

ARE WE STILL AMERICANS?

*Eric Lane**

We are living in a time of crisis. Terrorists have struck our shores and promise to again. We are at war in Afghanistan and Iraq and some believe we should add Iran to our battlefields. To protect us, the President claims unprecedented powers to engage our troops, wiretap our citizens, and torture our prisoners. Monarchical prerogatives his vice president has unembarrassingly called them.¹ A frightened Republican controlled Congress of President Bush's first six years provide no checks, serving as the President's parliament rather than as the independent branch of government promised by the Constitution. And, so far, the Democratically controlled Congress has not done much better in checking the President, passing quickly, without meaningful debate, the Patriot Act extension.² Few would disagree with this portrait of a crisis.

Worse, and here people would disagree, we Americans, We The People, are unknowingly acquiescing to this primitive contortion of our Constitution. And through our passivity, twisting the Constitution itself. Of course, at times of crisis, security concerns come to the fore and must be weighed more finely against our freedoms, but neither we, nor most of our representatives, have put our Constitutional concerns on this scale. In fact, most of us have no such concerns. We love our Constitution, but have little idea of what it contains or of the principles and values that give it life. "People revere the Constitution . . . yet know so little about it," the Senate's great institutional voice, Robert Byrd, said several years ago.³ And the evidence of this civic illiteracy is overwhelming. Through this illiteracy, we are losing our connection to the American story, to what it means to be an American.

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1. FREDERICK A.O. SCHWARZ JR. & AZIZ HUQ, UNCHECKED AND UNBALANCED: PRESIDENTIAL POWER IN A TIME OF TERROR 1-2 (2007).

2. Extension of Certain Provisions of the USA Patriot Act, Pub. L. No. 109-170, 119 Stat. 2957 (2006).

3. Sam Dillon, *From Yale to Cosmetology School, Americans Brush up on History and Government*, N.Y. TIMES, Sept. 16, 2005, at A14.

A headline in *The New York Times* pronounces: “Tough Question for a New Test: What Does ‘American’ Mean?”⁴ The new test is the 100 questions that will now be asked for immigrants seeking American citizenship. The test is intended to be harder and more relevant than its predecessors.

The questions now address mostly American democracy and American history, with a few questions on American geography, symbols, and holidays. Among the questions are: “What is the Supreme law of the land?”; “What does the Constitution do?”; “The idea of self-government is in the first three words of the Constitution. What are these words?”; “What is an amendment?”; “What is the ‘rule of law’?”; “What stops *one* branch of government from becoming too powerful?”; “Who makes federal law?”; “What are the *two* parts of the U.S. Congress?”; “Why do some states have more Representatives than other states?”; “If both the President and the Vice President can no longer serve, who becomes President?”; “Under our Constitution, some powers belong to the federal government. What is *one* power of the federal government” (similarly for state government)?; “What is *one* responsibility that is only for United States citizens?”; and “What are *two* rights only for United States Citizens.”⁵

Success on this test means, according the Director of the United States Citizenship and Immigration Services Emilio Gonzalez, that an applicant has the information necessary to be an American citizen, and, perhaps more, that an applicant knows what it means to be an American. “This test genuinely talks about what makes an American citizen.”⁶

If this is true, all American citizens (including law students) should be at least able to answer these questions or questions like them. But ironically the same time this revamped more difficult test for naturalized citizenship was publicized, a study by the Intercollegiate Studies Institute reported that American high school graduates cannot pass a basic civics test. The average grade was fifty percent. Four years of college do not make the matter much better in most cases, the report found. “The average college senior knows astoundingly little about America’s history, government, international relations and market economy, earning an “F” on the American civic literacy exam with a

4. Julia Preston, *Tough Question for a New Test: What Does ‘American’ Mean?*, N.Y. TIMES, Sept. 28, 2007, at A1.

5. U.S. Citizenship and Immigration Services, Civics (History and Government) Items for the Redesigned Naturalization Test, <http://www.uscis.gov/files/nativedocuments/100q.pdf> (last visited Dec. 5, 2007).

6. Preston, *supra* note 4, at A26 (quoting Emilio Gonzalez, Director of Citizenship and Immigration Services).

score of 54.2%,” said the report.⁷

And at this same time a new book by Professor Larry Sabato of the University of Virginia’s Center for Politics pointed out that American’s “ignorance of the Constitution” included little knowledge of its purpose and its content, but considerable misinformation.⁸ For example, many Americans believe that the President can suspend the Constitution at a time of war; that Marx’s “from each according to his ability, to each according to his need” is included in the text, and that English is the declared official language. The list goes on and on.

In fact, from the 1960s onward civic education has been declining and by the 1980s had nearly vanished. “[I]t is striking how little energy is devoted to trying to engage citizens more actively in the affairs of government,” Derek Bok wrote in 2001, “[c]ivic education in the public schools has been almost totally eclipsed by a preoccupation with preparing the workforce for a global economy. Most universities no longer treat the preparation of citizens as an explicit goal of their curriculum.”⁹ And certainly (with some exceptions) law schools do not see this as their job. In fact, at a recent panel discussion on constitutional change, Professor Sanford Levenson of the University of Texas School of Law bemoaned that fact that constitution law classes presume knowledge about our institutions and processes of government that student simply do not have.¹⁰

Various surveys have evidenced this decline. One in 1976 “found that civic competence diminished markedly from 1969 to 1976.”¹¹ Another in 1988 found that civic knowledge had continued declining since 1976, and another in 2002 found “that the nation’s citizenry is woefully under-educated about the fundamentals of our American Democracy.”¹²

But if these studies are right, if most Americans are insufficiently educated to pass this basic citizenship test does this mean that most of us are not Americans or at least do not know what it means to be

7. INTERCOLLEGIATE STUDIES INSTITUTE’S NATIONAL CIVIC LITERACY BOARD, *FAILING OUR STUDENTS, FAILING AMERICA: HOLDING COLLEGES ACCOUNTABLE FOR TEACHING AMERICA’S HISTORY AND INSTITUTIONS* 6 (2007), available at http://www.americancivilliteracy.org/report/summary_summary.html.

8. LARRY J. SABATO, *A MORE PERFECT CONSTITUTION: 23 PROPOSALS TO REVITALIZE OUR CONSTITUTION AND MAKE AMERICA A FAIRER COUNTRY* 223 (2007).

9. DEREK BOK, *THE TROUBLE WITH GOVERNMENT* 403 (2001).

10. Sanford V. Levenson, Professor, Univ. of Tex. at Austin Sch. of Law, Remarks at the National Constitutional Convention: A Call to Reform (Oct. 19, 2007).

11. BOK, *supra* note 9, at 406.

12. PUBLIC AGENDA FOR THE NATIONAL CONSTITUTION CENTER, *KNOWING IT BY HEART* 42 (2002), available at http://www.constitutioncenter.org/CitizenAction/CivicResearchResults/asset_upload_file173_2678.pdf.

Americans?

Yes is my answer to that question. But yes, not simply because of our civic ignorance, but because of the unraveling of the American story of which it is symptomatic. This unraveling feeds our always lurking tribalism and pulls against our forgotten and now replaced motto *e pluribus unum*, “from many, one.”

Writes the philosopher Michael Sandel:

There is a growing danger that, individually and collectively, we will find ourselves slipping into a fragmented, storyless condition. The loss of the capacity for narrative would amount to the ultimate disempowering of the human subject, for without narrative there is no continuity between present and past, and therefore no responsibility, and therefore no possibility of acting together to govern ourselves.¹³

America, unlike most of world’s nations, is not a country “defined by blood, clan, land origin or religious belief,” observes the journalist Ray Suarez.¹⁴ It is an “ideal,” notes the German political philosopher Carl Friedrich.¹⁵ Observes Harvard’s Derek Bok: “More than any other leading democracy, America is a country that preserves its unity through a shared belief in its Constitution, its institutions of government, and its democratic principles.”¹⁶ From this perspective, it is not our place of birth or lineage alone that makes us Americans, but our understanding of and commitment to our constitutional democracy, its ideas and principles, and to the on-going story of its realization. It is all of this that makes us Americans, holds us together as Americans, and keeps us free.

Of course, we start with liberty. It was for liberty that the Europeans settled the country and for liberty that the colonists declared their independence from England. (And it is liberty today the remains America’s great beacon to the remainder of the world.) But liberty, as the founders understood it, proved unsustainable. That notion of liberty was unrealizable, utopian, based on the dream of a unique American capacity to suppress self-interest for the public good in the conduct of public affairs. Public virtue Americans called it. America was a blank slate, Tom Paine declared in 1776, and Americans would write with

13. MICHAEL J. SANDEL, *DEMOCRACY’S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* 351 (1996).

14. RAY SUAREZ, *THE HOLY VOTE: THE POLITICS OF FAITH IN AMERICA* 2 (2006).

15. PETER JENNINGS & TODD BREWSTER, *IN SEARCH OF AMERICA* x (2002).

16. BOK, *supra* note 9, at 397.

virtue on it.¹⁷ All they needed to do was declare liberty from the corrupt and aging English empire that subjugated them.

But, by 1787, the Framers along with many Americans had a different self-assessment. Americans, it turned out, were like people everywhere and at all times, mostly self-interested and self-regarding and, in the public arena, usually unable to suppress their self-interests for the greater good.

Reality had changed the Framers' mind. The reality of American conduct during the war and the ensuing efforts to build the new nation had demonstrated to the founders that self-interest, not public virtue, was the citizenry's most compelling motivation. Simple liberty from Great Britain had not been adequate to assure success of the new nation. Real people simply could not sustain the life of public virtue envisioned in the revolutionary fervor.

Indeed in the eleven years since Independence, the country had become riven by factions, each intending to impose its interests on others. Self-interest, not public virtue, dominated public conduct. The pursuit of happiness had become the pursuit of individual and group interests and not those of the community or nation. And neither the state government nor the continental government had proven strong enough to maintain order.

"We have probably had too good an opinion of human nature in forming our confederation," George Washington wrote in 1786.¹⁸ And James Madison, who would become the father of the Constitution and the Bill of Rights, noted that the "more fatal" cause of the new nation's many failures "lies among the people themselves."¹⁹ Not only were Americans self-interested, but they were self-regarding. They thought what was good for them was good for everyone. As Benjamin Franklin noted: "Most men indeed . . . think themselves in possession of all truth, and that whatever others differ from them it is so far error."²⁰

From this dramatic change of perspective flowed a radically new form of government. "But what is government," James Madison, the father of the Constitution, wrote in 1788, "but the greatest of all reflections on human nature?"²¹

Liberty, of course, had to be protected. The American people would

17. THOMAS PAINE, *LIFE AND WRITINGS OF THOMAS PAINE* 243 (Daniel Edwin Wheeler ed., 1908).

18. 2 JOHN MARSHALL, *THE LIFE OF GEORGE WASHINGTON* 126 (1926).

19. JAMES MADISON: *WRITINGS* 76 (Jack N. Rakove ed., 1999).

20. CAROL BERKIN, *A BRILLIANT SOLUTION: INVENTING THE AMERICAN CONSTITUTION* 163 (2002).

21. *THE FEDERALIST* NO. 51 (James Madison).

stand for nothing less. But its excesses had to be curbed.

This meant that majority rule could no longer be the keystone of American democracy. The conduct of state government since the Revolution had convinced the Framers that their commitment to simple majority government had been simplistic. The will of the majority, the Framers now understood, did not automatically produce the common good. History had proven that a government too susceptible to the majority voice of its citizens could not protect liberty. “There is no maxim in my opinion which is more liable to be misapplied, and which therefore more needs elucidation than the current one that the interest of the majority is the political standard of right and wrong,” Madison wrote to James Monroe.²² For the interest of the majority, Madison added, was the “immediate augmentation of property and wealth,” and its realization would compel “the majority in every community to despoil and enslave the minority of individuals; and in a federal community to make a similar sacrifice of the minority of [] component States.”²³

What then to do? There was no model for a democracy without majority rule, particularly over such large spans of that which was already America. The Framers, in the best American tradition, had to invent one, had to discover again, in Madison’s words, “a republican remedy for the diseases most incident to republican government.”²⁴ The solution was to recognize that the great strength of Americans was their drive and ambition. And to make a virtue of that vice. The new idea for government presumed that people would pursue their own interests. Indeed, it counted on them to do just that. And it created paths for others to disagree, and resist them, or argue for something different.

Representation was the “pivot.”²⁵ But it would be an entirely new notion of representation. All government power—legislative, executive, and judicial—was to be vested in the people. (The Framers saw the courts as representative because of their nomination and confirmation processes.) As the influential James Wilson of Pennsylvania wrote:

The executive and judicial branches of the government are now drawn from the same source, are not animated by the same principles . . . with the legislative authority: they who execute, and they who administer the laws, are so much the servants, and therefore as much the friends of the people, as those who make them.²⁶

22. RALPH KETCHAM, *JAMES MADISON: A BIOGRAPHY* 181 (1971).

23. *Id.*

24. *THE FEDERALIST* NO. 10 (James Madison).

25. *THE FEDERALIST* NO. 63 (James Madison).

26. GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC 1776-1787*, 598 (1969).

Then after placing all of the power of the government in the hands of the People's representatives, that power was to be divided among different branches of government, and within two houses of the legislature, to avoid the accumulation of too much power in any one branch. "The separation of this governmental power, rather than simply the participation of the people in a part of the government, became the best defense of liberty."²⁷ And finally, a system of checks and balances would make it even more difficult for the policy views of one group or another to become law. In short, a reliance on public virtue was to be replaced by a "policy of supplying, by opposite and rival interest, the defect of better motive[]." ²⁸ Or more bluntly put, "[a]mbition must be made to counteract ambition."²⁹

At the end, the Framers' invention was a government designed to channel the inevitable struggles of factions; to impede change until enough people supported it; to force people to the middle; to encourage compromise; to spread power around so, in Hamilton's succinct vision, the few could not oppress the many, and the many could not oppress the few. A lot could get done if people worked together in this system. But, if they fought each other, it could all grind to a halt.

What the Framers then sent out from Philadelphia was more than just a piece of parchment, more than just a form of government. It was, like the Declaration of Independence, an homage to liberty, but one now pragmatically based in a realistic view of human nature and honed in the realpolitik of the Constitutional Convention. It was also a set of ideas and principles about government and democracy that has shaped political debate and conduct throughout our history. A critical one was what the scholar Michael Kammen has called "*conflict within consensus*."³⁰ Conflict over issues, within a consensus that we are bound one to another by our shared belief in our Constitution and its principles. This crucial tension has both held our country together and driven us forward. For conflict within consensus to be constructive, rather than destructive, Americans had to accept in their political bones another idea crucial to the Constitution—compromise. The Constitution was a set of compromises and assumed the vital need for compromise for the new

27. *Id.* at 608.

28. THE FEDERALIST NO. 51 (James Madison).

29. *Id.*

30. MICHAEL KAMMEN, A MACHINE THAT WOULD GO OF ITSELF: THE CONSTITUTION IN AMERICAN CULTURE 29 (1986).

government to function.

But the acceptance of compromise, conflict within consensus, implicated the idea of representation. Acceptance presumed an opportunity for all interests to be represented in the nation's political processes. The Framers' Constitution did not achieve this breadth. It did not expand representation beyond the white males who alone in the states could then vote or hold office. It did not free the nation's many slaves. But, it did establish the critical idea that representation was the key to the new government's legitimacy. And that idea provided the justification (and framework through its amendment process) for the many and bloody struggles for a more inclusive America that followed and continue today in arguments such as those over the electoral college, immigrant enfranchisement, felony disenfranchisement, voting machines and universal registration.

It is all of the Constitution's core political ideas (values) taken together—liberty, representation, tolerance of debate, conflict within consensus, compromise—and the struggles for their realization that became the American story, the narrative that has held us together as Americans and kept us free. It was through this story that we created our constitutional conscience, the screen through which we measure the virtues and vices of America's civic life. When, for example, Martin Luther King, Jr. came to Washington in 1963 and insisted to Americans everywhere that the time had come for Congress to pay off the nation's "promissory note" that race should block full participation in American life,³¹ Congress and everyone else knew he was right. And they acted, passing the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

Our story needs to be constantly told and heard. Franklin Delano Roosevelt warned that the Constitution is "like the Bible, it ought to be read again and again."³² And upon his departure from office in 1989, Ronald Reagan cautioned Americans: "If we forget what we did, we won't know who we are."³³ Roosevelt and Reagan are the touchstone presidents of the American Century. But they could not represent more different political moments. The first brought a powerful centralized federal government into our domestic lives. The other ran for office against that very government. Yet across the half-century that separated them, they each affirmed the centrality of connecting Americans to their

31. Martin Luther King, Jr., Address at the Lincoln Memorial, Washington, D.C. (Aug. 28, 1963), available at <http://www.americanrhetoric.com/speeches/mlkihavedream.htm>.

32. Franklin Delano Roosevelt, President, United States of America, Speech on the Reorganization of the Judiciary (Mar. 9, 1937), available at <http://www.mhric.org/fdr/chat9.html>.

33. Ronald Reagan, President, United States of America, Farewell Address (Jan. 11, 1989), available at http://techwritepublishing.com/tlj/speeches/farewell_address.htm.

democratic heritage.

The reasons for this are clear. Without knowing first and then being reminded of our story, there is no story. And without a story, there is no American community. That is at the heart of Professor Sandel's earlier noted observation that "without narrative there is no continuity between present and past, and therefore no responsibility, and therefore no possibility of acting together to govern ourselves."³⁴ This is also the message of the historian Sean Wilentz when he writes:

Democracy is never a gift bestowed by benevolent, farseeing rulers who seek to reinforce their own legitimacy. It must always be fought for, by political coalitions that cut across distinctions of wealth, power, and interest. It succeeds and survives only when it is rooted in the lives and expectations of its citizens, and continually reinvigorated in each generation. Democratic successes are never irreversible.³⁵

The Framers surely would have agreed with Professor Wilentz's view of a fragile democracy. The self-interest and self-regard of Americans, like all people, has always puts consensus-building through compromise at risk and threatened our liberty. It has always been easier to act on one's conviction rather than to deliberate and risk finding out they are wrong. And this continues to be the case today.

Today, Americans have high expectations for their government. They think it can solve their every problem. These expectations are a product of our history. As President Nixon noted in his second inaugural speech: "Ours has become—as it continues to be, and should remain—a society of large expectations. Government helped to generate these expectations. It undertook to meet them."³⁶ For close to forty years, starting with Roosevelt's inaugural promise of economic security to Nixon's crusade for the environment, the federal government grew enormously in both size and power. The Framers gave us a system whose primary purpose was to defend our shores, resolve our conflicts and then stay out of the way of our activities. What we created in the twentieth century was a massive administrative state.

A broad consensus in this country supported this growth of federal

34. SANDEL, *supra* note 13, at 351.

35. SEAN WILENTZ, *THE RISE OF AMERICAN DEMOCRACY: JEFFERSON TO LINCOLN* xix (2005).

36. Richard Nixon, President, United States of America, Annual Message to Congress on the State of the Union (Jan. 22, 1970), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=2921>.

government. But by the 1970s, that broad agreement was only a memory. The national consensus had come undone. “There is no consensus,” the historian Henry Steel Commager wrote in 1974.³⁷ “There is less harmony in our society, to my mind, than at any time since, say, Reconstruction.”³⁸ We were left with high expectations for what government could do and little agreement about what government should do. With so many interests pushing the government in different directions, it could do little or nothing. This is exactly what the Framers designed the system to do when consensus was lacking. But few now understand or appreciate that. People want what they want and do not know why they should not get it. Observes Bok:

Americans have expectations for politics and the political process that are often unrealistic. Convinced that presidents can often accomplish more than is humanly possible, that legislators should be able to arrive at sensible decisions without prolonged disagreement or controversy, and that politicians should refrain from pandering to the voters yet still reflect the views of their constituents, the public seems fated to endure repeated disappointment over the government and those who run it.³⁹

And this disappointment has naturally resulted in anger at government, a conviction that the system that is stopping us is wrong, flawed, broken or outmoded; a call for “reforms” that we think will help us get our way.

Perhaps some change is needed. The Brennan Center of Justice has demonstrated the array of state barriers to voting or casting meaningful votes. And it, as well as many others, has argued that the First Amendment’s protection of campaign expenditures is undermining the First Amendment’s protection of robust political debate and participation. The well-respected political scientist Larry Sabato warns that the intended balance among our branches of government is askew and in bad need of rebalancing. And he offers some interesting repairs.⁴⁰

But change is not itself the pressing issue, ignorance and complacency are. In 1888, the poet and editor James Russell Lowell remarked on the political complacency of his fellow Americans who were “neglectful of our political duties.”⁴¹ He traced this neglect back to a widespread but mistaken belief that the Framers of the Constitution

37. JAMES T. PATTERSON, *RESTLESS GIANT: THE UNITED STATES FROM WATERGATE TO BUSH V. GORE* 10 (2005).

38. *Id.*

39. BOK, *supra* note 9, at 383.

40. SABATO, *supra* note 8.

41. KAMMEN, *supra* note 30, at 18.

had “invented a machine that would go of itself.”⁴² Lowell said he admired the ability of Americans to let “confidence in our luck” and “absorption in material interests” subsume attention to the state of our democracy.⁴³ But luck may no longer be enough.

The War on Terrorism gives new urgency to our storyless condition. Americans are appropriately worried about (and unprepared for) more attacks and have been strongly assured of their possibility by both our government officials and our enemies. In such circumstance, we naturally look to the President to protect us. Indeed, it is his responsibility (indeed obligation) to protect us. And like every administration, this one takes that responsibility seriously. “Everyone in the administration with access to highly classified intelligence on threats to the homeland was scared of another deadly attack, and of not knowing how to prevent it,” writes Professor Jack Goldsmith, former head of the Justice Department’s Office of Legal Counsel in the Bush administration and now one of its most important critics.⁴⁴ And it is also the President whom we hold responsible for any failure. Under security threats, other presidents for the same reason have also taken strong steps. President Clinton, for example, “proved no exception. He broadly interpreted his war powers and aggressively used executive orders to bypass Congress—for example, ignoring a House vote opposing intervention in Kosovo.”⁴⁵ But none have argued for a constitutionally justified unrestrained presidency, made even more threatening by the seemingly open-ended duration of the War on Terrorism.

In this situation, civic illiteracy makes our democracy vulnerable. We are comforted by the President’s promise to protect us. That is natural. But without knowledge or understanding of our Constitution and our American story, we do not see the threats to our freedom such protection implies. We cannot participate meaningfully in the decision of how we balance security and freedom, and we do not want to.

“But,” one might fairly ask, “doesn’t the election of 2006 give lie to this gloomy picture of a threatened democracy?” After all, the President has been checked through his party’s loss of congressional control to the

42. *Id.*

43. *Id.*

44. JACK GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE BUSH ADMINISTRATION* 11 (2007).

45. Frederick A.O. Schwarz Jr. & Aziz Huq, *Where’s Congress in this Power Play?*, WASH. POST, Apr. 1, 2007, at B1.

Democrats. It is hard to dispute that this Democratic victory was anything other than a rebuke to the President's plunge into an unsuccessful and now (thus) unpopular war. But that rebuke was about a broken promise, not about a threat to our democracy. The President had promised a no cost (no draft, no tax increase), clean (few deaths, little mess) war, and he has failed.

In any event, elections, as vital as they are, are in effect a last resort—the voters passing judgment after the fact. The system was designed to produce better results before the fact, when it is allowed to work. Whether you, in the end, supported or opposed American entry into Iraq, extensive wiretapping, or even torture, those decisions of the President and Congress, would have been stronger and more effective if it had been subject to more oversight in Congress and more debate in public. Perhaps you think the more effective policy would have been to stay out of war. Or perhaps you wish the war and its aftermath had been more effectively executed. In any event, Congress did not watch over the President and the country got neither peace nor effective war. In 2006, the election produced dramatic shifts because classic checks and balances had failed and thus produced policies that angered the voters. The election results were a punishment. But punishment by itself does not correct the more basic reasons the system of checks and balances failed.

The Framers made it possible, not inevitable, for us to live together in liberty and community. The 220-year history of our Constitution is a history of Americans repeatedly rekindling our belief that our own interests are served by this system that grants extensive liberty in exchange for a willingness to debate, compromise, and tolerate differences. But there is nothing about our past success that guarantees our future success. Each generation must do that for itself. We have been given a great gift and with it a great responsibility. We are the inheritors and the guardians of the American story. Without it, we are not Americans. Again Michael Sandel says it best: “The hope of our times rests . . . with those who can summon the conviction.”⁴⁶

E Pluribus Unum

46. SANDEL, *supra* note 13, at 351.