

“LIMITED GOVERNMENT” AND THE BETRAYAL OF AMERICAN VALUES

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Whenever I get a request from the Federalist Society, I tell my assistant to put it on the very top of my list of speaking engagements. Even as I was flying down here from New York on this beautiful Saturday afternoon, I asked myself, “Why, again, did I accept this speech?” I will tell you quite candidly: It is because I believe that it is incredibly important to reach out to conservatives and individuals who disagree with the ACLU on certain issues. I very much appreciate it when we have individuals like Ken Starr, who came to our membership conference a year ago; Wayne LaPierre, who was there two years ago; or Bob Barr, who has spoken at several of our events. Bob Mueller even had the courage of his convictions to come and walk into our coliseum, and he walked out the live Christian that he was. So I just hope to walk out with my life, out of this coliseum.

I also appreciate being here because it gives me an opportunity to hear from individuals that I normally do not get a chance to see in person. For instance, I completely agree with much of what Dr. Murray has just said. It might surprise you or the ACLU’s members how much consonance there is on some of these issues. In fact, there is a common bond between those of us who care about the rule of law and those of us who care about American values. My day-to-day work is to apply the Constitution and the Bill of Rights, to make them come alive for people, to help people who struggle for their rights to live with dignity and equality, to make that not just a paper aspiration, but a reality. That is what we do. It is the alchemy of taking great founding principles and making them real for people.

And one of the things that many liberals or progressives have done poorly is to run away from those core “American values.” They have been reluctant to engage in a discussion of what it means to be an American.

When I took over the ACLU right after 9/11 (I was there on the job a week before the 9/11 attacks), we were very clear that we should wrap our organization in the American flag, and we should be unapologetic about being patriotic, about what defines us as a people and what it means when we salute the flag or sing the national anthem.

* Anthony D. Romero is Executive Director of the American Civil Liberties Union. Mr. Romero originally delivered these remarks during Showcase Panel IV, entitled *The Role of Government in Defining Our Culture*, at the Federalist Society’s 2006 National Lawyers Convention, on Saturday, November 18, 2006, in Washington, D.C.

What is it that makes us feel proud as Americans? What are those core American values? Innocent until proven guilty. The right to due process of law. Equality under the law. The right to be who you are and say what you think and live and love the way you want. Those are core American values that define us as a people. And in a country with no unifying language, no unifying culture, and no unifying religion, what brings us together is our adherence to these core values, our adherence to the rule of law.

When I look at the last four years or so, I see a very significant betrayal of some of these basic values. If I were a member of the Federalist Society (I have yet not joined, although I think I could, especially with Attorney General Meese being one of its distinguished leaders), I would think that these are very tough times to be a conservative and a patriot. I will say quite candidly that I think the Bush Administration is engaged in a wholesale betrayal of the values that they and some of you say they espouse. Think of the whole question about torture and abuse. Think about how some of the leaders at the highest levels of our government have authored documents that have redefined torture and backed away from long-held traditions of the protection of human rights. Think about the Office of Legal Counsel's memos. One of your speakers this afternoon is an author of those memos.¹ You have the memos from Attorney General Gonzales, who called the Geneva Conventions "quaint" and "obsolete."² You had this President sign into law the Military Commissions Act, which abolished the writ of habeas corpus—one of the cornerstones of our Constitution—for certain individuals detained by our government, denying them the fundamental right to challenge the lawfulness of their detention in court.³

The culture that has been created by those actions is a culture of impunity, and we ought to be clear that that is what we are creating when we allow or encourage officials to take those actions. Look at the culture that has been created by the National Security Agency's warrantless wiretapping program. Mr. Cheney ridiculed my organization just the other day at your Convention, saying that perhaps we were not going to suffer the great irreparable damage that the Michigan court found when it ruled in our favor in *ACLU v. NSA*.⁴ With all due respect, I take great issue with that statement. The great harm is the fact that this President decided that he did not need to adhere to the Foreign Intelligence Surveillance Act of 1978.⁵ This President believed that he need not go to any judge to authorize his wiretapping program, which involved eavesdropping on the telephone calls of

¹ See generally John C. Yoo, Executive Power in Wartime, Address at the Federalist Society's National Lawyers Convention (Nov. 17, 2006), in *ENGAGE*, May 2007, at 58–60.

² Alberto R. Gonzales, Memorandum for the President (Jan. 25, 2002), available at http://msnbc.com/modules/newweek/pdf/gonzales_memo.pdf.

³ Military Commissions Act, 10 U.S.C. §§ 948–50 (2006).

⁴ See Dick Cheney, U.S. Vice President, Barbara K. Olson Memorial Lecture at the Federalist Society's National Lawyers Convention (Nov. 17, 2006), in *ENGAGE*, May 2007, at 89–94.

⁵ Foreign Intelligence Surveillance Act, 50 U.S.C. §§ 1801–62 (1978).

Americans in the United States. That, my friends, leads to a culture of a President above the law. That affects all of us. And if our President really believed that he needed those powers, he ought to have engaged Congress in that discussion. Or he ought to have gone to one of the Foreign Intelligence Surveillance Court’s judges and asked for their permission. To blatantly violate the law, I believe, undercuts our core American values.

It must be hard to believe in “limited government”—the subject of this conference—and see current events in the political landscape. The abortion ban that was put on the ballot initiative in South Dakota, which lost in a predominately red state—even with many individuals, including Jerry Falwell, pouring millions of dollars into the campaign in South Dakota—would have banned abortions even in cases of rape or incest. It would be very hard for someone believing in limited government to believe that was good policy.

And take the example of gay marriage, as some of you call it; the idea that government need not legislate or create this culture of rights, these “special rights” for certain groups. I will tell you, while Dr. Murray goes back to his home and pours his martini,⁶ I will go back to my home into the arms of my partner, my husband of ten years, in a committed, solid, loving relationship. When his father came to New York from Miami dying of liver cancer, he was on our sofa. I rushed him to the hospital. I wiped his brow. I grieved when my father-in-law died. When anything hits our families, we are married; we engage it as two coequal, loving, committed partners. And yet, the law treats us as strangers. We do not have the same rights as those of you who are married. We do not have the same material benefits as those of you who are married. But whether or not the government grants us those rights, we will remain married, and we will fight for those basic rights.

Whether you choose to be on the side of granting people equality and dignity and freedom under the law or stay on the side of those who would deny people the protections and the rights that we all deserve to have, the choice is yours. I am confident that history will be on our side. And generations from now, when my grandkids talk about how their grandfathers were not allowed to be married, and they ask their counterparts in school, “What did your grandparents think of this issue?”, I hope you make them feel proud.

⁶ See Charles Murray, *The (Im)proper Role of Government in Defining Our Culture*, 102 NW. U. L. REV. 483, 484 (2008).

