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Cleveland-Marshall College of Law

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Legal Scholars debate Supreme Court direction

By Paul Deegan

CO-EDITOR-IN-CHIEF

Some of the area’s foremost legal scholars of Constitutional law convened in the Moore Court room on Tuesday, September 25, to discuss the direction of the United States Supreme Court. C-M’s Chapter of the American Constitution Society (“ACS”) co-hosted the U. S. Supreme Court Forum along with the C-M Federalist Society. The President of the ACS, Jason Grimes, opened the event by introducing the Forum’s moderator, Prof. James Wilson. On one side of the podium sat C-M’s Prof. Stephen Gard and local attorney Mr. David Marburger, while on the other side sat C-M Prof. David Forte and Case Western Reserve University Prof. Jonathan Adler.

Prof. Wilson asked each panelist where, in each of his opinions, he thought the Court was headed in light of the recent appointments of John Roberts and Samuel Alito. "What is happening in the Court, is it apocalypse now, later, or not at all?"

From the left, 2Ls Michelle Todd, Ana Tremaglio, and Hilary Michael enjoy the Annual SBA Halloween Social at Panini’s on Friday, October 26, 2007. The social was an opportunity for students to forget the stresses of law school for one night. Students competed for best costume awards in a number of categories including, scariest, and most scandalous costume.

Students vote for criminal law referendum

Morgan Keramati

CO-EDITOR-IN-CHIEF

During the September SBA elections, C-M students voted on a referendum to determine if the student body supported a new criminal law clinical program. A total of 199 students voted, 193 voted that a criminal law clinic is a good idea. Out of the 193 students, 149 students voted that they would seriously consider participating if a criminal law clinic existed. While the SBA does not have the power to require the school to create any educational programs, the resolution shows student support for a criminal law clinical program, said Anthony Ashhurst, a 2L responsible for urging the SBA to get involved in creating a new program at C-M.

The referendum passage alone is not enough to create a new criminal law clinic at C-M. "For example, the creation of a new clinic will require either new financial or other avenues of establishing and maintaining "law-cred" here at Cleveland-Marshall."

Number of legal jobs decline nationwide

Job prospects for C-M graduates are getting better if you’re in the top of your class, but much worse if you’re not. The Gavel explores this polarization.

Anonymous 1L's search for law-cred

It was called "popularity" in high school. The anonymous 1L discusses various avenues of establishing and losing "law-cred" here at Cleveland-Marshall.

Death Penalty debated

The Gavel political columnists Chuck Northcutt and Alin Rosca debate whether the death penalty is an appropriate punishment for criminals.

2Ls competing in 1L classes - Is it fair?

By Patrick O'Keeffe

GAZETTE CONTRIBUTOR

Perhaps you are a 1L? Perhaps you are a 2L? Perhaps you are a 1L who’s in the same class as a 2L. Perhaps you are a 2L? Perhaps you are a 1L who is in the same class as a 2L. Perhaps you are a 1L who is in the same class as a 2L who is in the same class as a 2L. And so on. When you first hear this, you may think, "What? Are there 2Ls and 1Ls in the same class?"

According to Dean Lifter, 2Ls and 1Ls are in the same class because either the 2Ls are part-timers or they are switching from full-time to part-time.

"I have added a few full-time 2Ls this year. This is not a conclusive study."

The reason for this is not that 2Ls have an advantage because they have more experience dealing with their classes. Actually, the opposite is true that 2Ls are more likely to get bored. According to Dean Lifter, if you want to do well in law school, you should be spending your time 2L's had a distinct advantage."

Oh, you're not. The Gavel explores this polarization.

THE STUDENT NEWSPAPER AT CLEVELAND-MARSHALL COLLEGE OF LAW

VOLUME 56, ISSUE 2 NOVEMBER 2007
Halloween socials cater to students, families

By Katherine Vesoulis

GAVEL CONTRIBUTOR

The SBA hosted its annual Halloween social at Panini’s Bar and Grille on October 26. This year the event was co-hosted by BarBri. The event offered free beverages, food, and the general entertainment of seeing your C-M classmates wearing glittery spandex and adult-sized diapers. After surviving my very first Full-Blooded Law as a law student and coming to the realization that my friends and I, in the grand tradition of being boring ILs, have become incapable of telling jokes that do not involve tresspass to chant or the elements of battery, this seemed like the perfect way to decompress. When asked what makes this social so popular, SBA president Nick Hanna contends that it is “because it allows everyone to see a side of their fellow students they rarely get to see.” Hanna also points out that “the social falls at a good time for students as milestones are finishing up and we’re still a couple weeks away from the grind of finals.” The costumes were creative and students clearly put a lot of work and thought into them. Some of my personal favorites included the three blind mice, diaper boy duo, Supreme Court justice boy, not wearing costume, Jean Grey (purple for sexiest costume), showgirls, Abe Lincoln, and the Star Spangled Banner. With the aid of Indiana Jones (Rick Ferrera), I was able to locate Wolverine, a.k.a. Alex McCreedy ‘09, to ask him some questions regarding the grueling preparation he endured to become this venerated icon. He candidly began preparing for the Halloween social in August by growing out his hair and a rather impressive beard. He informed me that his “girlfriend was okay with his beard and hair because she knew it was for the Halloween Social.” He also claimed to have worked out extensively and used moderate quantities of whey protein to achieve the aforementioned muscle consistency. Unfortunately, he did not win the costume contest, but the experience of transforming himself from a law student into an action hero was in many ways more fulfilling than any material prize.

In addition, the Halloween social hosted by the SBA hosted a program for children of faculty and students. This event featured an opportunity for kids to wear their Halloween costumes twice this year and to begin collecting candy well before their friends. There were also activities planned for the children, such as pumpkin decorating, costume contests, and various games.

Both socials seemed to be a great success in allowing students, friends, and family to come together to celebrate the beginning of this fall season. The SBA, as usual, did an outstanding job recruiting staff and students for the work during the week by providing an entertaining atmosphere that allowed students to let loose and show a side of creativity and humor that the socratic ethos typically discourages. I am happy I got to witness the festivities and look forward to seeing what students come up with next year.

Legal scholars debate U.S. Supreme Court’s direction in new term

Continued from page 1

Early in the forum, it became quite clear that the focus was going to center on Justice Kennedy because he is the voting vote on the Court. Popular culture and the media has labeled Justices as liberal or conservative, putting Chief Justice Roberts and Justice Scalia into the conservative camp, while Justices Breyer, and Souter are set in the liberal camp. With Kennedy providing the swing vote, the Court could move in either direction depending on his whim.

Some have called Kennedy the “conscience of the nation.” To ex- plode on this notion, Prof. Adler recognized, “we don’t see the emergence of the Roberts Court, we see the Ken- nedy Court.” To show his reasoning, Prof. Adler remarked that Kennedy only dissented twice within the sixty-eight decisions he participated in last term, an unprecedented event. In his view, the Court is not very conservative, as Kennedy appears to follow some of the liberal Justices. He thinks the conserva- tives are not winning and are having a small market advantage, noting that not much has changed in the Court. However, there were a lot of 5-4 cases (1 out of every 3), many along conservative/liberal lines last term. Prof. Adler thought that the Court will turn left during the next term.

Prof. Forte was not swayed by the conservative/liberal divide. In his view, the Court’s past decisions were neither conservative nor liberal, and he thought the generalizations regarding the Justices were unfair.

Mr. Marburger, a litigation partner at Baker Hostetler who represents the press regarding First Amendment issues, had a more cynical view of the current Court. He thinks the Court is very political, and is a “Court of men, not laws,” where the “laws are pretextual” to achieve a certain predetermined result. In addition, Marburger thinks that one can read the Justices through their previous decisions, and he reads their decisions to restrict access to the courts so that fewer people can bring claims in Federal Court.

Prof. Forte thought it was actu- ally a good year for the Court and the United States. He recognized that Justice Roberts turned the Court into what he thought was meant to be a Court that is integrated, rather than each Justice acting mutually exclusive of one another.

On the other hand, Prof. Gard disagreed with Prof. Forte. Gard sais that this Court is “not going to serve the Country well.” Gard didn’t think there is going to be “cataclysm” in this term, but he is leery about the way the Court is moving. Gard thinks this Court has a tendency to create new rules that will have a negative impact on the nation. For instance, Gard gave examples that indicated that the Court created rules that take issues away from the jury, and these rules that are neither based on the Framers intent nor the actual text of the Constitution, and rules de- signed to achieve ideological results.

With all the articulate and com- pelling statements made by the panelists, it is hard for one to gauge where the Court is headed. How- ever, one thing is certain – we will see some very interesting cas- es decided this upcoming term.
2L pushes for creation of criminal law clinic at C-M

Continued from page 1

resources, or the re-allocation of existing re-

sources for a criminal law clinic, it [the ref-

erendum] did not give students other options

for other classes or more student services,

such as additional staffing in the office of the

career planning," said Dean Geoffrey Mearns.

The Gavel recently spoke with Anthony

Ashhurst about his efforts with the referendum:

Who’s idea was it to create a criminal law clinic?

C-M actually had a criminal law clinic at one
time, but it was discontinued years ago for

various reasons. The question of re-instituting a clinic has been raised many

times by interested students, faculty and

staff over the intervening years. For ex-

ample, last year an effort at developing an

accord between C-M and the University of

Akron for reciprocal use of clinics was

attempted by Dean Mearns, but this is pres-

ently on hold for a number of reasons. But

to answer your question about the present
effort; since I hope to become a criminal

defense attorney I’ve always wondered why

I began researching clinical programs

developing several models for use at

C-M to present to Dean Mearns back in

August, about a week before the first SBA

meeting scheduled for Sunday, August 26,

2007. I had arranged a meeting to discuss

the subject with the Dean, and decided to

speak to the SBA about acting on a resolu-

tion I drafted supporting this purpose. I pro-

posed the resolution at the 8/26/07 meeting,

but asked that the SBA table voting on it un-

til after a student referendum could be held
to determine student support and interest.

Why did you want to start this?

Aside from the fact that I would like to

personally participate in such a program, I

consider it valuable for several reasons. I

thought it would be good for the profes-
sional development of students interested

in a future practicing criminal law, as well

as giving students interested in other fields

a clinical option besides the many already

being offered. I also thought it would

enhance the overall image of our College,

contributing to the improvement of both

our “Tier” status and the prestige of C-M

law degrees in the eyes of future employers.

What kind of reaction did you get from faculty/deans?

The faculty reaction has been mixed. While most faculty gave very strong

support for a new clinical program, some expressed

opposition based upon parochial special

interests. (i.e., opposition because they would

rather see more funds devoted to expanding

their own departments, increasing salaries,

or developing other programs; seeing little

value in, or need for, an additional law clinic

of any kind.) The Deans I have spoken to

are tentatively supportive, although con-

cerns were initially raised about whether

or not enough students would be available
to actually staff a clinic if one were to be

established. I think those concerns were

answered in the affirmative, when 149 out

of 199 students voted they would seriously

consider participating if a clinic was available.

Now that it’s passed, what’s going on?

Thanks to the overwhelming results of

the referendum, the SBA voted to pass my

resolution on Sunday, October 14, 2007. I

had a meeting with Dean Mearns and pre-

sented him with the resolution on Monday,

October 15, 2007. At that meeting we
discussed next steps for the establishment

of a clinic, and while nothing was decided,

I was invited to attend a meeting of the

Criminal Law Advisory Committee at the

Union Club on November 13, 2004. This

committee is made up of senior representa-
tives from various criminal law organiza-
tions, including: both the state and federal

Attorney-General’s offices; local county

prosecutors and public defenders offices;

judges, and other interested attorneys. I

will be allowed to make a presentation, seek

support for one of the test models, and hope-

fully discuss possible next steps to initiate

whichever test model meets with approval.

When could a criminal law clinic be available to students?

A standard clinic, set up for on-site

walk-in support at C-M requires dedicated

funding from state resources to cover sala-

ries for staff attorneys, clinical directors and

support personnel, and will probably not

come for several years. The hope is that

after one of the test-models I submit is ap-

proved, put into practice, and demonstrates

the merit of a fully funded clinical program,

then funds will be allocated to establish

the standard model at C-M. Perhaps 3 or

5 years to allow the initial 2008/2009 test

model school year. Meanwhile, I believe

one of the interim no-cost/low-cost test

models that I have submitted can be initi-

ated by Fall 2008, perhaps even as early as

Summer 2008. It is also possible that if

efforts at developing an accord with the

University of Akron for reciprocal use of

their criminal law clinic are re-initiated, then

we could see a standard model clinical pro-

Frivolous patents hinder the patent law profession

By Krishna Grandhi
GAVEL CONTRIBUTOR

The first patent in the United States was granted in 1790. Two hundred and fifteen years, and over seven million patents later, the US patent system is still strong and reaching new heights with every passing year. While there is no doubt that the success of our patent system fuelled the American economic growth and continues to promote advances in sciences and technology, some patents will leave you questioning the strength of the current patent system and its ability to keep fools out - albeit occasionally.

Let’s take a look at a couple of patents I came across while browsing Delphi’s gallery of obscure patents (delphion.com/gallery). These patents in my opinion should have never seen the light of the day: US Patent Number 4344424: Anti-eating face mask. Your eyes are not deceiving you; this is a mask for crying out loud. Many inventors claim that their invention is a “face mask for preventing the introduction of substances into the mouth of the wearer…” or “to put in same person’s mouth, a mask that will prevent eating or drinking liquids”. Am I hallucinating here? Or is this the dumbest thing I have ever heard in my entire life? I am sure this invention will give the folks at The South Beach Diet® a run for their money.

US Patent Number 5934226: Bird Diaper. Again, this is not a prank. This is a real US patent. Someone had the nerve to sit down and spend hours of their time (and obviously hundreds or perhaps thousands of dollars) only to waste the useful Patent Examination time in evaluating a Bird’s excretion mechanism. Seriously, give me a break. You might wonder if there is anything in this world that is even dumber. Here is something for you – I actually bought this one off Amazon.

So the point I am trying to make here is that when there are millions of babies around the world (and a sizable number of them here in America) starving out of poverty and malnutrition, a bunch of bright minds had nothing better to do than figure out how not to eat and how to collect the end-products of what birds eat. Call me sentimental, but there is something inherently wrong with this picture. Well, it is one thing if these inventors are wasting their own time and money, but their inventions have nothing to do with the top of the class.

However, the decline in the legal sector of the job market is not having a negative effect on the top students. Instead, the article finds that top students are actually enjoying better than normal job prospects and increasing their salaries. The students who have the highest entrance exam scores go to the highest ranked law schools and generally receive the top jobs. This is the situation with the job market that is used by all law schools. It puts each student in competition with each other in order to develop a ranking system by which most law schools are measured.

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The article notes that a student’s ability to discriminate between ethics and economics when practicing law in the real world. We must help build a system that dis-
While capital punishment may not seem pleasant to some, even less pleasant are the brutal acts committed by the murderer which it applies. None of the arguments against the death penalty can take away from the viciousness of these acts, nor from the pain suffered by the murder victims’ families. However, in the last 15 years, 15,000 murders have been committed each year, and roughly 1,000 people have been executed in the past 30 years. Capital punishment has been reserved for the absolute worst. First and foremost, the constitutionality of the death penalty is crucial. Despite the arguments that it is cruel and unusual punishment under the 8th Amendment, it is actually acknowledged in the 8th Amendment, which says, “No person shall be . . . deprived of life . . . without due process of law.” The Court later rejected the cruel and unusual argument in Gregg v. Georgia, 428 U.S. 153, 179 (1976), reasoning that, “it is now evident that a large proportion of American society continues to regard it as an appropriate and necessary criminal sanction.” The Court concluded that the death penalty does serve the purposes of retribution and deterrence and that it is “invariably disproportionate to the crime” of murder. Id. at 183-87. Ultimately, Constitutional law recognizes that it is only human nature for the grief-stricken survivors of the murder victim to demand retribution. Our society must take their loss extremely seriously, even acknowledging their right to demand vengeance. However, as a civilized society, vengeance can only come from the State, and only after fair due process of law.

Another counterargument to the death penalty is the expense factor. However, this argument is weak, if not false. According to JFA, life without parole costs $1.2 million - $3.6 million more than death penalty cases. Even if this wasn’t so, I would still find it very expensive to tell a murder victim’s family that “we can’t execute the fiend who murdered your loved one, because of a simple matter of economics!”

The murder rate dropped from a high of 10.2 (per 100,000) in 1980 to 5.7 in 1999 — a 21,000 percent increase over the 1966-1980 period. Furthermore, the reduction in the number of executions in 2000 led to 150 additional homicides over the next four years, according to a 2006 University of Houston study. Finally, each execution deters an average of 18 murders according to a 2003 Emory University nationwide study. The law says that if you kill someone, instead of life imprisonment where you will have a warm place to sleep and three square meals a day, we will just end your life. Who knew that it would make potential murderers think twice? Another counterargument to the death penalty is the expense factor. However, this argument is weak, if not false. According to JFA, life without parole costs $1.2 million - $3.6 million more than death penalty cases. Even if this wasn’t so, I would still find it very expensive to tell a murder victim’s family that “we can’t execute the fiend who murdered your loved one, because of a simple matter of economics!”

Just as this piece is written, the Supreme Court has halted an execution by lethal injection in Mississippi after having agreed to hear a challenge to Kentucky’s lethal injection procedures, which are alleged to cause unnecessary pain. This is yet another testimony to how much we care about the well-being of our criminals — well, before we kill them. The irony (or is it hypocrisy?) is that some of the staunchest supporters of the death penalty also claim to be followers of a great Man who once advised his disciples to forgive those who trespass against them, love their neighbors, and turn the cheek. Another “irony” is that some of the states that condone the death penalty claim to be some of the most progressive states in the nation. When it comes to the death penalty, all of our professed kindness, high-mindedness, and progressive thinking tend to disappear. They go down the drain exactly when they should be held that is, when the government has the power to allow are tests of our advancement as human beings, which we fail every time. The death penalty itself is a shameful, embarrassing admission of barbarism. Why should we give up the death penalty? Because each execution costs an indefensible state its decency, and because society ratifies it taints our high aspirations to promote such brutality, sadism and bloodthirsty, savage instincts that once dominated our ancestors. Because it lowers us, as human beings and members of a society that claims to be civilized and aspires to civilized others.

Vengeance or Justice? Is the death penalty an appropriate solution?

By Chuck Northcutt

Conservative Gavel Columnist

By Alin Rosca

Liberal Gavel Columnist

China, Iran, Pakistan, and the United States are very different countries, but they share one common value: zealously believe in killing criminals and share the shameful distinction of having the highest number of executions in the world, year after year.

While capital punishment is the most inhumane and barbaric method of execution, it is not the only one in which some countries are hard to find. The fact that ours belongs to it casts a shade on our standing in the community of civilized peoples of the world.

In the United States, 37 states—excluding Ohio—still feel comfortable with lethal injections. The physical evidence of the most of these states to adopt so-called “human” execution methods, as if there could be anything humane about forcefully taking a human life.

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Liberal rebuttal...

That a man who has reached the highest position in our justice system feels morally comfortable comparing an act of killing to which he is a moral accomplice with the act of killing that had been committed by his victim, and decides that somehow the gruesomeness of the murderer’s act erases the immorality of his own act and makes it “pretty desirable,” shows how far we still have to go on the road to civilization and progress.

Civilized societies don’t let the state kill inmates for them. Civilized societies don’t kill inmates. Killing other human beings, no matter what they did, is repugnant, immoral, and barbaric. We should stop doing it for our sake, not theirs.

Conservative rebuttal...

My counterpart’s disdain for factual “scientific” data is apparent given the only implication of data he gave is it is just plain wrong and misleading. With China executing up to 8,000 people in 2006 according to the International Covenant on Civil and Political Rights, and in a league of their own when compared to our 53 executions last year. In fact, China claims 90% of executions that year, while only 1% occurred in Iran, Pakistan, Iraq, Sudan, and the United States combined! Actually, we came in 6th place that year, not 4th. As far as Iran, despite having a population of 70,472,846 that is much smaller than ours of 302,721,000, their number of executions is over three times ours at 177. There is just no comparison with these countries to our fair administration of due process, which the Constitution dictates. Furthermore, the U.S. is one of 25 nations, still believes in the effectiveness of capital punishment, not the four that my counterpart would have you believe, which includes Japan, South Korea, Taiwan, and Kuwait.

Despite the separation of Church and State, my counterpart saw fit to bring my faith into this debate, however, according to biblical scholar Dr. Carl F.H. Henry, “A Matter of Life and Death,” p. 523, “If the death penalty for murder is used, it was most likely trying to kill the soldier (John 18:10),” prompting “ . . . Christ’s statement that those who kill by the sword are subject to die by the sword (Matthew 26:51-52).” This implicitly rejects the government’s right to establish a religious code of death. Finally, my counterpart makes little of “scientific” data and “gey, image-rich examples” of murderer, such as the rape and murder of that little girl mentioned above, mainly because he knows all to well that both are very real and that his emotional and condescending argument will lose every time, once the average American is presented with this reality.
C-M is going through a lot of changes—new construction, new professors, record bar passage rates. The school is also making changes about C-M’s trial team. The faculty curriculum committee decided not to allow second year trial team members to receive credit for their efforts. Students can choose to participate on the team for two years, but they won’t be rewarded for doing any credit hours for the work hard they put into the program.

As a result of the committee’s decision, the team’s coaches resigned. Robert Yal- lech, a partner at the law firm of Reminger & Reminger, resigned immediately, and Bradley Barmen, an associate at Reminger & Reminger, will resign at the end of the year. One can only imagine the pain every other law school which fields a competitive trial team allows students to receive credit for competing as a future professional. This makes sense since student advocacy skills improve with each competition, and each passing season. Imagine how competitive our most courted law student is. Then try to imagine a law review publication with only 2L editors. Imagine those programs only receiving two ungraded credit hours.

Anonymous 3L
The flowing is the second of a six-part series following the beaten ad hom broken law student: I really need to focus on what I’m doing for the rest of my life, or at least what I’m doing after the Bar. This should be a priority in my life right now. It is extremely important that I take the time to update my resume, fill out applications, and collect some recommendations because this is my professional life—my career. The reason I’ve been working so hard for the past two and a half years. Instead, I’m spending time thinking about the fact that Christmas Ale is the most wonderful time of the year. I’ve had a knot in my stomach since August that I can’t seem to shake. I thought that I was supposed to coast through my last year of law school and not acquire a new set of anxieties. Recurring nightmares of loan repayments, failing the Bar after studying for six weeks straight, and failing cross examinations on the street are plaguing me. It also doesn’t help that I’m falling dangerously behind in my classes. Thank god I saved up those pass/fail options.

The job interviews are draining and incredibly intimidating. Getting the interview is one stressful process and the interview itself is another. I sit in those interviews and I’m supposed to have crystal clear answers to all of the questions I’ve constantly been asking myself. One question from one particular interview sticks out: “What was a difficult decision you made and how do you feel about it now?” I have the feeling that I will have a much better answer for that interview in May. I’m not sure what I hope I’d say.

What will a law degree from Cleveland State mean to me? What will it mean to me? Which state’s Bar should I take? Will having Marshall on my resume hold me back? What if I don’t want to be a lawyer anymore? These are huge life questions that require time and thought. The following poet Rainer Maria Rilke helps me at times like these: Have patience with everything unresolved in your heart and try to love the questions themselves as if they were locked rooms or books written in a very foreign language. Don’t search for the answers, which could not be given to you now, because you would not be able to live them. And the hazy了一生 questions are no questions now. Perhaps then, someday far in the future, you will gradually, without even noticing anything, live your way into the answer.

Until I can live my way into the answers, you can find me living the questions… and enjoying a few cold Christmas Ales at the same time.

Anonymous 1L
The following is the second of a six-part series following the experiences of an anonymous first-year student.

The first year of law school is a very busy period in your life. For example, if you want to be a lawyer anymore? These are huge life questions that require time and thought. The following poet Rainer Maria Rilke helps me at times like these: Have patience with everything unresolved in your heart and try to love the questions themselves as if they were locked rooms or books written in a very foreign language. Don’t search for the answers, which could not be given to you now, because you would not be able to live them. And the hazy了一生 questions are no questions now. Perhaps then, someday far in the future, you will gradually, without even noticing anything, live your way into the answer.

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Until I can live my way into the answers, you can find me living the questions… and enjoying a few cold Christmas Ales at the same time.
I really have no idea what American politics is all about

By Matt Samaa
Gavel Columnist

Next year, the American public will vote in presidential and general elections. The voting public will be narrowing the field of candidates and then ultimately selecting the next executive of our country. The policies the next president chooses to pursue will have a vast impact not only on American society, but also on global politics as well. Who are the voters that decide which candidate wins? What are these voters most concerned with when they cast a ballot? What does this tell us about what elections really mean? Is this the right way to select a leader? Educational attainment levels of voters provide some interesting insights into who votes and what they vote the vast impact not only on American society, but also on global politics as well.

According to the U.S. Census Bureau, over 65 percent of the Americans that cast votes in the 2004 presidential elections had not received a Bachelor’s Degree. On the other end of the spectrum, only 7% of voters in the 2004 election failed to receive a high school diploma. These statistics highlight two disturbing aspects of American electoral politics. First, the voters who elect the president probably cannot intelligently dissect presidential policies. Second, the voters who did not vote probably do not provide an accurate representative sample of the American people. Without making too broad a generalization, unelected voters probably cannot cast votes based on complex presidential policies. This is not to say that voters will not cast thoughtful votes, but that voters without a college education have little chance of understanding and evaluating the socio-economic impact of policies pursued by the president. Moreover, many of these voters without a college education are the same voters that the president is making. To highlight this, I’d like to point out that before I came to law school, I had no conception whatsoever of FBA policy, the impact of GSEs on the economy and on communities, how SROs function and the import of their regulations, how independent agencies promulgated rules, so on and so forth.

Although today I have some rudimentary understanding of some of these topics, for the most part I still could not intelligently comment on a comprehensive policy regarding any of these issues or innumerable other issues of importance. Fortunately, my postgraduate education focused at least in part on some of these policy matters, namely the mechanisms of our government. If these issues confound the most educated voters, are we selecting our leaders haphazardly? Are we selecting candidates who can understand the candidates’ policies, what are they voting on? While the Iraq War ranks first on nearly every list, reducing a war in which the country is already embroiled to a yes or no, or stay or leave issue seems overly simplistic. Most voters want American troops to leave Iraq, but weighing the candidates’ plans to extract the troops seems ambitious to me. Social issues dominate the remainder of the political discourse. Abortion, welfare, and stand-your-ground laws are issues that dominate the political campaigns. Is this odd, noting that most American’s don’t seek abortions, receive AFDC welfare benefits or suffer a crime in their families that could possibly require the death penalty for the perpetrator? Aren’t these issues all focused on what other people should be doing, getting or receiving? Is what is most important to voters? A variety of other hot button issues evoke strong feelings, but again these complex issues confuse voters. For instance, immigration reform ranks high on hot button issue lists. Certainly, illegal immigration affects the American economy in a variety of ways, both positively and negatively. Is “you’re soft on illegal immigration” an acceptable attack on a president candidate? Does that capture the complexity of the issue? However, for many voters it appears that the immigration argument is about cheap labor to service, be it road cuts and tax cuts are always important issues. But are the hardline stances on lenstax or more taxes tenable policy positions? I would tell you because I’ve lost casting ballots based on the Internal Revenue Code, how to make it more equitable and efficient. But I’d wager the issue is much more nuanced. 

So again, how do voters decide? It seems to me that they’re making arguments regarding what they feel other people should do and whether or not they trust a particular candidate shares their values. To make those judgments, voters rely on the media to tell them which candidates share their values. Often times, this reliance on the media results in patently absurd political discourse that glosses the complexity of issues in favor of partisan rhetoric. Even in the pages of this fine paper, I’ve read “liberal” and “conservative” discourse calculated not to resolve complicated issues, but instead written in incoherent partisan passions. This type of discourse ignores social problems in favor of appealing to voters on a guttural level. And this comes from the most highly educated voters. Then, the political ads further distort the candidates’ backgrounds, voting records, and spoken statements, obscuring important policy discussions.

Is it any wonder why so many Americans are apathetic about politics? Is it any wonder that this apathy translates into our second important statistic — that uneducated voters are underrepresented? Is it the factionalism that the Founding Fathers feared so much? Are the American public refrain from voting because of a feeling of disenfranchisement? Perhaps our system is not the most efficient way to pick a qualified leader, but this is how we choose our president. Not that I have any suggesions, but isn’t this somewhat disturbing?
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