

## **Who's Afraid of Senator Byrd? The Constitution and the Uses of American History**

Stanley N. Katz  
Woodrow Wilson School  
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A half-page ad in the *New York Times Book Review* a few weeks ago announced that the Annenberg Foundation Trust's Annenberg Classroom could help to make Constitution Day, September 17, "easy." Constitution Day "shaped our HISTORY, it charts our Future." <sup>i</sup> The Foundation asserted that "The U.S. Constitution protects the wellbeing of our country and ensures our freedoms. Yet many Americans know little about it. That's why Congress established Constitution Day – a time to teach future generations about the foundations of our democracy."<sup>ii</sup>

I wonder how many of you have wondered why you are sitting in Dodds Auditorium on a lovely September afternoon, when you could otherwise be walking along the towpath or at least heading for Firestone? Many years ago when I was finishing my dissertation, a grad school friend was summoned to a job interview at UCLA, and to the astonishment of the History Dept. committee preparing to interrogate him, he spoke first at the meeting, asking "You gentlemen must have wondered why I have brought you together today?" Despite his chutzpah, he got the job. But the answer to the analogous question today is "Senator Byrd." We would not be here today if the distinguished Senator (D, W.Va.) had not had the chutzpah to write into law on December 10, 2003 the requirement that any and all educational institutions that receive federal monies must offer their students an instructional program on the U.S. Constitution

each September 17th. Who's afraid of Senator Byrd? Well, I am not, but here you are being educated by me about the U.S. Constitution – though perhaps not exactly as the good Senator would have wished.

I confess that the first thought that crossed my mind when I read reports of the legislation was that the federal government had no right to determine the curriculum of Princeton University (or any other institution of higher education). But on reflection I have concluded that while we should go to the barricades in the name of academic freedom if the feds were to mandate a requirement that every undergraduate take a course in constitutional law or history, requiring us to hold a once-a-year educational experience of our own choosing seems sufficiently permissive and respectful of institutional educational prerogatives. And in any case the constitutional status of academic freedom is not so clear.

For example, as part of its get-tough-on-Cuba policy, the Bush administration recently issued regulations restricting the travel of U.S. undergraduate students to Cuba for short courses (of the sort that Princeton in Cuba used to provide). The regulations were challenged in the name of First Amendment based academic freedom. Last July 30 Judge Huvelle of the federal District Court in the District of Columbia upheld the regulations on the grounds that what she referred to as “the so-called academic freedom doctrine” applies only to government regulations that control the content of academic speech – and travel restrictions are a different matter.<sup>iii</sup>

More importantly, of course, the federal government has been in the higher education business at least since the passage of the Northwest Ordinance setting aside public lands for the support of public education in 1787 and the Morrill Act that

established our magnificent land grant college system in 1862.<sup>iv</sup> Following in the Jeffersonian republican tradition, mid-nineteenth century Republicans agreed with one of their House members from Illinois, who asked during the Morrill Bill debate: “What is the true, genuine spirit of our institutions: Upon what are they founded? The *two great pillars* of our American Republic, upon which it rests, are universal liberty and universal education.”<sup>v</sup> These days we think of the federal government’s role in higher education as primarily the provider of student financial aid and the funding of scientific research, but from the start many Americans have accepted the conceptual link between education and democratic citizenship. Senator Byrd is on safe ground in this respect.

I want to suggest to you this afternoon that while the constitutional basis for the Byrd legislation is somewhat problematic, that is not nearly so troubling as what the legislation implies both about how we think about the U.S. Constitution and how we think about the role of history teaching in undergraduate education. That is, I am less concerned about the role of the federal government in mandating teaching requirements in higher education, than I am about it mandating the manner of teaching of U.S. history in particular. Therein hangs a very interesting and consequential tale, which begins with a discussion of the written Constitution, and ends with my own suggestion for the best use of Constitution Day.

Of course Senator Byrd is not alone in his veneration for the Constitution, which he famously and invariably carries with him at all times – as do I. [*Flourish Constitution*] When beginning to write this lecture, I was struck by a passage in a September 1 *New York Times* article about Condoleezza Rice’s concern for her historical legacy. She told the reporter that she had recently visited the National Archives for the first time (about

time, I should think), and spent a morning viewing the Emancipation Proclamation, the Declaration of Independence and (her rank ordering is interesting, friends) the Constitution.<sup>vi</sup> These documents, she told the Times, gave her a new perspective: “People are still trying to resolve those legacies . . . [so] I’m not going to worry about my legacy.”<sup>vii</sup> These are wise words. Secretary Rice seems suggest that the meaning of historic documents is not immediately self-evident, a point that seems to have escaped the Annenberg Foundation, Senator Byrd, and others I shall soon mention.

This is not a matter of politics. Many, perhaps most, commentators on public affairs have grand and fixed notions of our Founding documents, but they attach very different significances to these documents and to the Founding Era, some seeming to tie themselves to the past, others using them for present purposes. The very able Dean of this School has recently published a book entitled *The Idea that is America*, in which she makes a point about the relationship between American ideas and historical context:

The American idea took shape at our nation’s founding as a vision and a promise. The Founders foresaw a nation that could be different from any other. They wrote this vision into the Declaration of Independence, the Constitution and the Bill of Rights [a different trio than Condi Rice’s, notice]. But in themselves . . . these documents are only words on paper, however venerable the parchment and flourishing the signatures. The idea that is America maybe written in words, but it is realized in our deeds.<sup>viii</sup>

Constitutional law scholars will recognize in this formulation the distinction between “originalists” and advocates of a “living Constitution,” but for the moment I simply want to remind you of the distinction between historical documents and present political realities. The question is how we are connected to our constitutional past? What claims, if any, does it have on us as citizens?

Americans have been declaiming on the subject for centuries, perhaps stimulated by what Benjamin Franklin said at the Constitutional Convention in Philadelphia on September 17, 1787, the day on which the Framers actually signed the Constitution of the United States – and now the secret is out as to why we are here on this particular date. Franklin, the new country’s elder statesman, wrote out remarks for James Wilson to read to the Framers two hundred and twenty years ago today. It is a wonderful speech, in which Franklin began by saying that “there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them,”<sup>ix</sup> words which tell us something important about the multiple ways in which the Framers thought about the document they had produced. He went on to say that he agreed to the Constitution “with all its faults, if they are such; because I think a general Government necessary for us, and there is no form of Government but what may be a blessing to the people if well administered . . . I doubt too whether any other Convention we can obtain may be able to make a better Constitution. . . . It therefore astonishes me . . . to find this system approaching so near to perfection as it does . . .”<sup>x</sup> “Near to perfection” is perhaps the conception we need to hold on to on Constitution Day. “Thus,” Franklin proceeded, “I consent . . . to this Constitution because I expect no better, and because I am not sure, that it is not the best.”<sup>xi</sup> Many of you will remember that after the Framers filed by the front of the Hall to sign the parchment, Madison reported that Franklin “looking towards the Presidents Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun.”<sup>xii</sup> Franklin noted that he had often wondered whether the sun on this chair was rising or falling, “But now,” he said, “at length I have the happiness to

know that it is a rising and not a setting sun.”<sup>xiii</sup> What a happy story for Constitution Day. But of course Franklin could only be sure that the sun was rising in September, 1787. What do you suppose he would say about the sun’s inclination today?

But of course neither Ben Franklin nor George Washington ever suggested that we celebrate September 17 as a holiday in honor of the constitution. So far as I can tell, the events that led us to the designation of a Constitution Day began with the Congressional designation of another date, the third Sunday in May, as “Citizenship Day and New Citizens Day” in 1940, on the eve of the war.<sup>xiv</sup>

On this special day of recognition, observance, and commemoration of American citizenship, both the newly naturalized citizen and the youth attaining the age of 21 are to be recognized. The precise nature of the program is left to each local community.<sup>xv</sup>

The INS was given the responsibility for coordinating with local communities and providing suggestions for developing ceremonies.<sup>xvi</sup> In 1944 Judge Learned Hand gave the Day’s ceremonial talk, and linked its observance to the Constitution, albeit negatively: “Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, and no court can save it; no constitution, no law, no court can even do much to help it ...”<sup>xvii</sup> But for Hand this was not just the work of man: “the spirit of liberty is the spirit of Him who, near two thousand years ago, taught mankind that lesson it has never learned, but has never quite forgotten, that there may be a kingdom where the least shall be heard and considered side by side with the greatest.”<sup>xviii</sup> There matters rested until 1952, when Congress designated September 17 as Citizenship Day, and in 1956 proclaimed the week beginning September 17<sup>th</sup> as Constitution Week.<sup>xix</sup>

The Byrd amendment actually changed the name “Constitution Day” to “Constitution Day and Citizenship Day.”<sup>xx</sup> Since then, as I have already told you, educational institutions receiving federal funds are obligated by federal law, not simply encouraged, to celebrate the Day formally. The annual Constitution Day proclamations of Presidents Clinton and George W. Bush indicate the range of available meanings of the observance. In 1995 Clinton referred to the Constitution as “the greatest expression of our national identity.”<sup>xxi</sup> He noted that

From the beginning, there was a dissonance between the plain meaning of our creed and the reality of American life, and constitutional history reflects the vital changes wrought by amendments, civil war and tremendous social transformations. Emancipation, women’s suffrage, civil rights, voting rights – all these began as struggles of citizens who joined together to push our Nation toward the ideals enshrined in our Constitution, and whose efforts were encouraged by the Constitution itself.<sup>xxii</sup>

But when Bush proclaimed this week on August 22, he said that “we celebrate the anniversary of our Nation’s Constitution and honor the Framers who created the landmark document that continues to guide our Nation.”<sup>xxiii</sup>

Today, every American shares in this legacy of liberty, and we are grateful for the courage, conviction and sacrifice of all those who have helped preserve and uphold the principles of a free society. As we remember the enduring importance of the Constitution, we also recognize our responsibility as citizens to respect and defend the values of our founding and participate in the unfolding story of freedom.<sup>xxiv</sup>

I don’t want to read too much into words written by those Executive Office functionaries who also write the proclamations honoring National Pickle Eaters Day, but presumably they are trying to reflect the views of their bosses. Put simply, Bill Clinton saw the Constitution as an originally flawed document, the product of change produced by more than two centuries of political struggle, and George Bush sees it as the

embodiment of enduring values and the key to understanding American history. My argument is that it is this view that Senator Byrd and others are promoting in designating today as Constitution Day and in seeking to reform the teaching of American history accordingly. I find this troubling and my task today is to explain why.

Let's start by looking at Senator Byrd's rationale for the Constitution Day requirement. He gave the obligatory address himself at Sheperd University in West Virginia on Sept. 16, 2005, the first observance in his home state. "Not a day has passed in the history of this great republic in which the Constitution has not been important," he assured the audience, "[a]nd certainly not today, as religiously inspired terrorist groups strike from wild dark places at the way of life that our Constitution guarantees for us."<sup>xxv</sup> This is heady stuff. Is it a "way of life" that the Constitution "guarantees" us? Let's forget for the moment the "wild, dark places," or, for that matter, "the children of light and the children of darkness." "The anniversary of the signing of the Constitution is," he went on:

a very important day, yet it is often not even printed on the calendar and is only rarely observed. That is a shame. Why should the phases of the moon, or the first day of Autumn, or Halloween, be granted more notice in the passing days of our lives than an event which has such impact on so many aspects of our daily occupations?...<sup>xxvi</sup>

Moreover,

This deceptively simple document fundamentally affects how we live in the United States. Most issues of concern on a national scale involve it: war, treaties, international and interstate commerce, the role of the federal and state governments in the event of national catastrophes, discrimination, civil rights, taxes – the list goes on and on. It is written in simple English, not legalistic gobbledygook. There is no reason why all Americans cannot read it and see how it applies to events going on around them.<sup>xxvii</sup>



Now, it is nice to know that the Constitution is not “legalistic gobbledygook,” though not all of us find its language so transparent as Byrd does, but what counts for him is that an eighteenth century formulation is a sure guide to understanding twenty-first century events. In his 2006 Constitution Day message Senator Byrd reminded us that he carries a copy of the document with him “wherever I go,” and asked “but what about you? What do you know about the Constitution? How much of it do you carry around with you? Why should you want to know about your Constitution?”<sup>xxviii</sup> His answer was to refer to Ben Franklin, who reminded the Framers that they had created a “Republic, if you can keep it.”<sup>xxix</sup> And adhering to the structures and values of the Constitution, he argued, is the way to preserve the republic.

Our Constitution embodies the vision of the Framers, their dream of freedom, supported by the genius of practical structure which has come to be known as the checks and balances and separation of powers. But we cannot defend and protect this dream if we are ignorant of the Constitution’s history and how it works. Ignorance is ultimately the worst enemy of a people who want to be free.<sup>xxx</sup>

Education is then, for Byrd, the key to the preservation of the republic, historical training is the key to education, and understanding of the Founding Era is the key to United States history.

My concern with what Byrd has done (and is doing) is with the political and ideological spin that is put upon the Constitution on its Day. I believe that the most serious problem is the sanctification and glorification of the Constitution *qua* constitution, that is, with the veneration of a parchment signed in 1787 -- in and of itself. This is what our former colleague Walter Murphy, the immediate past McCormick Professor of Jurisprudence at Princeton, called *constitutionism*

The awkward neologism “constitutionism” refers to adherence to the terms of the constitutional text . . . . Constitutionalism differs [in that] [i]t does not merely connote a nation’s having a constitutional text but to its having a particular kind of constitutional order. Constitutionalism [on the other hand] is a normative political theory that contends that all exercises of governmental power, whether representing the will of one person, an elite, or an overwhelming majority of citizens, is subject to important *substantive* limitations.<sup>xxx1</sup>

It has, alas, been all too common in our history for those who want to lock in old constitutional values and interpretations to promote constitutionism.

The most egregious recent example of this phenomenon was then Chief Justice Warren Burger’s management of the Bicentennial of the Constitution in 1987. (He was the Chair of the Bicentennial Commission). Twenty years ago today the *New York Times* reported that, “President Reagan is scheduled to speak outside Independence Hall. And at 4 P.M., the moment of the Constitution’s signing, former Chief Justice Warren Burger is to ring a reproduction of the Liberty Bell, signaling other bells to chime around the country and at United States installations around the world.”<sup>xxxii</sup> When the bells stopped ringing and he had his chance to speak Burger intoned:

Here, as the nation joins Philadelphia in this celebration, we must remember that 200 years ago our people faced perils. A wilderness and great social and economic problems were there to conquer. Risks and challenges are present today. But, if we remain on course, keeping faith with the vision of the Founders, with freedom under ordered liberty, we will have done our part to see that the great new idea of government by consent—by We the People—remains in place.<sup>xxxiii</sup>

“Keeping faith with the vision of the Founders” had a special meaning for Chief Justice Burger, but for some it represents a sort of nostalgic patriotism and filiopietism.

And Associate Justice Thurgood Marshall was quick to point this out in a speech shortly after the Bicentennial Commission got down to work:

I do not believe that the meaning of the Constitution was forever “fixed” at the Philadelphia Convention. Nor do I find the wisdom, foresight, and sense of justice exhibited by the framers particularly profound. To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain a system of constitutional government, and its respect for the individual freedoms and human rights, that we hold as fundamental today.

[The men who gathered in Philadelphia in 1787] could not have imagined, nor would they have accepted, that the document they were drafting would one day be construed by a Supreme Court to which had been appointed a woman and the descendant of an American slave. “We the People” no longer enslave, but the credit does not belong to the framers. It belongs to those who refused to acquiesce in outdated notions of “liberty,” “justice,” and “equality,” and who strived to better them.<sup>xxxiv</sup>

Marshall here says, what I believe, that what we should revere in this democratic nation is not a *document* embodying the ideals of two centuries ago, but rather that greatest of American intellectual and political contributions to the world – *the idea of constitutionalism*. Just as Bill Clinton argued in his Constitution Day proclamation in 1995, change is the friend, not the enemy, of constitutionalism. True constitutionalism, as I have argued many times before, is the product of political struggle within particular societies, not a set of universal values or prescribable institutions.

But now I want to move beyond Byrd’s interpretation of the Constitution, and his intentions for Constitution Day. I’d like to deal with the implications of Constitution Day for the teaching of history, for Senator Byrd is not simply concerned with respect for the Constitution. He is himself an historian, the author of a number of speeches on the history of the United States Senate, later collected into four volumes, and a deep believer that the nation’s future depends upon our success in educating youngsters about the history of the country. To that end, he successfully introduced legislation in 2000 to create what he called the “Teaching American History” initiative.<sup>xxxv</sup> His original

proposal was to appropriate \$50 million annually in grants to schools that teach American history as a separate subject within their curricula<sup>xxxvi</sup>:

An American student, regardless of race, religion or gender, must know the history of the land to which [*sic*] they pledge allegiance. They should be taught about the Founding Fathers of this Nation, the battles that they fought, the ideals that they championed, and the enduring effects of their accomplishments. They should at be taught about our nation's failures, our mistakes, and the inequities of our past. Without this knowledge, they cannot appreciate the hard won freedoms that are our birthright.<sup>xxxvii</sup>

A year later Byrd explained that he hoped the TAH initiative would provide “incentives to help spur a return to the teaching of traditional American history... Our failure to insist that the words and actions of our forefathers be handed down from generation to generation will ultimately mean a failure to perpetuate this wonderful, glorious experiment in representative democracy.”<sup>xxxviii</sup>

The core of Byrd's intention is to return to what he thinks of as *traditional* American history. “[W]e need good history books and good teachers so that the boys and girls today will find their heroes among the early Americans who built this country.”<sup>xxxix</sup> Good history is the story of Byrd's childhood heroes. The problem for Byrd is not just that school children are not being taught enough American history, but that they are not being taught the *right kind* of history. And his initiative has flourished. In 2002 TAH was incorporated into the No Child Left Behind Act (as part of the Teacher Quality section of the Act)<sup>xl</sup>; even in tough budget times over the past five years it has consistently been funded at more than \$100 million dollars a year<sup>xli</sup> – about two-thirds of what the National Endowment for the Humanities and the National Endowment for the Arts each receives annually.

Considering that in the entire history of the United States prior to 2000 there had never been dedicated funding for the teaching of American history in the schools, this is a staggering national investment in the field. How did it come about? I do not have time today for details, but essentially this is the story of an idea that appealed to a great many politicians for very different reasons – and of the clout an ancient, long-time member of the Senate can willfully exercise. One set of reasons has to do with the so-called “culture wars” of the late 1980s and early 1990s, in which political conservatives made much of the alleged ignorance of American schoolchildren as a potential cause of political decline. Another set had to do with the efforts of some university historians to try to reclaim the teaching of history from the dominant social studies curriculum in the public schools. Both sets were stimulated by the contentious survey conducted by Diane Ravitch and Chester Finn, published in 1988 as *What Do Our 17-Year-Olds Know?*, with a forward by NEH Chairman Lynne V. Cheney, who made historical “truth” one of her mantras.<sup>xliii</sup> In short, the argument of Ravitch and Finn was that schoolchildren did not know the facts of American history, a finding also confirmed in a survey report by the American Council of Trustees and Alumni in 2000 entitled “Losing America’s Memory: Historical Illiteracy in the 21<sup>st</sup> Century.”<sup>xliiii</sup> Like the Ravitch-Finn survey, the ACTA report focused on ignorance of commonplace historical facts, reporting that 81% of those surveyed “could not identify Valley Forge, passages from the Gettysburg Address, or the principles of the U.S. Constitution.”<sup>xliv</sup> ACTA also reported that none of “the nation’s top colleges and universities require students to study American history” (yes, that still includes Old Nassau) and “only 10 per cent require students to study history at all” (not us either).<sup>xlv</sup>

Congress itself jumped on the “historical ignorance” bandwagon, and in the summer of 2000 Senator Joseph Lieberman (who along with Lynne Cheney had co-founded ACTA) and others introduced a bipartisan resolution “Expressing the Sense of Congress Regarding the Importance and Value of Education in United States History.”<sup>xlvi</sup> The resolution decried “the historical illiteracy of America’s college and university graduates” and called upon higher education to respond by reviewing undergraduate curricula and promoting U.S. history requirements in order “to restore the vitality of America’s civic memory.”<sup>xlvii</sup> (This passed the Senate by something like 90-0.)<sup>xlviii</sup> Senator Lamar Alexander (occasionally in tandem with Senator Ted Kennedy) has also promoted the study of American history – in April, 2003, Alexander held a hearing on his “American History and Civics Education Act”<sup>xlix</sup> – please note the connection between history and civics. Alexander commented that “When we are asking our young men and women to fight to defend our values, we need to do a better job of teaching just what those values are.”<sup>l</sup> For Alexander and Lieberman, history is about teaching facts and values, with the facts intended to support particular values, though the evidence they produce of lack of historical knowledge is primarily about ignorance of specific individuals (“heroes,” mostly), events (especially related to the Founding) and places (related to both of the aforesaid). The Alexander bill, which first passed the Senate in 2003, proposes to create summer residential academies for public school American history teachers and students, modeled on the program that Alexander sponsored as Governor of Tennessee.<sup>li</sup> Alexander intends that the program would “put the teaching of American history and civics back in its rightful place in our schools, so that our children can grow up learning what it means to be an American.”<sup>lii</sup>

Civics is being dropped from many school curricula. More than half the states have no requirement for a course in American government. And American history has been watered down, textbooks are dull, and their pages feature victims and diminish heroes. Because of politically correct attitudes from the left and right, teachers are afraid to teach the great controversies and struggles that are the essence of American history.<sup>liii</sup>

This, by the way, is a riff on the more famous statement of Yogi Berra that “if you don’t know where you are going, you might not get there.” In 2005 Senators Alexander and Kennedy introduced new legislation to improve American history and civics scores on the National Assessment of Education Progress examination.<sup>liv</sup> As I will argue in conclusion, this is a normative and prescriptive view of the uses of history, and I think that both historians and political liberals ought to be wary of it. I could give you a great many more examples. The most important would be the controversy over the adoption of national standards for the teaching of American history, a dispute fomented by NEH Chairman Cheney to great political effect. But I had better not go there . . .

I think many of you are familiar with that sorry episode, but you may be less aware that NEH is still in the business of using American history for similar purposes, and I think you ought to know what the current Chairman, Bruce Cole has been doing to promote the American heritage. I have the comfort here in knowing that I am not the only one to have noticed Cole’s appropriation of American history. In May of 2007 Judith Dobrzynski of the *Wall Street Journal* wrote an article on Cole entitled “This NEH Chairman is Our Official History Scold.”<sup>lv</sup> Cole told the reporter that history was not like other aspects of culture: “It’s essential.”<sup>lvi</sup> And he quoted Ronald Reagan as saying that “this country comes from well-informed patriotism; it’s that love of country, that love of place, that’s necessary for any country’s survival. You can call them myths if you want, but unless we have them, we don’t have anything.”<sup>lvii</sup> Cole himself contended that

“History is a safeguard for our democracy. . . .It’s part of our national security.”<sup>lviii</sup>

Relevant to an American Studies lecture, the Chairman also opined that “. . . I do believe in American exceptionalism. . . . This is the greatest country that has ever existed.”<sup>lix</sup>

This from a distinguished historian of the art of the Italian Renaissance.

Under Cole’s leadership, and with the explicit endorsement of President George W. Bush, the signature program of the NEH has become “We the People” (note the Constitutional reference, please), “an initiative to explore significant events and themes in our nation’s history, and to share these lessons (note the word, please) with all Americans.”<sup>lx</sup> At the Rose Garden ceremony at which the President announced the program, Mr. Cole took the podium to comment that “Studies [he meant Ravitch-Finn and ACTA] have shown that Americans of all ages have a dangerously poor understanding [I hesitate to comment on the President’s more recent political use of history.] of American history and culture. . . . The President has identified this lack of understanding as a serious problem and has asked NEH to help combat (note the verb) it.”<sup>lxi</sup> We the People is designed (1) to call for applications for projects designed to explore significant events and themes in our nation’s history, (2) to sponsor an annual “Heroes of History” lecture by a scholar “on an individual whose heroism has helped to protect (note the verb) America and (3) to sponsor an annual “Ideal of America” essay contest for high school juniors.<sup>lxii</sup>

Cole concluded the announcement ceremony with a reference that must have pleased the Chief Executive:

Last year’s September 11 terrorist attack was designed to destroy not only thousands of people but also the American way of life. In defending our homeland we must fight to protect the democratic ideals and principles of freedom on which our nation was founded.<sup>lxiii</sup>



And he pressed the national security rationale for the teaching of American history and culture:

The humanities tell us who we are as a people and why our country is worth fighting for. They are integral to our homeland defense. People increasingly are forgetting what shaped their past and led to a national identity. When a nation fails to know why it exists and what it stands for, it cannot be expected to long endure.<sup>lxiv</sup>

And We the People continues to be the signature program of Cole's NEH, although compared to the sums allocated for Teaching American History, WTP is a financially modest program. The Heroes of History lectures have thus far been given three times by fairly distinguished figures, beginning with Robert Remini reflecting on "Ordinary Heroes: Founders of Our Republic," and by subsequent lecturers extolling Abraham Lincoln and George Marshall ("An American for all Seasons").<sup>lxv</sup> The essay contest also continues, with an assigned topic each year on "the principles that define and unite our nation."<sup>lxvi</sup> In 2003 NEH also launched a WTP reading list on "Courage" with Cole and Lynne Cheney (yes, she is still involved) announcing the establishment of a "We the People Bookshelf" – "By reading these books, young readers can gain greater understanding of how people from all walks of life – facing challenges large and small – can find strength to do what is right."<sup>lxvii</sup> It is also noteworthy that in September 2002 NEH announced that it would convene an annual conference on "civics education, the state of historical knowledge and ways to enhance the teaching of American history," leading to a White House Forum on the subject in 2003.<sup>lxviii</sup>

In sum, since at least 2000 a variety of politicians from both parties have proposed programs to reinvigorate the teaching of United States history and (closely linked to it in purpose) civics, on the theory that history education is a prerequisite for

democratic education. The George W. Bush NEH and the Department of Education have administered such programs. Of course there is nothing wrong with striving to improve the teaching of history and civics. But the agenda behind these particular programs is ideological and didactic. It is premised on the notions that The Founders Knew Best and that We Ought Still Be Governed by the Original Principles, and these are both historically and politically debatable at best and educationally pernicious at worst. Not just historians but all educators should resist the notion that students of all ages should be taught historical political mythology.

But this is not to argue that there is not a nexus between democracy and education. Quite the contrary. My personal hero in this regard (alas, not a Founder, but at least a Dead White Male), John Dewey, put it eloquently in 1916 (when our democracy was anything but secure):

The devotion of democracy to education is a familiar fact. The superficial explanation is that a government resting upon popular suffrage cannot be successful unless those who elect and who obey their governors are educated. Since a democratic society repudiates the principle of external authority, it must find a substitute in voluntary disposition and interest; these can be created only by education. But there is a deeper explanation. A democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience... A society which is mobile, which is full of channels for the distribution of a change occurring anywhere, must see to it that its members are educated to personal initiative and adaptability. Otherwise, they will be overwhelmed by the changes in which they are caught and whose significance or connections they do not perceive. The result will be a confusion in which a few will appropriate to themselves the results of the blind and externally directed activities of others.<sup>lxix</sup>

It seems to me that some such assumption should properly be the basis for liberal undergraduate education. We ought not to be about telling our students what is right (though any teacher worth her salt will have strong views as to what is right and what is

wrong). The aim of liberal education is to challenge students to make their own informed judgments. We, along with Dewey, want our students to be “educated to personal initiative and adaptability.”<sup>lxx</sup>

More specifically for history teachers, the goal is not facticity (which might be compared to constitutionism). The historian aims to train his students in historical thinking – to be able to acquire the relevant data (facts among them) and then to be able to make reasoned judgments and draw conclusions from them. This is the sort of thinking that is not so easily assessed, unlike the simple-minded information survey that led to the dismal conclusions of *What Do Our 17-Year-Olds Know?*<sup>lxxi</sup> or the even more tawdry ACTA survey.<sup>lxxii</sup> It would be nice if all of my students knew what happened on September 17, 1787 in Philadelphia, but it would be much nicer if they had an informed interpretation of what the long-term significance of the signing of the federal constitution might be.

My friend and History Department colleague Theodore Rabb put the point well in a June essay on history teaching in the schools in *The Chronicle of Higher Education*<sup>lxxiii</sup>:

If we gave talented teachers of history their heads, they could convey the joys of this endlessly fascinating subject, with its heroes and villains, conflict and engagement, drama and discovery. Their students, in turn, could gain a sense of perspective about themselves and their world, and learn to analyze the news that surrounds them. Instead, we put the teaching of history into ever narrower straitjackets, and spin test results that demonstrate profound ignorance into symptoms of a brighter future.<sup>lxxiv</sup>

Exactly. History, especially U.S. history, also has a large role to play in our university classrooms, in training students in historical thinking, and even in teaching them how democracy works. But this is not in my view the special obligation of historians. Rather, it is an integral part of liberal education.

And on this, Harry Lewis, the distinguished former dean at Harvard, wrote in the *Chronicle* just two weeks ago that “colleges can’t say that civic ignorance is just the problem of high schools. Honoring the responsibilities of citizenship in a democracy is part of the moral obligation universities assume in exchange for the vast freedoms . . . they enjoy.”<sup>lxxv</sup>

I stoutly oppose federal interference in the content of college curricula. But institutions of higher education have a social contract with America, and we are not holding up our end of the deal. We owe it to the country to teach our students how democracy works. [and] More is at issue here than the dates in American history. Students need to develop a feeling for the preciousness of human freedom and self-determination, and the responsibility of citizens to act for the good of their country and not only in their personal self-interest. In college, they should learn how America’s foundational ideas, of liberty and equality under the law, apply to the difficult problems with which it is struggling today. They need to learn that as citizens we have no one but ourselves to blame for our elected officials and their actions.<sup>lxxvi</sup>

I think Lewis has it just right.

Put another way, what Lewis (and I) would advocate is not filiopietistic patriotism, of the NEH variety, nor even of Byrd’s, but rather constitutional patriotism, which is quite a different matter. As Jurgen Habermas has put it:

The political culture of a country crystallizes around its constitution. Each national culture develops a distinctive interpretation of those constitutional principles that are equally embodied in other republican constitutions—such as popular sovereignty and human rights—in light of its own national history. A “constitutional patriotism” based on these interpretations can take the place originally occupied by nationalism.<sup>lxxvii</sup>

Notice that Habermas asks us to locate where we are constitutionally in relation both to our own history and to the situation of other republican polities. This is a sensible and responsible use of constitutional history. It appeals to me, since I have devoted fifty

years of teaching to attempting something like what Habermas suggests. But, as you have heard, I am adamantly opposed to the calls for the normative teaching of history and the prescriptive use of education.

My challenge to you, in the exercise of Princeton University's obligation to provide an "instructional program" for our students on this day, is simply to think about what the Constitution means today and has meant historically to this country. This is what my UCLA colleague Joyce Appleby did last week in an op ed entitled "Let's Do Something Constitutional on Constitution Day,"<sup>lxxviii</sup> urging the Congress to act on its constitutionally-mandated exclusive power to declare war. There's a practical suggestion!

If you should happen to agree with me that some of those who have urged us to venerate the document and its early history are now undermining the vigor and integrity of our constitutional tradition, I would be delighted. If not, I would love to engage you on the topic.

Long live the Constitution of the United States. Long live the active and engaged teaching of U.S. history. And long live Senator Robert Byrd.

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NOTES

The author wishes to acknowledge the invaluable assistance of Maribel Morey of the History Department, Princeton University, in assisting with the research for this lecture.

<sup>i</sup> The Annenberg Foundation Trust at Sunnylands Advertisement, *Constitution Day Made Easy*, THE NEW YORK TIMES BOOK REVIEW, Sept. 2, 2007, at 23.

<sup>ii</sup> *Id.*

<sup>iii</sup> *ECDET Appeals Judge's Decision on Restrictions on Academic Travel to Cuba*, PR NEWSWIRE-US NEWSWIRE, Aug. 9, 2007, available at [http://www.earthtimes.org/articles/show/news\\_press\\_release,156790.shtml](http://www.earthtimes.org/articles/show/news_press_release,156790.shtml).

<sup>iv</sup> WILLIAM HULL HOFER, TO ENLARGE THE MACHINERY OF GOVERNMENT 9-20 (2007).

<sup>v</sup> *Id.* at 95.

<sup>vi</sup> Helene Cooper, *As Her Star Wanes, Rice Tries to Reshape Legacy*, THE NEW YORK TIMES, Sept. 1, 2007, at A6.

<sup>vii</sup> *Id.*

<sup>viii</sup> ANNE-MARIE SLAUGHTER, THE IDEA THAT IS AMERICA 3-4 (2007).

<sup>ix</sup> MAX FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 641 (1966).

<sup>x</sup> *Id.* at 642.

<sup>xi</sup> *Id.* at 643.

<sup>xii</sup> *Id.* at 648.

<sup>xiii</sup> *Id.*

<sup>xiv</sup> Citizenship Day and New Citizens Day, Pub. L. No. 67-183 (1940). *See also*, Franklin L. Burdette, *Education for Citizenship*, 6 PUBLIC OPINION QUARTERLY 269, 277 (1942).

<sup>xv</sup> Glenn Kendall, *Educational Activities of the United States Immigration and Naturalization Service*, 17 JOURNAL OF EDUCATIONAL SOCIOLOGY 36, 41 (1943).

<sup>xvi</sup> Marian Schibsby, *Private Agencies Aiding the Foreign Born*, 223 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL SOCIAL SCIENCE 182, 187 (1942).

In co-operation with civic, social, and educational agencies, the Federal Government's Immigration and Naturalization Service for the last three years has been promoting ceremonies in honor of foreign-born persons who have become American citizens during the current year—the so-called “I Am An American Day” ceremonies. For the past year, the Immigration and Naturalization Service and Work Projects Administration, working with state departments of education, have organized a nationwide program, the National Citizenship Education Program, for the education and assimilation of the foreign-born and especially of the four and a half million who are still aliens. NCEP classes have been set up in almost every state, and in some states the program is making excellent headway. *Id.*

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<sup>xvii</sup> Ara Lovitt, *Review: Constitutional Confusion? (Reviewed Work: Freedom's Law: The Moral Reading of the American Constitution by Ronald Dworkin)*, 50 STAN. L. REV. 565, 602 (1998) (quoting from Learned Hand's "The Spirit of Liberty," speech at an "I Am an American Day" ceremony, Central Park, New York City, May 21, 1944, in LEARNED HAND, PAPERS AND ADDRESSES OF LEARNED HAND (ed. by Irving Dilliard 1952)).

<sup>xviii</sup> *Id.*

<sup>xix</sup> Citizenship Day and Constitution Week, Proclamation 6720, 30 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1783 (Sept. 19, 1994).

<sup>xx</sup> Omnibus Spending Bill of 2004, Pub. L. No. 108-447; Constitution Day and Citizenship Day, 36 U.S.C. § 106, 108 (2004).

<sup>xxi</sup> William J. Clinton, *Proclamation 6825—Citizenship Day and Constitution Week, 1995*, 31 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Sept. 25, 1995, at 1575.

<sup>xxii</sup> *Id.*

<sup>xxiii</sup> *President Bush Proclaims Sept. 17 as Constitution Day, Citizenship Day, Sept. 17-23 as Constitution Week*, U.S. FED NEWS SERVICE, Aug. 22, 2007.

<sup>xxiv</sup> *Id.*

<sup>xxv</sup> Senator Byrd's Constitution Day Address, Sept. 16, 2005, *available at* [http://www.byrdcenter.org/events\\_constday2005.html](http://www.byrdcenter.org/events_constday2005.html).

<sup>xxvi</sup> *Id.*

<sup>xxvii</sup> *Id.*

<sup>xxviii</sup> Senator Byrd's Constitution Day Address, Sept. 16, 2006, *available at* [http://www.byrdcenter.org/events\\_constday2005.html](http://www.byrdcenter.org/events_constday2005.html).

<sup>xxix</sup> *Id.*

<sup>xxx</sup> *Id.*

<sup>xxxi</sup> WALTER F. MURPHY, CONSTITUTIONAL DEMOCRACY: CREATING AND MAINTAINING A JUST POLITICAL ORDER (2006).

<sup>xxxii</sup> William K. Stevens, *The Constitution 1787-1987; Philadelphia Gears Up for Bicentennial Party*, THE NEW YORK TIMES (Sept. 16, 1987).

<sup>xxxiii</sup> Bicentennial Observance of the U.S. Constitution, HISTORIC DOCUMENTS OF 1987 (1988), *available at* [http://www.cqpress.com/incontext/constitution/docs/bicentennial\\_observance.html](http://www.cqpress.com/incontext/constitution/docs/bicentennial_observance.html) (last visited October 13, 2007).

<sup>xxxiv</sup> Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARVARD L. REV. 1 (1987).

<sup>xxxv</sup> Senator Byrd's website links to description of Teaching American History, *at* [http://byrd.senate.gov/hist\\_index.html](http://byrd.senate.gov/hist_index.html) (last visited October 13, 2007).

<sup>xxxvi</sup> *Id.*

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<sup>xxxvii</sup> *Id.* at [http://byrd.senate.gov/hist\\_background/hist\\_background.html](http://byrd.senate.gov/hist_background/hist_background.html) (last visited October 13, 2007).

<sup>xxxviii</sup> Amendment to Teaching American History, Congressional Records § 4809 (May 10, 2001).

<sup>xxxix</sup> *Id.*

<sup>xl</sup> Alex Stein, *The Teaching American History Program: An Introduction and Overview*, 36 THE HISTORY TEACHER (2003).

<sup>xli</sup> National Coalition for History, *Teaching American History Grants Background*, available at <http://historycoalition.org/issues/teaching-american-history/> (last visited October 13, 2007). “For the past three fiscal years, approximately \$120 million a year was appropriated to carry out the program.” *Id.*

<sup>xlii</sup> DIANE RAVITCH AND CHESTER E. FINN, JR., WHAT DO OUR 17-YEAR-OLDS KNOW? A REPORT ON THE FIRST ASSESSMENT OF HISTORY AND LITERATURE viii (1987).

<sup>xliii</sup> Anne D. Neal, et. al., *Losing America’s Memory: Historical Illiteracy in the 21<sup>st</sup> Century*, Issued for Presidents’ Day, Feb. 21, 2000 (2000), available at [www.goacta.org/publications/Reports/acta\\_american\\_memory.pdf](http://www.goacta.org/publications/Reports/acta_american_memory.pdf) (last visited October 13, 2007).

<sup>xliv</sup> Robin Wilson, *A Not-So-Professional Watchdog: Anne Neal has never worked at a college, but she has become a leading critic of left-wing faculty members*, THE CHRONICLE OF HIGHER EDUCATION: THE FACULTY 1 (Nov. 10, 2006), available at <http://chronicle.com> (quoting Neal, *supra* note 43).

<sup>xlv</sup> National Endowment for the Humanities, *President Bush Announces NEH American History Initiative* (Sept. 17, 2002), available at <http://www.neh.gov/news/archive/20020917.html>.

<sup>xlvi</sup> Maris A. Vinovskis, *No Child Left Behind and Highly Qualified U.S. History Teachers: Some Historical and Policy Perspectives* 45-48 (draft, June 2007), prepared for Brown University Conference on “Clio at the Table: The Uses of History to Inform and Improve Education Policy,” June 14-15, 2007.

<sup>xlvii</sup> *Id.*

<sup>xlviii</sup> *Id.*

<sup>xlix</sup> Senator Lamar Alexander’s website, *Press Release: Senator Alexander Chairs Hearing on American History and Civics Act*, April 10, 2003, available at [http://alexander.senate.gov/index.cfm?FuseAction=pressreleases.detail&pressrelease\\_id=163&month=4&year=2003](http://alexander.senate.gov/index.cfm?FuseAction=pressreleases.detail&pressrelease_id=163&month=4&year=2003).

<sup>l</sup> *Id.*

<sup>li</sup> Senator Lamar Alexander’s website, *Press Release: Senator Alexander Applauds President Bush’s Emphasis on American History and Civics*, May 1, 2003, available at [http://alexander.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease\\_id=171&Month=5&Year=2003](http://alexander.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=171&Month=5&Year=2003).

<sup>lii</sup> Senator Lamar Alexander’s website, *Press Release: Senator Alexander’s American History and Civics Bill Passes Senate Unanimously*, June 20, 2003, available at [http://alexander.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease\\_id=211&Month=6&Year=2003](http://alexander.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=211&Month=6&Year=2003).

<sup>liii</sup> *Id.*



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<sup>liv</sup> Senator Lamar Alexander's website, *Press Release: Senator Alexander and Kennedy Introduce Legislation to Improve American History Scores and Civics: States Across the Country Will Be Able to Compare Test Scores*, April 20, 2005, available at [http://alexander.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease\\_id=707&Month=4&Year=2005](http://alexander.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=707&Month=4&Year=2005).

<sup>lv</sup> Judith H. Dobrzynski, *A Cultural Conversation with Bruce Cole: This NEH Chairman is Our Official History Scold*, WALL STREET JOURNAL, May 22, 2007, at D8.

<sup>lvi</sup> *Id.*

<sup>lvii</sup> *Id.*

<sup>lviii</sup> *Id.*

<sup>lix</sup> *Id.*

<sup>lx</sup> National Endowment for the Humanities [NEH] website, *President Bush Announces NEH American History Initiative*, Sept. 17, 2002, available at <http://www.neh.gov/news/archive/20020917.html>.

<sup>lxi</sup> *Id.*

<sup>lxii</sup> *Id.*

<sup>lxiii</sup> *Id.*

<sup>lxiv</sup> *Id.*

<sup>lxv</sup> List of "Heroes of History" lecturers, available at <http://www.wethepeople.gov/heroes/index.html> (last visited October 13, 2007).

<sup>lxvi</sup> National Endowment for the Humanities [NEH] website, *NEH Announces 11<sup>th</sup>-Grade Winners of 'Idea of America' Essay Contest: Laura Bush to recognize six young writers during White House ceremony*, Feb. 16, 2003, available at <http://www.neh.gov/news/archive/20030216.html>.

<sup>lxvii</sup> National Endowment for the Humanities [NEH] website, *NEH Launches We the People Reading List on "Courage": Lynne Cheney and NEH Chairman Bruce Cole Announce New Book List for Young Readers; New NEH Program Will Provide Books to Libraries that Offer Public Programs*, June 3, 2003, available at <http://www.neh.gov/news/archive/20030603.html>.

<sup>lxviii</sup> National Endowment for the Humanities [NEH] website, *President Bush Announces NEH American History Initiative*, Sept. 17, 2002, available at <http://www.neh.gov/news/archive/20020917.html>.

<sup>lxix</sup> JOHN DEWEY, *DEMOCRACY AND EDUCATION* (quoting from Chapter Seven, "The Democratic Conception in Education," Section Two, "The Democratic Ideal") (1916), available at <http://www.ilt.columbia.edu/publications/dewey.html> (last visited October 13, 2007).

<sup>lxx</sup> *Id.*

<sup>lxxi</sup> DIANE RAVITCH AND CHESTER E. FINN, JR., *WHAT DO OUR 17-YEAR-OLDS KNOW?: A REPORT ON THE FIRST NATIONAL ASSESSMENT OF HISTORY AND LITERATURE* (1988).

<sup>lxxii</sup> Anne D. Neal, et. al., *Losing America's Memory: Historical Illiteracy in the 21<sup>st</sup> Century*, Issued for Presidents' Day, Feb. 21, 2000 (2000), available at [www.goacta.org/publications/Reports/acta\\_american\\_memory.pdf](http://www.goacta.org/publications/Reports/acta_american_memory.pdf) (last visited October 13, 2007).

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<sup>lxxiii</sup> Theodore K. Rabb, *On the Contrary: Those Who Do Not Learn History*, THE CHRONICLE REVIEW, June 22, 2007, at B2.

<sup>lxxiv</sup> *Id.*

<sup>lxxv</sup> Harry R. Lewis, *Point of View: A Core Curriculum for Tomorrow's Citizens*, THE CHRONICLE OF HIGHER EDUCATION, Sept. 7, 2007, at B20.

<sup>lxxvi</sup> *Id.*

<sup>lxxvii</sup> JURGEN HABERMAS, THE INCLUSION OF THE OTHER: STUDIES IN POLITICAL THEORY 118 (ED., CIARAN CRONIN AND PABLO DE GREIFF 1998).

<sup>lxxviii</sup> Joyce Appleby, *Let's Do Something Constitutional on Constitution Day*, HISTORY NEWS NETWORK, Sept. 10, 2007, at <http://hnn.us/articles/42551.html> (last visited October 13, 2007).