NATIONAL CONSTITUTION CENTER

525 Arch Street | Independence Mall
Philadelphia | PA 19106 | T 215 409 6600 | F 215 409 6650
www.constitutioncenter.org

President Bill Clinton
"Global Reach: How Constitutional Ideas Travel"
National Constitution Center
Tuesday, April 28, 2009

—Executive Officer of the National Constitution Center. We are thrilled to have you, our members and friends, here today for what promises to be a fascinating and memorable hour. Before we get started, there's a change in our program. Professor Dick Howard is unable to be with us this afternoon, and therefore our discussion will be moderated by Professor Jacques deLisle of the University of Pennsylvania.

It's an honor to have President Bill Clinton with us. The Center was created to present exactly the type of programming a former President of the United States, our Board Chairman, discussing constitutional issues with a preeminent scholar and We the People. It has been said that at this time in history, people across the world are experiencing a level of global awareness that has never existed before. President Clinton, who in 2005 established the Clinton Global Initiative, believes this new sense of connection has the potential to lead to great things if committed people worked toward positive change.

Joining the President in this afternoon's conversation about the global reach of constitutional ideas is Jacques deLisle, the Stephen A. Cozen Professor of Law at the University of Pennsylvania. An expert in Sino-U.S. relations, Chinese politics and legal reform, Professor deLisle's research focuses on China's approach to international law as well as legal and economic reform. His writings have appeared in a variety of publications, ranging from Asian studies journals to law reviews and the nation's leading newspapers. Professor deLisle is Director of Asia Programs at the Foreign Policy Research Institute and a member of the National Committee on U.S.-China relations. Professor deLisle, thank you with gratitude; and welcome.

In all likelihood by now, you know that in January, President Bill Clinton was named Chairman of the National Constitution Center; but you may not know that his commitment to our mission at the Center goes back to the days before we occupied this magnificent landmark on Independence Mall. In September of 2005, President Clinton participated in the groundbreaking ceremony for this building. On that amazing day, he presided over an naturalization ceremony of 75 new American citizens and signed his name on one of the steel beams at the construction site. Even less commonly known is that long before President Clinton took that job in Washington, D.C. or even the governor's position in Arkansas, he was a professor of constitutional law at the University of Arkansas. Oh, to have been in one of those classes. We are glad to be able to give the President the opportunity to dive back into a subject he clearly loves. Ladies and gentlemen, our Chairman, President Bill Clinton.

Professor Jacques deLisle
Mr. President, it's an honor to have you here and it's a pleasure to be back on the stage with such a distinguished guest. We have several questions to pose to you today. The first one is to ask you in your judgment, what is distinctive about the American constitutional experience? Is our system truly unique or are there common themes that enable us to export our ideas for emulation in other countries and cultures?

President Bill Clinton
It's both unique and I think its core values are exportable and some of its actual systems are. Unique in the sense that it was a product of the enlightenment and reflected our founders taking a very different course than the French Revolution and enabled us to sustain what we started in a very different way. If you look at what's inherent in the constitutional system we have, first of all, it is a written document—unlike the British constitution—that enshrines the equality of all citizens, establishes a system of popular representation with majority rule and minority rights. The second may be more important than the first in preserving democracy and freedom over the long run. It also establishes certain inherent limits on government's ability to take away freedoms from individuals; and checks on government power including judicial review; and division of government power to stop the concentration of power between the executive, legislative and judicial branches, between the states and the national government. The whole thing that gave rise to our Constitution was a flight from the arbitrary exercise of unlimited power.

I know a lot of people—particularly in my party, a lot of us who are more activists—get really frustrated at how slow government is, but it's important to realize that our founders made a deliberate decision to slow it up to keep it from getting too powerful to take too much liberty away from people. So was it a product of a particular mindset at a particular moment in time? Yes. Does it have universal application? It does. Will it be different in different cultures and different times? Yes; and finally, different countries will have different capacities to develop the institutions necessary to thicken democracy, but I think it's important to recognize before we get too sanctimonious about that that we're still trying to improve the perfection of our democracy. We couldn't run a very good election in Florida in 2000. There are tens of thousands of people who showed up to vote, and their votes weren't counted. So I think that we can be proud and should be learned about the unique circumstances of our birth, but I think a lot of what we have produced and the values on which it rests and the interest it seeks to protect are more widely shared around the world than some people think. My most recent vivid picture of that are those 300 brave women walking down the street in Kabul, Afghanistan with all those men calling them whores. Let me tell you; it's been my experience that when anybody tells you that in their society the culture won't permit an advance of democracy, the person who said that is already in a dominant position. So that's my two cents; otherwise, I don't have strong feelings about it.

Professor deLisle
I guess a good deal more than two cents. We get a good value at that rate. You've made the case for American values—constitutional values being universally resonant. As a more predictive matter, do you think that they are likely to be embraced in some parts of the world

where many people would think there's a more hostile terrain for them—perhaps in the Middle East, perhaps in China and other such countries that don't have a history of American-style constitutional democracy?

President Clinton
Well, I think the answer will be "yes" and "no" in different places. For example, we were talking backstage before we came out here about China. If you talk to the Chinese officials, they'll say, "Well, we have a lot more freedom than we used to have. People can live wherever they want to live. They can do whatever job they want to do. They can go to work wherever they wish. They can go to school wherever they can be admitted. They can do things they didn't used to be able to do." That is factually true. But because the country's worst nightmare is still disintegration, they don't protect free speech very well. They still have a lot of political prisoners, for example. And they're very nervous about not only the Tibetans but the Uighurs, so they don't have protected minority rights in the way that we believe they should be. Are they stumbling toward the rule of law in constitution? I think they are in many ways. We were talking before when, in my second term, we sent teams of American lawyers over there every month because the Chinese wanted us to help them to develop a system of laws that anybody who did business in China could identify with; that their contract rights, their investment rights could be protected. That legal system is now increasingly being used by people who want to assert other rights—community rights, environmental right, preservation rights.

I say that to say that the path of democracy is uneven and shifting in different places due to culture, the distribution of power, circumstance; but I do think that basically—if I could borrow a phrase from Dr. King—the arc of history is long but it does bend toward justice and it bends toward liberty. So I think that people will find things they can use and bring out—or not as the case may be—as they develop their own systems.

I also would like to remind you—for example, I was honored to help to bring into being the first new nation of the 21st century, East Timor. The first elected government including the election of Romas Horta and Gusmao, Sha Na Na, we call him, who was the rebel leader for over 20 years was clearly the product of majority rule. They were interested in minority rights, but there was a lot of controversy, and Romas Horta was shot and could have been killed not all that long ago. It's the poorest country in Asia, so they don't have the money to develop the systems that we take for granted that make democracy work in all of its manifestations. You just have to look at this, and there are other places where there is no majority rule, so you have to have shared decision making from the get-go; or where there is a majority rule but the minority is so big and the interests are so different you do.

You can look at Bosnia, for example, which has a tri-apartheid presidency to reflect the three major ethnic groups. The Bosnian serves the Croatian Catholics and the Bosnian Muslims, and they alternate the presidency. That's another thing; in the Irish system that we worked out the peace process, they had special relationships, the Northern Irish did, with both the Irish Republic and the United Kingdom. They had guaranteed shared decision making so that given any reasonable distribution of the vote as between the parties, everybody would be guaranteed a piece of the action. That can be very empowering and also can be very

paralyzing, and I will close on this. Think of the Israeli example. Israeli society has gone much more complex in the last 30 years. You had, first, the Jewish people who were born in the Holy Land, the Sabras; then the Europeans Jews. Then you had the Jews from North Africa and now, increasingly, from Russia and the other former communist countries and the roughly 7 percent of the population that is native Arab to 1948 Israel. Every time you do that, you complicate matters further, and you need a slide rule to figure out how to put a government together. We, the rest of the world, look at the Israelis only through the prism of "Oh, my God! Is this good or bad for the peace process? Will they ever stop all this and resolve everything?" When they're voting, they're voting on a gazillion different things, and I haven't even mentioned the ultra orthodox who claim special privileges for the religious and those who are secular who believe there should be no special privileges. So the culture will shape the democracy, but if there's a genuine majority rule, minority rights, individual protection from abusive power, a representative form of making laws in some appeal to higher constitutional principals which we call judicial review, then at least you've got the beginnings of a democracy.

Professor deLisle
You've spoken about some of the innovative constitutional structures that you've seen come into place in Bosnia and elsewhere. One of the major divides in constitutional reform and democratic transitions is whether to go to a parliamentary system or a presidential system. You're obviously a veteran of a presidential system, but I wondered what your views are on the relative merits of those systems and their suitability to different circumstances in countries that either have been or would undergo a transition?

President Clinton
Well, in theory, the parliamentary system should be more efficient. Why? Because you can't be Prime Minister unless either your party or the block of parties of which you are a part have a majority of the vote in the Parliament. If people don't vote with you, they'll either bring your government down or you can kick them out of their position. So there's no such thing as a filibuster, for example, in a parliamentary system. The whole thing would be unthinkable. It wouldn't be permitted because there's a unitary executive and legislative party that's running the show; so you get efficiency. That's the good news. The bad news is you can't have a head of state who's also a head of government. The parliamentary democracy of the UK has a queen, for example. If you going to exercise genuine executive authority, and you want to be creative about it, it's probably better to have a presidential system. But it is slower on the legislative side if you do it; almost inevitably. The people in the congress owe their job to the President even the President of same party. The people in the Parliament—they actually owe their jobs to the leader of their party, or at least the leader of their party can take them away, so they have more success in passing laws. I say that's in theory. However, in a parliamentary system, as you see, it is more difficult to maintain a two-party system. The British have gotten along essentially with three. Once in awhile they have a fourth party that gets a few votes, and they've got a rather stable situation. The French have a reasonably stable situation now but not always. Most parliamentary democracies wind up with five or six or in some cases, in the Israeli case, a gazillion parties, which complicates life immeasurably.

Professor deLisle

At this point, we're going to turn to questions that have been submitted by members of our audience here in the room, and since the dean of my law school and the president my university are sitting in the audience, I have to ask this one.

President Clinton
How are we doing with your dean? Are we doing okay?

Professor deLisle
You've spoken of the role of government initiatives, including the lawyers that your administration sent over to China, but how can non-governmental actors and particularly institutions of higher education in the United States help to promote constitutional democracy building within the country and abroad?

President Clinton
Well, I believe the most important thing we can do is, first, educate more citizens in poor countries and make sure that we eliminate the gender bias in education. I think that's important. The second thing I think that we can do through higher education is make sure people know at least not only how we developed our democracy and what the fundamental elements of it are, but talk about some other different kinds of democratic systems and how those might be adapted to the country in question. The third thing I think we can do is to help them to build civil society. That's what I do in my life now with my foundation. I think that we need more foundation work, more charitable work, more civil society work generally but especially in this whole area of perfecting the democracy. People's voices have to be heard. I'll say again, it's not just the majority rule. It's minority rights. It's not being able to be gagged and the protection of individual liberties. Having a non-governmental force can make all the difference in the world in whether those minority rights and those individual liberties are protected. Sooner or later people come to realize that if you're in the majority, you have more moral authority if you respect minority rights and individual liberties. So I think the university system can do a lot to educate people and also to organize the civil society, which is still really needed in a lot of countries although there has been an explosion of social organization in the last 10 to 12 years.

Since I became president back in the dark ages—16, 17 years ago—we've had an explosion. America now has a million foundations. Some of them have had to file for bankruptcy in the current environment, but in general we have a million foundations plus 355, 000 religious-based organizations—faith-based organizations doing charitable work associated with their church, their mosque, their synagogue, their temple, their whatever. Half of the foundation number have been established in the last dozen years. See what an explosion there's been. In India, there are more than half a million active foundations. Indian ones—not us there. China has probably now almost 400,000 registered with the government; at least half again that many that aren't registered because they're worried about political ramifications. So I think that those of us who are in the university movement and particularly law students in law schools, we can help people comply with the laws of their country, make sure they're not getting in trouble, make sure they have the best possible legal and well as political defense of what their endeavors are and help them to understand that you really can't make a complicated society work even with the perfect constitutional system if there's no civil society,

if people aren't well-informed voters, that they don't belong to organizations, if they don't do things.

When the Tote Bill came here in the 1830s, he kept talking about what great joiners we were and how as opposed to what Vice-President Cheney affectionately referred to as "Old Europe." When Americans had problems in the 1830s, he said, instead of waiting for the government to solve them, they go out and organize a new group and just figure out what to do. We're still doing that, but now the whole world is doing that. It makes government work better if there is a vigorous civil society. It makes laws and rights more likely to be observed. It makes elections more likely to be honest. It makes politicians more likely to be accountable if you've got a civil society. I think that the American university network, and particularly the law schools of American, could do a lot to help promote that.

Professor deLisle
Do you see that most effectively promoted by foreign students coming here, which now numbers hundreds of thousands, or in terms of outreach programs that would send American faculty and maybe recent graduates out to countries?

President Clinton
Both. I think—first of all, I was very alarmed—after 9-11, I understood why we had to be a little more careful about who came and went into the country because our system leaked like a sieve then. There were a number of those 9-11 people who never should have been able to get in this country. I'm not saying—with what we then knew—we could have kept them all out, but we should have done better. I think that we were in danger of paying a very high price in terms of discouraging foreign students from coming here to go to school. One of the difficulties that the Middle East has had is that after the OPEC first got organized, almost 40 years ago now, and they started making real money by putting a floor on the price of oil, a lot of the countries involved started taking the money and building their own university systems and keeping their kids at home where they were likely to concentrate in religious studies or something else and used their oil money to hire foreign workers to come in and do the work instead of sending their young people out to the rest of the world to become exposed and to bring ideas—not just from America but from everywhere—back home. So I think the more students we can get here the better.

I also think this movement led by the Gulf States of inviting American universities to establish branches or even one school in their countries—Qatar has a medical school from New York, an engineering school from Texas, a school of international affairs from my alma mater, Georgetown; all in one little place. I think that that is very important too. I think that anything we can do—I know NYU is now attempting to increase its beachhead in the Middle East. I think anything we can do in Africa and the Middle East, anywhere where the issue of democracy is debated—even in China; when I was in China as President, I went to a university and had a televised debate with the students. They asked me whatever questions they want. The President of China had allowed his press conference with me, including the debating points, to be fully televised, so I think anything the university networks can do to establish beachheads and debates and openness and educate people is a good thing to do.

Professor deLisle
President Clinton, you with the Clinton Global Initiative now have programs going on in, I think, over a hundred countries and probably 10 times that many discreet undertakings. In terms of the aspects of that work that are focused on democracy or serving the creation of constitutional government, what lessons have you learned about what works and what doesn't work?

President Clinton
Well, preaching at people doesn't work very well, particularly if they think you're hypocritical. I think what works is genuine efforts that seek to empower the individual citizens and to make the country work better and to make the country more successful in the world at large. I think normally the debate on this is well, should we try to impose our values and our system on somebody else? Or should we just whisper to them in private and do business and make as much money as we can? That's really a gross over simplification of what happens.

I mean, I could give you lots of examples of that, but when I was in China, I had an open discussion on Chinese national television, in front of all the people there, about why I believe that the president, Jiang Zemin then, should meet with the Dalai Lama. I made the argument in terms of why it would be good for China, and why diversity in China was good and not bad, and that I understood that they were worried about internal conflict and break-offs and disintegration because of Chinese history, but we needed to be looking to the future and not the past. In the future, diversity would be a strength and a reason for staying together, not a weakness and a reason for breaking apart.

I think that's what you always have to think about. There's no like one rule here. You have to look at the facts of the case. If you believe that history should be, in no small measure, the march of liberty, the reconciliation of social diversity and shared values, of individual rights and common progress, then I think you just take the facts as you find them and figure out how to push from where you are to where you want to go.

Jacques deLisle
One of the debates that often swirls around efforts to promote democracy or constitutions abroad is the question of sequencing. Sometimes you get the argument that you need political democracy, and rights, and such first, and then economic development depends on that. Increasingly one hears, particularly with respect to Africa, the argument that you need economic foundations first, and you can worry about these other things later. What is your view of that debate?

President Bill Clinton
I'm very skeptical of that, actually. I think it does take a certain level of economic advance to support genuinely sophisticated and reasonably expensive manifestations of democracy, an elaborate appeals court system, or whatever. It's not clear to me that we're better off. I mean, China chose economic development first and did advance, as I said. They're right; their people are more free than they were 40 years ago, but even though the system is a long way from democratic.

The Russians had elections that were very vigorous, and hard fought, and genuinely democratic, and didn't develop their economy. Then as soon as they made a lot of money, economically through oil, they became somewhat less democratic. I don't know; I just think that either/or thing is kind of a bogus argument. In Africa, if you look around the continent, there are lots of relatively poor countries that have clean honest elections. At least my experience is that the people who cherish their freedoms think that those elections and those choices have a value that is independent of whether they're making a lot of money or not.

I was born in a state that had a per capita income barely half the national average at the end of World War II when I was born. We didn't know we were all that poor. We didn't think we were supposed to not care about being free just because we weren't rich. I think it's a big mistake to patronize poor people ever, under any circumstances, and certainly under these. I do believe that there are some cultures where it doesn't work. I'll give you an example. When Senator Smith was still in national life, and I was gone, the Bush administration thought there ought to be elections among the Palestinians. That's how the Hamas got Gaza, right?

Now, that's all most people know about the story. Here are the facts. This is why sequencing is important, and systems are important, and details matter. The Fatah had been the ruling party for so long among the Palestinians that it had gotten a little long in the tooth, but also the same thing happened in Fatah that happened in the democratic party in the South after World War II, because the republicans were shut out because Abraham Lincoln freed the slaves. There were no Republicans who could get elected to anything in most parts of the South for decades. What happened? Both before and after World War II, what happened? Every Democratic party developed a liberal Democratic party and a conservative Democratic party, and so we had an election that looked like a regular election, and a Democratic primary. That's what Fatah was used to. Nobody pointed out to them that a lot of Palestinians were upset that they were not delivering the services. They didn't think it was an entirely honest operation. A lot of people were going to vote for Hamas, not because they wanted terrorist tactics—the Palestinians were the least radical of all the people in the Middle East—but because they thought they might get better service and better government.

The reason that Gaza was won by Hamas has nothing to do with everything that is paralyzing us all there now. They won because Fatah carelessly and foolishly ran both its slates in too many parliamentary seats. Their average vote was 41%, not 51%. That's what they won Gaza with, and a lot of people have forgotten that. What does that mean? That means that if you ask me should democracy precede growth? Should growth precede democracy in some cultures? Forget about that, if you ever want to go have an election, the details matter. In politics, in law, and in setting up a constitution, the details matter. How it will work matters. So I'm not sure that President Bush and his administration were wrong in wanting the election, but if we were going to have an election, we should've had an understanding with the people that we were trying to empower with it. To be sure, we wanted to empower the Fatah government and particularly the moderates under President Abbas. Then they went out and shot themselves in the foot by running two slates. All of a sudden, there's a new party in town, you see.

To go back to my earlier analogy, the Republican party is very much alive and well in the South. There is no Democratic party in any southern state that would ever permit there to be an election with one Republican against two Democrats. It would be idiotic. That's what happened there, so the details matter.

Jacques deLisle
You present a compelling analysis for how the devil and the angels are probably both in the details, but it is a nice segue way into our next somewhat broader question which is, even if you can solve many of the problems with a careful analysis of how an election would proceed, there still are going to be democratic elections that fairly predictably will produce results that will not be appealing to Americans, and that may be adverse to the United States national interests, at least in the immediate sense. One of our questioners asked, "What should we do about that? Is that a concern? Does it undercut an agenda of democracy and constitution promoting?"

President Bill Clinton
No, and first of all, if the test for whether you liked democracy or not were do you like all the results of democracy, well I've had abolished elections in America a long time ago. So would all of you, right? Whatever your party, whatever you philosophy would be, we got to grow up here. We got to realize if we're going to actually peddle this democracy, we're going to have to live with it. That includes the right of people to elect people who don't agree with us. Mr. Correa was just re-elected with a huge vote in Ecuador. He's been a little bit at odds with us. I personally think we could make up with him, but anyway, after the Venezuelan people first narrowly declined to let President Chavez run for re-election, then they did. It's hard to know, since he's so authoritarian, exactly where a majority sentiment lies there, but anyway, a lot of people are for him.

I think that if you are going to recognize the legitimacy of elections, you have to recognize the legitimacy of two things—number one, variation. Some countries will let the president run for re-election. Others won't. I notice in Latin America lately, if there's somebody that we don't like, and they change the constitution to give it a second term, we go crazy. If we kind of like them, we're sort of happy if they get a second term. Then if they want to give them a third term, well, we don't like that too much because our president only gets two terms. In other words, you got to be really careful here about what's at the core of the rule of law and democracy and human liberty, and what is inherent in the diversity of the human experience, and cultural attitudes, and all the things that can vary.

My view is if we're for elections, we have to be for the elections if they're honest, even if they don't turn out the way we want. Then we tell the people who win the elections, even if they won them bad mouthing America, "Look, we're prepared to work with you, but if you do things we can't live with, then we'll have to act accordingly. Just because you're a democratic country in theory doesn't mean that we think you can treat your people in a way that is unfair or threaten our national security by harboring terrorists or whatever." You have to be prepared to deal with countries based on what they do.

If we believe in democracy, then we have to believe in it when we don't like the results just like when we do. Otherwise, America wouldn't be here. We would have torn this country to smithereens a long time ago. The thing that makes our deal fly is when we get beat, we eat it and go on—if it was honest. I lost two elections in my life, hurt worse than anything on earth, until Hillary lost hers. That hurt worse than my two along. That's life. That's democracy. That's what you do. You contend. You get in the arena, and you win some, and you lose some. How in God's name can we apply a different standard to others. Well, that's fine for us Americans, but if you're going for somebody we don't like, we're not fooling with you anymore. You can't do that. People have a right to vote for people we think are nuts. They do not have a right to do things to their own people or to others that violate all standards of democratic peoples everywhere, without expecting an adverse response.

What do we all do? We elect a new president. You voted for him. I voted against him. I voted for him. You voted against him. We said, okay, let's give that person a new start. Right? Then we make our judgments about what we say and what we do based on whether we agree with what that person then does. That's the way we have to treat other people in other countries. If you're lucky enough to get honest systems where there's genuine majority rule, and you want minority rights, and you want individual liberties to be preserved, if somebody gets elected with 80% of the vote, that's not democracy if they take the other 20% and put them in jail.

I think the most intellectual confusion in the developing world has occurred when people say, "Well, why are you griping? I got a majority." I think that's the one thing I would say to all of you, when you get frustrated by the slow pace of American change, just remember, those people that started this country, who made possible this building by what they did so long ago, they deliberately gummed up the works, because they knew that people who had power would tend to abuse it. They thought the first thing they had to do was to stop the abuse of power, and stop the arbitrary exercise of power. They realized that at various times in our future—not our history then, it was our future—we might play a terrible social price for the slowness of our response to a challenge. It was a price they decided to pay to protect individual liberty, the integrity of elections, and the majority rule, as well as minority rights. I think we should think about that. I basically believe the world is stumbling in the right direction. It's kind of like the countries through this economic mess we're in. We're sort of stumbling in the right direction.

We're kind of like a fire alarm goes off in a bar after midnight. It's ugly watching people go to the exits, but if they all get out alive, we're still just fine. Tomorrow morning everything will be fine. That's where I think were are, and that's what this march of democracy is like. It's like people are stumbling for the exit, and it's sometimes ugly, but we are stumbling in the right direction.

Jacques deLisle

I think I've been given the high sign for one last question, so I'm going to abuse the privilege of being the questioner here and ask you to put back on your law professor hat in a way for a moment, which is one debate that's been going on in the Supreme Court in recent years, is how much in interpreting our constitution, the justices should look abroad to foreign ideas,

including foreign, constitutional, and democratic ideas. Do you think this should be a two-way street? Do you think we are inevitably headed towards more reception of ideas from abroad, and is that a good thing?

President Bill Clinton
Yes, as long as we don't pretend that it's something that under our constitution it cannot be. It cannot be binding precedent unless the United States Senate has ratified treaty obligations, or we have joined an international organization in which a price of membership is agreeing to be bound. I think otherwise, it would be silly for us not to look at the experience of other countries, and other courts, and other legal systems, in dealing with a problem if it's a problem that's on all fours with the case before the court.

Now, I think that debate got blown way out of proportion myself. I didn't see any of the judges on the court proposing to be bound by a legal precedent that clearly had no standing under our constitution and laws. They just said, look, if they've looked at this in Europe, and they've had the same sort of problem, and they've got legal principles that are pretty much like ours, how did they resolve it? I think when we live in an interdependent world, and we are trying to build this shared future with shared responsibilities and shared opportunities, and we're trying to reconcile our differences, I think it's a good place to look because every country's trying to make its legal system better.

I like it. I don't think it undermines our sovereignty at all, as long as we don't pretend that someone else's decision is somehow binding on the courts or could carry any legal weight that under our constitution it can't carry anyway. One other thing I wanted to say, just because I know we're supposed to be out of time, but I want you all to think about this. I mentioned in the beginning the Afghan example, and a lot of you nodded your heads. I said you remember the 300 women demonstrating for greater liberty and say in Kabul. You have lots of these examples. The biggest problem I see with trying to export our constitutional system is not selling majority rule. It's selling diversity and minority rights, and limitations on government in favor of individual liberty, the citizen acting alone. If you look at a lot of these countries, particularly where they're trying to put in religious law, Sharia law, or any other kind of uniform system, that's where we're going to have to move back from absolutism to compromise in those countries for them to have any shot of having a constitutional system that resembles ours.

When you go home tonight, think about that. The thing that's enabled us to be here after all those years since the constitution was ratified, is not just that we had honest elections where the person who got the most votes got to be president, or be in congress, or be governor. It's that the rest of us who are on the other side, we're safe. By extending the civil rights laws, first getting rid of slavery and the civil rights laws, and rights for women, and all this other stuff, we kept expanding the circle of opportunity so that we could lose and be safe, and be equal before a court of law.

That's the struggle I'm worried about. I just don't want us to get so carried away when we're trying to promote our ideas of thinking that if we can just have an honest election that produces the will of the majority, that that's the same thing as constitutional democracy.

That’s not true. The thing that makes our constitutional democracy sing is what we do with the losers and the loners. That’s really, really important.

Jacques deLisle
It’s a pity to see this hour come to an end. Thank you for an extraordinary session.