

WHAT'S AT STAKE? WHY CIVICS MATTERS TO ME AND TO YOU

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PREPARED FOR THE CIVIC EDUCATION: WHY IT MATTERS TO DEMOCRACY, SOCIETY & YOU CONFERENCE
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Author's note: The following is a transcript of the remarks delivered orally without notes and have been edited; no effort has been made to transform them from speech to scholarly essay.

Dean Minow: Nearly three years ago, Justice Souter gave a truly extraordinary commencement address here at Harvard, upon receiving an honorary degree. In his exploration of the tensions among the values embodied in the United States Constitution, he offered deep insights into important decision making by the Supreme Court and equally conveyed the hard work that is necessary to advance the values of democracy and freedom, individual rights, and democratic participation. We are so touched and honored by your participation here today, which I know reflects your admiration and affection for your colleague, Justice O'Connor, and also your deep abiding commitment to this subject [civics]. Why does it matter to you so much?

Justice Souter: I've come by stages, I guess, to the answer. I'll take you through the stages. By the way, I should issue two disclaimers to begin with. The first is, we are talking about civics and I'm going to talk in terms of civics. But, you cannot have civics without history. So, I might just as well be making the argument for history. The second disclaimer is, I don't mean to take positions in the pedagogy controversy. I don't know

how to teach, I don't know where the proper midpoint is between interactive learning and book learning and participatory exercises and so on. I'm not taking a position there. Maybe with one exception, and that is, if you're going to test in math and reading you better test in civics or it's going to be a poor child of the curriculum.

On the question why I think it matters, as I've said, I've come to my feelings by stages and the first stage was set by Justice O'Connor at a series of conferences she and Justice Breyer sponsored in Washington, provoked by the concern for the independence of the courts. The judiciary at the time was under a lot of attack and almost from the beginning the thing we learned there was the degree of civic illiteracy. We learned the statistic, which I believe is still true today, that there are only about a third of the people in the United States who can name the three branches of government. And the lesson that everyone learned was that without some knowledge of the structure, without, frankly, some constitutional knowledge, the value of an independent judiciary is a value that makes no sense. Independent from whom? From what? Well, we know the answer. The rest of the government, etcetera. But, the first point of focus that came to me was that without a bedrock grounding in a lot of fundamentals that my own generation did learn as kids, constitutional values will frequently make no sense because there is no context for them.

The second stage of thinking why this subject of civics matters has come as a result of the recent calls for constitutional amendment and constitutional change, which we have been getting from all corners. There have been calls for an amendment in response to *Roe v. Wade*, calls for an amendment in response to the Citizens United campaign contribution limitation decision, calls for change in response to the possibility of a disparity between the Electoral College vote and the popular vote, and so on. It's pretty obvious that someone who has no idea of what we have in the Constitution to start with is in no position to make any kind of critical judgment about what we might change, whether we ought to change it, and if so what change we ought or ought not to make. Ignorance is no foundation for constitutional thinking but, like it or not, we are being asked as a country to engage in constitutional thinking. None of it may in fact lead to a formally proposed amendment, let alone a convention, but who knows. So, I guess the second point in my feeling was about what is at stake: simply the need for a foundation for critical judgment on the part of citizens.

But finally, I've come, to a third, umbrella position, which certainly subsumes the two stages that I've already mentioned. And I will warn you right now that my ultimate line is like the remarks of several other people here this morning, and that is really an exposition of what Professor Gardner¹ started off with and in particular his fourth point. Let me make my point this way. The American constitutional system is in effect a constant exercise in balancing, and perhaps a precarious balancing, between two very fundamental tendencies in American society and American political organization: the tendency to fragment into pursuit of individual

¹ Gardner, H. (2013, April 1). *Knowledge: What should young Americans know about democracy?* Moderated discussion presented at Harvard Law School, Cambridge, MA.

interests and the tendency to pull together. I could spend a long time this morning, which I won't, simply cataloging what seems to me the growing force of the former sort, the centrifugal tendencies that pull us apart. Just think about these.

To begin with, the very nature of the United States as it has developed is a conglomeration of fragmenting tendencies. We do not have a national religion. We do not have a homogenized national private culture, as distinct from political culture. We are in fact an amalgamation. We are a patchwork. We are a nation of immigrants, and people remember where they came from, whether they look back one generation or fourteen. There is a disuniting tendency built into the very nature of the United States, and it's not going to go away. And I don't suppose there's anyone who wants it to go away entirely. I don't.

Number two, there is great force in a philosophical tenant that we like to think of as ours. It's not a coincidence that Ralph Waldo Emerson was an American. Consider the notion of Emersonian individualism, Emersonian self-reliance. They feed a kind of admirably atomistic tendency that I suppose can be called a widely shared character, a powerful element of our scrambled culture.

Number three, we are living at a time when the class divide in the United States is growing larger and the possibility of bridging that class divide is in fact shrinking. We are at a point now where the spread of wealth disparity is greater than it has been for over a century. And it is now a very unfortunate fact of life in the United States that social mobility is greater in a number of European countries than it is in this one. Parents in the United States cannot assume that their children have a real opportunity to be better off than they were.

Number four, there is an increasingly apparent divisiveness inherent in current developments in the news media. You can cherry-pick the news you want on the device that you hold in your hand. A substantial portion of the country is not even exposed to the breadth of traditional newspapers.

And, finally, I'll stop by simply echoing what others have said about the growing tendency toward cynicism about the processes of government for which there is a very good foundation. Too many people are realistically looking upon government as basically a clash between a public interest and more powerful interests, exerting power through lobbies financed by huge amounts of money, with the names of the people behind them being to a great extent undisclosed.

These are conditions, historical and contemporary, that drive us apart and tend to disunite us. What have we got pulling on the other side? By and large, what we have pulling on the other side is an adherence to an American Constitutional system, and here's where I get to Professor Gardner's point. The American Constitution is not simply a blueprint for structure, though it is that. It is not merely a Bill of Rights, though it is that, too. It is in essence, a value system. Professor Gardner's first point was that we need to teach that we have a value system, and the one common value system that we can claim to have in the United States is the

constitutional value system: a value system that identifies the legitimate objects of power, the importance of distributing power, and the need to limit power by a shared and enforceable conception of human worth.

That value system is the counterpoise to the divisive tendencies that are so strong today, and civic ignorance is its enemy. It is beyond me how anyone can assume that our system of constitutional values is going to survive in the current divisive atmosphere while being unknown to the majority of the people of the United States.

So, what is driving me right now is simply the indispensability of our increasingly unrecognized and ignored constitutional value system. Without it, there is no chance of overcoming, of surviving the polarization that everyone decries. It is only in the common acceptance of that value system that at the end of the day, no matter what we are fighting about, no matter what the vote is in Congress or the State House or the town meeting, we will still understand that something holds us together. Ultimately, what is driving me in working for the renewal of civic education is the need to share the threatened aspirations that should mark us as people who belong together as a nation.