking for respect as a given in certain relationships, I am interested in watching it develop over time.

I believe that respect generates respect; a modest loaf becomes many. With that in mind, I am interested in how people work to challenge and dismantle hierarchies rather than how they reinforce and reify them; as well as with the ways in which the organizational context shapes the ways in which people engage in respectful relationships. Since I focus on individuals, it is important to consider how family roots, temperament, and life stories shape the ways in which people are able to become respectful and respected. Rather than the language of inhibition and constraint typical of a more old-fashioned view of respect, I listen for the voices of challenge and exuberance. Rather than the language of dutiful compliance, I hear the words of desire and commitment. Rather than the broad and esoteric abstractions of philosophers—so distant from the complexities of people's lives—I watch for the details of action; and try to decipher the nuances of thought and feeling.

In my book, that begins with birth and ends with death, I identify six dimensions of respect—not to be heard as discrete ingredients of a prescribed recipe, but rather as a framework for considering the rich, experiential complexity of the term.³ Each dimension reveals a different angle of vision.

The first dimension is empowerment. When we are respectful of others, we want to offer them the knowledge, skills, and resources that they need that will allow them to make their own decisions and take control of their lives.

The second dimension is healing. In showing respect for another, we hope, through our work and actions, to nourish a feeling of worthiness, wholeness, and well-being in them.

The third dimension is dialogue. In showing respect for another, we encourage authentic communication. We listen carefully and respond supportively. We are willing to move through misunderstandings, distortions, conflict, and anger towards reasoning and reconciliation.

The fourth dimension, the one on which I will focus here, is curiosity. When we are respectful of others, we are genuinely interested in them. We want to know who they are, and what they are thinking, feeling, and fearing. We want to know their stories and their dreams.

The fifth dimension of respect is, of course, self-respect. In order to show respect to another, we must feel good about ourselves. Self-respect must not be confused with narcissism or entitlement. It results from a growing self-confidence that does not seek external validation or public affirmation. It is learning to live by our own internal compass—one defined by a daily, private vigilance.

And the final dimension of respect that I explore is attention. When we are respectful of another, we offer our full, undiluted attention. We are fully present, completely in the room: sometimes engaged in vigorous conversation, sometimes bearing silent witness.

CURIOSITY: THE LENS OF DAWOUD BEY

I want to talk to you about curiosity, and its messenger Dawoud Bey, because I think it is perhaps the quality of respect that surprises and enhances our view more than any other. Curiosity seems so innocent, so ordinary, so doable; it seems to be the least tainted by political hype or tired rhetoric. It also seems so fundamental to relationships of all kinds—between lovers, between parents and children, between teachers and students, between mentors and mentees, among colleagues—all kept alive by genuine curiosity, by wanting to know and be known, by the search for knowledge, by discovery, openness, and attention to newness and change; by making oneself vulnerable to hearing things painful or incoherent. And curiosity is fundamental to the quest for justice and the commitment to inclusivity. Individually and

institutionally, we must be genuinely interested in the stranger's voice, and in the challenges and opportunities that his/her new perspectives will bring.

As an artist and photographer, Dawoud Bey creates larger than life-sized color portraits that allow us to see into the psyche of his subjects. His powerful images hang in art museums across this country and around the world. When Dawoud talks about his art, he points to the "development of a relationship" with his subjects at the center of his work. If most of us think of photographers with a camera held up in front of their faces, using their equipment as mask or barrier, hiding out while they expose others, then Dawoud Bey stands in defiant contrast. He believes that photographers must enter into relationships with their "subjects" that are mutual and symmetric; where both photographer and subject are unmasked, making way for trust and dialogue. Dawoud's photography is more about discovery, more about finding out what is "true" for each person through listening to his or her stories, than it is about presenting a likeable portrayal. For him, photography begins, always, with a "deep curiosity." "I am endlessly curious," he says about the primary motivation that defines his respectful regard of the people with whom he works.⁴

In his early twenties, Dawoud began his career hanging out in the streets of central Harlem: streets that were both exotic and familiar to this middle-class black boy from Queens. For five years, from 1975 to 1980, he worked to develop his unique approach to making pictures about the human experience. His "hanging out" was methodical. He would select a particular area—usually a ten block square like 125th to 135th Streets, moving from East to West—and he would land there each day with his 35mm camera hanging around his neck. For several days he wouldn't take any pictures; he would just stand around, approach people, and begin a conversation. Sometimes he'd go to the same bus stop for several days in a row and begin to recognize the people who would arrive at the same time each day. They would also begin to notice him, and eventually they'd strike up a conversation. "This was very hard for me," admits Dawoud. "I was an incredibly shy person by temperament. As a child, I was very reticent, a stutterer, real fearful of reaching out. I think making pictures was the way I began to engage people... the way I came out of my shyness."

But even as a novice, Dawoud knew that photographs grew out of relationships, and that the process had to be reciprocal. This reciprocity usually emerged out of the sharing of stories. Courageously pushing past his

reticence, Dawoud forced himself to reach out to folks and make a connection. Sometimes he had to begin the storytelling in order for people to feel moved to carry on. But once the “ball got rolling,” he found that one story encouraged others. Before you knew it the afternoon had slipped into evening, and an atmosphere of reciprocity had emerged. The stories were usually inspired by a question, by genuine curiosity about the other person. The curiosity could not be faked.

Despite his shyness, Dawoud thinks part of the reason he was able to learn how to reach out to people was because Ken, his father, was an amazingly friendly and gregarious man who “had the ability to engage everyone.” He could stand on the street all day and enjoy “talking to anybody about anything.” Dawoud remembers how Ken would stop and talk to the man selling hotdogs on the corner. “His curiosity was provoked by anybody... He’d ask the guy how long he’d been selling hotdogs, who his supplier was, how much profit he made, and so on... endlessly curious.” But it was not only that Ken was eager to engage in conversation that amazed his son; it was also his ability to connect with all kinds of people whatever their station or status.

Ken was an electrical engineer by training. He usually held the position of manager or director wherever he worked, but he never used the power of his position to diminish others or to pull rank. Dawoud remembers visiting his dad at work and “never having the sense that he was the boss... He had an easy relationship with all the men who worked for him.” Dawoud loved his father’s curiosity, his gregariousness, and the even-handed way he dealt with everyone around him. Even though he grew up feeling awkward and shy, so different from his father’s ease and cool, he must have absorbed some of his social inheritance. In his early days meeting people and taking pictures in Harlem, a part of his father seemed to grow up in him.

When Dawoud describes the curiosity and commitment that are part of his work, and the depth and complexity that he strives for, he takes me on a “flashback” to his second-grade teacher at P.S. 123, a Queens public school filled with African-American teachers and students. When he photographs his subjects, and bathes them in light, he wants them to feel “seen” in the way he felt “seen” in Mrs. Jones’ classroom. “Mrs. Jones,” he recalls, “was profound and extraordinary and very inspiring.” “In what way profound?” I ask, somewhat surprised at a word that seems to go beyond most people’s recall of second grade. His response is

immediate. “She established *real* relationships with every single child in her class. Everything was possible and everyone could do it.” Ever since second grade, all of Dawoud’s other teachers and all of his other educational experiences have been measured against Mrs. Jones’ “amazing skill and compassion” and they have all come up wanting.

By the time he was in third grade, Dawoud’s parents had enrolled their son in P.S. 131, a higher achieving white school where he was the only black child in his class; one where he remembers feeling an uneasy, unnamed anxiety every time he stepped off the bus and into the school. Dawoud recalls an incident in fourth grade when one of the little girls’ lunch was stolen, and he looked up to find the teacher singling him out. He saw her cold stare and her accusatory finger waving in his face, and he felt baffled and confused. “I was innocent; I didn’t even get the connection.” “*Me?*” he stammered. “Are you talking to *me?*” asked Dawoud in a sweat. Yes, she meant him, and he was to go down to the guidance office immediately. He was the culprit. There was no doubt in her mind. Dawoud rose up from his seat, walked the long march to the door amid the quiet stares of his classmates, and dutifully took himself to the guidance office where, as he remembers it, the counselor gave him some “weird” tests “putting square pegs in round holes.” In Dawoud’s memory this is one story among many. “I’d get singled out,” he recalls. “Much of the time I was in a conflicted state. There were strange things going on, but what do you say? I couldn’t name what was happening, and I couldn’t find the words or the courage to ask.”

He remembers that in the following year, in fifth grade, the class was writing a group play about Colonial America, and the play was to be written in verse. Dawoud loved the assignment and he leapt right into the middle of the work. The teacher was gratified by the way her class pulled off the assignment so quickly and with such apparent ease and mature collaboration. She inquired of everyone how they had been so incredibly productive, and the children all pointed to Dawoud who smiled back shyly. “I remember,” says Dawoud with hurt in his eyes, “how her expression changed in that moment. The raised eyebrow, the amazement, the surprise.” She must have applauded his inspired work and thanked him for his contribution. But the only thing that Dawoud can remember is her utter bafflement and his inner confusion. The teacher was unable to reconcile his brightness with her stereotype of him. How could this black boy produce this verse? She seemed tormented by this.

Dawoud's tales of being painfully misunderstood—the ways in which his fourth and fifth-grade teachers were blinded by their prejudice—remind me of the opening passages of Ralph Ellison's classic novel, *Invisible Man*, a book published just before Dawoud was born.

I am an invisible man. No, I am not a spook like those who haunted Edgar Allen Poe; nor am I one of your Hollywood-movie ectoplasms. I am a man of substance, of flesh and bone, fiber and liquids—and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me. Like the bodiless heads you see sometimes in circus sideshows, it is as though I have been surrounded by mirrors of hard, distorting glass. When they approach me they see only my surroundings, themselves, or figments of their imagination—indeed, everything and anything except me.⁵

The plight of Ellison's invisible man echoes through Dawoud's later childhood stories. He suffered what Ellison describes as “the construction of their inner eyes” and he learned, the hard way, that to exist we must be visible. The contrast between the biased oversight of his teachers at P.S. 131, and the full, empathic attention bestowed by Mrs. Jones, surely influenced Dawoud's approach to his art. His photographs, motivated by curiosity, shaped by a commitment to his subjects, and their consent and participation, allow his subjects to express themselves, bathed in respectful attention.

Our view of knowing—really seeing—the people in our lives—in our relationships, our schools, our families, and our communities—might be informed by Dawoud Bey's masterful and compassionate lens. Threaded through his story, we see the daily acts of justice, the warm embrace of inclusivity, and the relentless curiosity that says “yes” to little sister Paula's haunting question, “Will anybody know who I am?” Times have changed since Ellison spoke about the anguish and isolation of invisibility.

Times have changed since Dawoud Bey suffered the assumptive caricatures of his teachers who could not see his beauty or his braininess. Times have changed since my sister Paula climbed onto the school bus hoping to be seen, known, and cherished when she crossed the threshold of her classroom. But I would argue that the lessons drawn from their stories have

even greater poignancy now when the current educational discourse and policies are being driven by narrowing standards and creeping standardization that neglect the relational dimensions of teaching and learning; when our schools remain rigidly segregated by race, ethnicity, and class; when our long-standing aspirations for schools as the institutions for individual and group mobility, as the engines of access, opportunity, and justice continue to be unrealized. Dawoud's story and Paula's haunting plea feel both anachronistic and contemporary, both time-limited and timeless.

In closing, then, let me offer eight lessons that I believe are important for those of us who want to honor and enact our dual missions of excellence and equity, and welcome the exciting and difficult challenges of transforming and strengthening our schools; for those of us committed to embracing diverse voices and identities, and for those of us who want to build educational cultures based on relationships of respect.

FIRST LESSON: ON SYMMETRY

We need to reconstruct our images of, and metaphors for, respect. The old views of respect, that emphasize hierarchy, approbation, and obedience based on habit, ritual, or law, tend to lead to relationships that are static, asymmetric, and constraining. People become stuck in their roles—of power or impotence, responsibility or irresponsibility—and are neither challenged nor inspired to try on other personas or develop in new ways of being. Respect that is symmetric and dynamic, on the other hand, supports growth and change, encourages communication and authenticity, and allows generosity and empathy to flow in two directions. The image is one of a circle, not a triangle or a pyramid. From this new perspective, differences in power, strength, and expertise may remain, but the respect creates a relational, generative symmetry.

SECOND LESSON: ON RELATIONSHIP

Respect grows in relationship and it is shaped by the context. One cannot possibly envision respect in the abstract. It is grounded in individual reciprocity and engagement, defined by the immediacy of the moment and the constraints of the setting. It is visceral, palpable, conveyed through gesture,

nuance, tone of voice, figure of speech. One of the reasons “to diss” has become a verb spoken by all of us, not just by cool-talking adolescents, is because it seems to capture, in one sharp syllable, the potency of respect not given: the moment when we are suddenly made to feel diminished, dismissed, and demeaned. Those of us seeking to nourish respect, then, must see its embeddedness in growing relationships, and appreciate the immediate and visceral way it is transmitted.

THIRD LESSON: ON CIVILITY

It is important that we not confuse respect with civility. Although these notions are related, they are certainly not the same. Civility refers to the rituals, routines, and habits of decorum that characterize a gracious encounter. We think of the etiquette of politeness and manners; an important, but relatively surface engagement. Respect certainly includes attention to these rituals of civility, but it goes deeper. It penetrates below the polite surface and reflects a growing sense of connection, empathy, and trust. It requires seeing the “other” as genuinely worthy.

FOURTH LESSON: ON STORYTELLING

Storytelling is at the center of respectful encounters: stories lubricated by a genuine curiosity, authentic questions, and attentive listening. Stories also allow for rapport and identification across the boundaries of class, race, gender, prejudice, and fear. Through the unique and specific aspects of each other’s stories, we discover the universals among us. And remember, stories are not exclusive property. One story invites another as people’s words weave the tapestry of human connection.

FIFTH LESSON: ON LANGUAGE

If we are to make progress towards an authentic pluralism, a real diversity of voices in our organizations, then I think we have to listen carefully to the language we use, and get rid of code labels—such as “inner-city,” “at risk,”

“disadvantaged,” and even “urban”—that are masks for words we refuse to say in the politically correct and subtly racist environments we tend to inhabit. We have to strike, or at least revive and reinvest in, tired terms like multiculturalism and diversity that have lost their punch and challenge. One of the reasons I love the word “curiosity” is because it is so plain, so core, so untarnished. (It is the curiosity in Dawoud Bey’s work that resists caricature and stereotype.) If we really practice curiosity, we will be genuinely interested in understanding the colors and differences in our midst. We will be eager to get to know the stranger.

SIXTH LESSON: ON DISSONANCE

Getting to know the stranger is not only motivated by curiosity. It also requires that we anticipate the inevitable moments of misunderstanding, misinterpretation, and missteps; that we prepare ourselves to navigate the moments of distrust and disappointment; that we choose carefully when to fight (not dissipate our energies), and when to engage the conflict that may open up the path towards reasoning and reconciliation. In other words, in building respectful relationships and healthy organizations, we must welcome the dissonance of voices and perspectives. In fact, we need to learn to love the dissonance: the noise, the spark, the discomfort, the challenge that it causes. It cries out for notice; it demands attention; it pushes towards resolution. Whether it is the dissonance in Miles Davis’ *Sketches of Spain* or the haunting harmonies in Alicia Keys, or the dissonance in a Romaire Beardon collage, or the flash of rage or defiance in a Dawoud Bey portrait, it allows us to see the conflict and the resistance, to reflect on it, and if we are courageous enough, to take respectful action.

SEVENTH LESSON: ON FAMILY ORIGINS

The imprint of family is powerful in shaping the ways we each negotiate respectful relationships. As we try to create relationships that are nourishing and challenging, that have respect at their center, we often confront the ghosts of our parents, the haunts of our early experiences as a child. These echoes can be inspiring; we create relationships that have the imprint of

our parents' empathy and generosity. This was the good fortune of Dawoud Bey, who inherited his father's irrepressible warmth and curiosity. But others of us must work to challenge harsh and troubling generational echoes. We have to try hard not to unleash on others the assaults our parents, wittingly or unwittingly, inflicted upon us. Our determination to become teachers, mentors, and institutional healers may, in fact, be inspired by the deep residues of pain inflicted by abusive parents. As adults, engaged in respectful encounters with our students, we must do the opposite—act out of compassion and empathy, restraint and connection—and in so doing heal ourselves.

EIGHTH AND FINAL LESSON: ON SILENCE

Respect is not just shown through talk. It is also conveyed through silence. I do not mean an empty distracted silence, but a fully engaged silence that permits us to think, feel, breathe, and take notice: a silence that gives the other person permission to let us know what he or she needs. In nourishing respectful relationships, then, we must develop receptive antennae, take on the role of witness, and learn to live in the stillness.

“At the still point,” says T.S. Elliot in his poem *Four Quartets*, “there the dance is.”⁶ Birth and death join at such moments, inviting our deep curiosity, our full attention. For the dying and, I believe, the living, the immediate moment is the most significant. Now is the time. Now is always.

NOTES

1. Otis Redding, “Respect,” <http://www.lyrics007.com/Aretha%20Franklin%20Lyrics/Respect%20Lyrics.html>.
2. Paula Lawrence Wehmiller, *A Gathering of Gifts* (Church Publishing Inc., 2002), pp. 5–6.
3. Sara Lawrence-Lightfoot, *Respect: An Exploration* (Perseus Books, 1999).
4. Op. cit., p. 144.
5. Ralph Ellison, *Invisible Man* (Random House, 1952), p. 3.
6. T. S. Eliot, “Burnt Norton” in *Four Quartets* (Harcourt, Brace and Co., 1943), p. 5.

WOODROW WILSON INTERNATIONAL
CENTER FOR SCHOLARS

One Woodrow Wilson Plaza
1300 Pennsylvania Avenue, NW
Washington, DC 20004-3027

www.wilsoncenter.org