

“Civility in a Fractured Society”

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President Tilghman, General Patraeus, Dean Paxson, friends of the university:

Few subjects seem duller than concern for public manners. But in the context of American history, where change was wrought in the crucible of debate about the nature as well as the rights of man, little is more important for the world’s leading democracy than recommitting to an ethos of thoughtfulness in the public square. The times require a new social compact rooted in mutual respect and citizen trust.

The concept of civility implies politeness, but civil discourse is about more than good etiquette. At its core, civility requires respectful engagement: a willingness to consider other views and place them in the context of history and life experiences.

Comments several months back on the House floor involving advocates on both sides of the health care debate have gathered much attention, but vastly more rancorous, socially divisive assertions are being made across the land. Public officials are being labeled “fascist” or “communist,” sometimes at the same time. And more bizarrely, hints of history-blind radicalism –notions of “secession” and “nullification”– are creeping into the public dialogue.

One might ask what problem is there with a bit of hyperbole. The logic, to paraphrase Marshall McLuhan's observation about the media, is the message.

Certain frameworks of thought define rival ideas. Other frameworks describe enemies.

If 400,000 American soldiers sacrificed their lives to defeat fascism, if tens of thousands more gave their lives to hold communism at bay, and if we fought a civil war to preserve the union, isn't it a citizen's obligation to apply perspective to incendiary words that once summoned citizens to war? There is, after all, a difference between supporting a particular spending or health care view and asserting that someone who prefers another approach or is a member of a different political party is an advocate of an "ism" of hate that encompasses gulags and concentration camps.

Citizenship is hard. It takes a commitment to listen, watch, read, and think in ways that allow the imagination to put one person in the shoes of another.

Words matter. They reflect emotion as well as meaning. They clarify – or cloud – thought and energize action, sometimes bringing out the better angels of our nature, sometimes baser instincts.

Stirring anger and playing on the irrational fears of citizens inflames hate. When coupled with character assassination, polarizing rhetoric can exacerbate intolerance and perhaps impel violence.

Conversely, just as demagoguery can jeopardize social cohesion and even public safety, healing language such as Lincoln's plea in his second inaugural address for "malice toward none" can uplift and help bring society closer together.

The choice for leaders is whether to opt for unifying statesmanship or opportunistic partisanship.

Likewise, the challenge for citizens is to determine whom to follow: those who respect diversity but favor a united country, or those who press debilitating cultural wars or extreme ideological agendas.

But civility is not exclusively about governance. At issue is whether we perceive ourselves as belonging to a single American community with all its variety, and whether we look at people in other neighborhoods and other parts of the world as members of families seeking security and opportunity for their kin just as we do.

Nevertheless, in politics as in family, vigilance must be maintained to insure that everyone understands each other. Vigorous advocacy should never be considered a thing to be avoided. Argumentation is a social good. Indeed, it is a prerequisite to blocking tyranny and avoiding dogmatism. Rather than policing language, the goal should be to uplift the tenor and tone of debate and infuse it with historical and philosophical perspective.

The poet Walt Whitman once described America as an “athletic democracy.” What he meant was that 19th Century politics was rugged, with spirited debates about immigration, taxes, and slavery. Things could also get violent. A vice president, Aaron Burr, killed our greatest Secretary of the Treasury, Alexander Hamilton, in a duel triggered by Hamilton’s claim that Burr was a “despicable” character. Tragically, that judgment was vindicated at the duel where Hamilton fired prematurely skyward, presumably not realizing that the triggering mechanisms of the Burr-supplied pistols had been filed to a hair trigger.

So, political treachery is nothing new. What is new in our social discourse are transformative changes in communications technology, debilitating changes in American politics, and the gravity of issues facing mankind.

In teaching at Princeton upon leaving Congress, I developed a series of what I call two minute course in American governance. Let me cite several that point to some of the causes of American angst and division.

Political Science 101: The country over the past generation has been approximately one-third Democratic, one-third Republican, and one-third independent. Basic math tells us that one-half of one-third is one-sixth, so 16 2/3rds percent of the voters nominally control candidate selection in a typical election. But only one in four voters (often a fraction of this figure) participates in primaries where candidates are chosen. Thus, it is $1/4^{\text{th}} \times 1/6^{\text{th}}$, only $1/24^{\text{th}}$ of the electorate that determines who the candidates of the principal parties will be. This 4 percent is socially quite conservative on the Republican side and actively liberal on the Democratic. Consequently, legislative bodies intended to represent a vast cross-section of the American public come principally to reflect its philosophical edges.

Political Science 102: In primaries for president, Republican candidates lean to the right, where the vote is, and then, if nominated, scoot to the center in the general election; Democrats do the same, but begin from the left. When it comes to Congress, however, the scoot to the center is seldom evident. Approximately 380 House seats are gerrymandered to be “safe” for one of the parties. About half of these safe seats are held by Republicans and half by Democrats. With few exceptions, safe-seat members must lean to the philosophical edges to prevail in primaries. Once nominated, there is no incentive for politicians to move to the center, either as candidates or legislators, because the only serious electoral challenge is likely to come from within their party’s uncompromising base. Polarization is the inevitable result.

Psychology 101: An increasing number of issues in Congress are being projected as questions of morality rather than judgment. Advocates of one perspective assume that those with a different view are championing immorality. On the left, the problem is frequently evidenced by those who assume that increasing social spending for almost any compassionate cause is the only moral choice; on the right, by those who assume that the moral values of one or another group should be written into law to bind society as a whole.

Psychology 102: There is something about the human condition that wants to be allowed to make governing decisions at socially cohesive levels where citizens may have impact. Much is written today about globalism but this century is also about “localism.” To adapt to a fast changing world, one must understand both of these phenomena – the fact, as Tip O’Neill repeatedly noted, that all politics is local and a corollary that all local decisions are affected by international events. The angst of our times is correlated to the concerns of peoples everywhere that their livelihoods are increasingly buffeted by forces outside the control of family and community.

Journalism 101: In the 19th Century, towns and cities often had two or more newspapers, many biased toward one or the other major political party. With the consolidation of newspapers and the popularization first of radio and then television in the second and third quarters of the 20th Century, a newly configured media recognized that large audiences required greater attention to accuracy and balance. The 1930s produced a few radio demagogues like Father Coughlin, but the media, especially the three major television networks that initially emerged, competed to present balanced reporting. In the newspaper industry, editors came to understand the public’s craving for diversified balance and chose to augment their editorial pages with the juxtaposition of conservative and liberal columnists from Bill Buckley and George Will to Walter Lippmann and Paul Krugman. With the rise of cable T.V. and the Internet, competition for audiences and advertising revenues increased. While many media outlets strive to be neutral brokers of the news, some have found it commercially advantageous or ideologically compelling to ape politics and project a one-sided point of view, coming full circle to the 19th Century model of partisan reporting. Thus today’s dilemma: at a time when in-depth analysis of the issues of the day has never been more important, quality journalism has been jeopardized by financial constraints and undercut by facile purveyors of ideology who design news, like clothes, to appeal to a market segment.

Sports 101: A mid-20th Century sports journalist, Grantland Rice, famously observed that winning and losing are less important than how the game is played. Likewise in politics. The temper and integrity of the political dialogue are more important for the cohesiveness of society than the outcome of any election. In politics there are few rules and no referees. The public must be on guard and prepared to throw flags when politicians overstep the bounds of fairness and decency. As athletes compete to win, they learn to respect their opponents. Is it asking too much for candidates and their supporters to do the same?

Literature 101: In a set of four books published half a century ago called the *Alexandria Quartet*, the British author Lawrence Durrell describes urban life in Alexandria, the ancient Egyptian city on the Mediterranean, between the first and second World Wars. In the first book, Durrell spins a story from the perspective of one individual. In each subsequent book, he describes the same events from the perspective of others. While the surrounding events are the same, the stories are profoundly different, informed by each narrator's life and circumstances. The moral is that to get a sense of reality it is illuminating to see things from more than one set of eyes. This observation can apply to interactions in a court room or town hall or on the international stage. What America does may seem reasonable from our perspective, but look very different to a European, African, Middle Easterner, or Asian.

Physics 101: Sir Isaac Newton set forth three laws of motion, the third of which affirmed that for every action there is an equal and opposite reaction; in shorthand, action equals reaction. Social chemistry can be quite different. In the kindergarten of life, reaction can be greater than action. If, for instance, one were to malign a rival calling him for instance a "bum" or "crazy" or worse, or describe the country in which a person lives as "evil" or "backward," the reaction might produce effects far greater than the precipitating words envisioned or intended.

Humanities 101: In the most profound political observation of the 20th Century, Albert Einstein suggested that splitting the atom had changed everything except our way of thinking. Human nature may be one of the few constants in history,

but 9/11 has taught that thinking must change not simply because of the destructive power of the big bomb, but because of the implosive nature of small acts. Violence and social division are rooted in hate. Since such thought begins in the hearts and minds of individuals, it is in each of our hearts and minds that hate must be checked and our way of thinking changed.

Humanities 102: In Western civilization's most prophetic poem, *The Second Coming*, William Butler Yeats suggests that "the centre cannot hold" when "the best lack all conviction, while the worst are full of passionate intensity." Citizens of all philosophical persuasions are displaying increased disrespect for their fellow citizens and thus for modern day democratic governance. Much of the problem may flow from the fast-changing nature of our society, but part of the blame falls at the feet of politicians and their supporters who use inflammatory rhetoric to divide the country. Candidates may prevail in elections by tearing down rather than uplifting, but if elected, they cannot then unite an angered citizenry. Negativity dispirits the soul of society just as it raises the temperature level of legislatures.

Political utterances have consequences. Even those unheard, as we found last month during the State of the Union address.

For the first time in memory a comment mouthed, but not voiced, has sparked a debate about public manners. According to lip readers, a Supreme Court justice silently framed the words "not true" in response to the President's critique of a Court ruling.

There are two contrasting takes on the incident. Either the President inaccurately and inappropriately criticized the Supreme Court, or a justice injudiciously ruled on an issue fundamental to our political system and over-reacted to Presidential criticism.

How one assesses this circumstance relates to how one views the issue.

What the Court did in the *Citizens United v. Federal Election Commission* decision was take a problematic campaign finance case it had the option of deciding narrowly -- in which circumstance it might not have sparked great concern -- and instead ruled broadly. Its assertion, in defiance of statutory precedent, that corporations have a Constitutional right imbedded in the First Amendment to use their assets to support or oppose political candidates precipitated a 5 to 4 division.

If one assumes that Constitutional rights apply to corporations in the same manner as they do to individuals in the political process and believes the right to infuse money into campaigns inheres in the right of free speech, the majority opinion is logical. But I come down on the side of the “minority-four” for reasons that track but go beyond those set forth in dissenting opinions.

Because I have spent the majority of my adult life on Capitol Hill, I would like to ruminate at some length about the *Citizens United* decision which is about how we as a people make public decisions.

The issue that sparked the public manners incident during the State of the Union address is fundamentally about public discourse: how to balance a Court imputed right of corporations to “speak” with money in the political process against the capacity of non-moneyed citizens to have their voices heard.

Today’s public angst relates in no small measure to a concern of many voters that they are not being listened to, that vested interests hold an improper, behind-the-scenes sway in the political life of our country. There is a growing sense that elected officials have lost sight of the public interest, what 19th Century British utilitarians used to describe as the greatest good for the greatest number.

Many are familiar with the saying, sometimes attributed to Bismarck, that the public should not look too closely at laws or sausages being made. Law and sausage making are different, but the commonality is public concern that the seen and unseen ingredients of each be integrated in as “clean” a manner as possible.

In America, process is our most important product. Our founders recognized human frailty and thus went to great lengths to attempt to erect a system that would be democratic rather than aristocratic. Individuals could be expected to make mistakes but the political system was to be above reproach, capable of evolving in ever fairer, more equalitarian ways.

Great struggles, including a Civil war, suffrage and civil rights movements, produced progressive change. Over this tumultuous history, the Supreme Court has generally been at the forefront of advancing justice and protecting the rule of law. But from time to time our politics and the Court have been out of step with our deepest ideals. We err if we are not forthright in recognizing and correcting mis-steps. Now, particularly.

Today, the country confronts a host of policy challenges, from wars abroad to health care at home, but our capacity to deal with these problems is undermined by the growing loss of public confidence in government itself. This confidence gap is in no small part a consequence of the deepest blemish in our political system – the legalized conflicts of interest that characterize candidate indebtednesses to interest groups. It is these conflicts that are magnified by the *Citizens United* ruling.

The Court hangs its campaign spending ruling on the assumption that corporate spending for or against candidates must be protected as an abstract right of free speech. But in the real world, corporate intervention in politics has little to do with individuals speaking out and everything to do with the money-driven capacity of powerful institutions to induce candidates to pay attention to their concerns.

It is influence-peddling rather than speech that is advanced by this corporatist ruling. It is also inequality. Corporate muggings are frequent in American politics. If political action committees (PACs) are a guide, paid speech has a tendency both to drown citizen speech in the build-up to elections and to cause decision-making tainted by conflicts of interest afterwards.

The electoral process is more than about what happens on election day. It is also about what happens between elections. To paraphrase Clausewitz, law making is the continuation of politics in another forum. Electoral politics never stops. It is just interrupted every year or two to count ballots.

In the hurly-burly of modern politics some citizens compete to be heard with quiet argumentation; others with a megaphone; and now the Court is increasing the access of a moneyed few to the headphones of candidates, especially just before and just after elections.

As the gap between rich and poor is widening in America, so the political gap between the powerful and the powerless is heightening. This correlated economic and political phenomenon relates to a linguistic gyration. To vest with Constitutional rights an inanimate entity, the Court conflates two sets of words – “money” with “speech” and “corporation” with “person.” But the democratic basis of our individual rights is the precept that governmental legitimacy springs from the people.

A corporation cannot vote or run for office. It is an artificial creation of the state which in turn is a creation of the people. The inspiring words of our founders were about free men born with inalienable rights. It is they who speak. It is they who can assemble. It is they who are considered equal amongst each other.

The principal way money is treated as speech in our society relates to the disparaging metaphor: “money talks,” rather than to the First Amendment.

Equating an enslaved person to property, as the 1857 *Dred Scott* decision did, is morally far more repugnant than equating a corporation with a person for political purposes. Nevertheless, corporate personhood is a linguistic presumption that pushes American politics in an oligarchic direction.

Holding that a corporation is a person with citizenship rights simply doesn't square with the Declaration of Independence. All men may be created equal in relation to each other, but not necessarily in relation to corporations or, under

this ruling, in relation to how corporations may empower some individuals relative to others. There is no equality of individual and corporate “personhood” and no equality of individuals when one without a corporate nexus is limited to one voice and one with multiple corporate ties may be able to trumpet an immensely louder perspective.

Multiple personality disorder may from time to time seem to describe a candidate in regard to stances taken, but it never was intended to define the political system itself.

Property-less people as well as women and slaves were initially denied the right to vote and there was an original Constitutional acceptance that slaves could be considered 3/5ths of a person for legislative and Electoral College apportionment. But none of our founders ever advanced the notion that one individual could be several persons and have magnified influence based on control of corporate assets.

The arc of our history that has bent toward justice has suddenly with this Court decision twisted back to that part of our Constitutional heritage that was self-evidently unjust. Property considerations have again become accentuated in a key aspect of citizenship.

Granting to corporations the right to muscle further into the political fray is complicated by the fact that shareholding by sovereign wealth funds and foreign individuals in American corporations is substantial and growing. Foreign governments, citizens and corporations are currently barred from making political contributions. Under the new ruling, they now will be able to influence, explicitly or implicitly, how American institutions exercise political power, whether through companies which they control as U.S. incorporated subsidiaries or through share ownership on American public exchanges.

But the main casualty of the *Citizens United* ruling may be idealism.

At a time when the country needs to pull together, the Supreme Court has chosen a path to magnify public cynicism. The sacrifices Lincoln inspired at our most trying moment had no reference to a union of, by and for corporations. Rather, he spoke of an imperishable government of the people.

Politeness may be an aspect of civil discourse but civility and polite words are not synonymous. Moneyed speech that carries strings may be the most uncivil speech of all. It eviscerates reasonableness in public dialogue and distorts the capacity of citizens and policy makers to weigh competing views in balanced ways.

Theoretically, the consequences of the Court's recent ruling could partially be obviated by legislative tinkering. But even if Congress can reach consensus on a legislative approach, the Court could strike down anything meaningful based on the logic of the *Citizens United* decision.

For instance, I have long favored a system where electoral spending would be limited to small individual contributions matched, up to a point, by public funds. But if corporate campaign contributions are considered protected by First Amendment rights, system reform of this nature designed to reduce the influence of special interests would presumably be ruled unconstitutional.

Let me conclude with several observations.

While I have not studied the law as an academic discipline, I am nonetheless convinced from an historical and philosophical perspective, as well as from 30 years on Capitol Hill, that the Court should consider a different tack than taken with its recent ruling. Rather than conflate a corporation with a person and money with speech, the focus should be shifted to the transactional relationship inherent in speaking and listening.

Citizens should be allowed to exercise free speech in such a way as to be heard by candidates whose ears are not plugged by special interest money. It is the

individual voter rather than institutional influence peddler that should be listened to and empowered.

The goal of advancing justice and thus the principle of equal justice under the law applies to the making and administering of laws just as it does to their adjudication in a court room.

Yet the public senses that something is “a kilter” in our political system.

Many good people enter politics only to find that the system causes the low road to become the one most travelled. Politicians routinely develop conflicts that do not technically rise to a legal standard of corruption because legislated law and now judicial fiat have weakened that standard.

Speech is thus at issue from two perspectives. At one end, uncivil speech must be protected by the Court but dismissed by the public and, at the other, corporate “speech” must not be allowed to silence the voices of the people

The public interest can hardly be advanced if public concerns are either manipulated or ignored in public decision-making.

Thank you.