

# The Clough Center Report

THE CLOUGH CENTER  
FOR THE STUDY OF  
CONSTITUTIONAL DEMOCRACY

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## Clough Center Hosts Conference on Secularism, Islam and Democracy

JOHN LOUIS  
GRADUATE STAFF

The Arab Spring of 2010 produced a wave of pro-democracy social movements demanding regime change in the Arab world. In October 2011, the Clough Center cooperating with the Boston College Law School, BC's Islamic Civilization and Societies Program, and the Political Science Department sponsored *Secularism, Islam and Democracy: Constitutional Tensions and Accommodations*. The conference brought together a range of scholars from a number of disciplines to help better understand the problems and challenges of establishing constitutional democracy in the Middle East. The conference included three panel discussions featuring exciting new research and a keynote address by Robert W. Hefner, Director of the Institute on Culture, Religion, and World Affairs at Boston University.

Citing public opinion surveys and ethnographic studies, Hefner commented on the spread of democratic values within Islamic Society, noting, "in all but a handful of Muslim-majority countries a majority of respondents

believe that democracy is a good form of government." As support for democratic government has increased, Hefner explained, the Muslim world has also experienced a "great resurgence in religious observance" and increased demands for the adoption of "Sharia, or Islamic Law, on all Muslim citizens." Hefner asked, "If the Sharia is accommodated to democracy, will the resulting democracy look different from that of the West?" While acknowledging infant Muslim democracies emerging from the Arab Spring may "develop qualities different from those...of the contemporary West," Hefner argued that democratic political processes will likely force continual evolution in church-state relations. The panelists' research provided support for many of Hefner's general themes.

The first panel, entitled "Secularism and Religion," addressed the question whether democracy requires secular government. Mirjam Kunkler of Princeton University argued that secularism need not be considered a prerequisite of democracy, rather "religious

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## Conference

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organizations may have a pivotal role to play” in helping to legitimate and support young Muslim democracies. Islamic intellectual and Iranian ex-patriot Arash Naragi, suggested Islamic theology provided for tolerance of religious pluralism without strict secularism. Lastly, Samer Shehata of Georgetown University looked at the possible role the Muslim Brotherhood will play in determining the character of a newly democratic Egypt.

Panel two, “Democracy,” examined contemporary Middle Eastern democracies to determine the distinctive character of Islamic democracy. Focusing on North Africa, Eva Bellin of Brandies University determined that although political enfranchisement and civil liberties do not always coincide, the proper relationship between the two results from the potentially painful process of political struggle and negotiation. Amaney Jamal of Princeton University explored the effect of U.S. international involvement in the Middle East and argued that regional reliance on U.S. patronage often bolstered citizen support for authoritative regimes. Noting frequent human rights abuses and the unfair electoral system produced under Turkish democracy, Gunes Murat Tezcur of Loyola University, showed increasing enfranchisement “does not necessarily translate into greater political equality, and respect for human rights.”

The third panel, “Constitutional Tensions & Accommodations,” considered the importance of written constitutions and the rule of law in new Muslim democracies. Asli Bali of the University of California Los Angeles contended that Turkey’s experiment with constitutionalism exemplified the potential difficulties in achieving democratic consolidation and securing civil liberties. Nathan Brown of George Washington University argued constitution-making by participatory bargaining produces short-term contention by which public grievances acquire long-term constitutional expression. Egypt’s choice of Supreme Constitutional Court justices, concluded Tamir Moustafa of Simon Fraser University, will determine if the constitutional clause officially establishing Islam as the “chief source of legislation” becomes a strict-standard for judicial review.

Bringing together a superb collection of recent scholarship the conference broadened collective understanding of the possible tensions and accommodations necessary to complete the newest wave of democratization. In his opening remarks, Director Ken Kersch, wondered if the Arab Spring would compare to Europe’s 1848 Spring of Nations. In 1848, reactionary politics eventually silenced popular revolutions. While nothing guarantees the triumph of constitutional democracy in the Islamic world, the collected scholarship gives reason for optimism. Democracy and Islam are not mutually exclusive. Islamic democracy may not directly emulate the Western liberal tradition, but the Arab Spring’s demand for political rights confirms the universal appeal of equality, individual freedom, and human dignity.

## PHOTOS FROM THE CONFERENCE



ABOVE: ROBERT W. HEFNER AND KEN KERSCH DURING HEFNER’S KEYNOTE.

BELOW: ASLI BÂLI, NATHAN BROWN, TAMIR MOUSTAFA, AND VLAD PERJU ON A PANEL ENTITLED “CONSTITUTIONAL TENSIONS AND ACCOMODATIONS.”



ABOVE: ALI BANUAZIZI AND INTISAR RABB REFLECT ON THE CONFERENCE

## News from 10 Stone Ave

JARED HARDESTY  
GRADUATE ASSISTANT

Greetings and welcome to our latest edition of the Clough Center Report. This spring, we have a number of events and new programs that we cannot wait to begin. By far the most ambitious of these is our new Graduate Fellows Program. Meant to compliment the successful Junior Fellows Program, the Graduate Fellows will be a writing group that brings students studying issues of constitutional democracy together in a unique, dynamic, and interdisciplinary forum. Fellows will have the opportunity to present their own research in a unique setting and get critical feedback from those outside of their discipline. Graduate Fellows will also be able to organize conferences and bring outside scholars to campus. After a competitive application process, the center chose 20 fellows who will begin their tenure this semester and represent a myriad of different fields, including History, Political Science, Sociology, and English. Like the Junior Fellows, the Graduate Fellows Program will be fellow-driven. This will allow them the ability to shape their own program all while being backed by the resources of the Clough Center. For those interested in becoming a fellow or know someone who would, please see our website.

If our new fellows program is exciting, so are our upcoming events. One in particular stands out. This April, the Clough Center will welcome J.J. Mulhern. Mulhern is a Senior Fellow at the Fels Institute of Government and Adjunct Associate Professor of Classical Studies and Government Administration at the University of Pennsylvania and has published taught extensively on government and politics from classical antiquity to the present. His visit will bring a unique perspective to our ongoing dialogue about constitutional democracy. The Center has done a wonderful job at looking at constitutional democracy in both the United States and international contexts and examined its modern historical origins from the eighteenth-century to the present. Nevertheless, we have never held an event looking at the true origins of democracy: Ancient Greece. Mulhern's talk, entitled "The Prospects for Constitution Making: Two Ancient Perspectives," will allow us to see how democracy functioned before the advent of modern constitutionalism. Overall, it will be an exciting event and we look forward to you joining us.

## *A Semester of Luncheons*

When we invite guests to speak at the Clough Center or co-sponsor events, we often ask them to join us for lunch. Here are some photos of those meals from the previous semester.



Above: Professor Jack Rakove holds a lunch discussion at Boston College Law School after his lecture the previous day (see page 4).

Below: Professor Pierre Manent, director of studies at the L'École des Hautes Études en Sciences Sociales in Paris, France, offers his reflections on Western political philosophy during a luncheon held at 10 Stone Ave. Manent was at Boston College as part of the John Marshall Lectures in Political Philosophy. For more information on this series, please see our website.



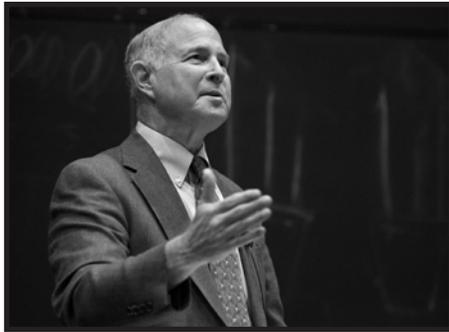
Below: Clough Center Junior Fellows met and had lunch with Former Massachusetts Chief Justice Margaret Marshall before she gave a lecture about the Magna Carta and American constitutionalism (see page 5).



## Jack Rakove: “The Radical Significance of the Free Exercise Clause”

CHRISTOPHER FITZPATRICK  
UNDERGRADUATE STAFF

Since the Bill of Rights was first incorporated into the Constitution, the First Amendment has provided judges, lawyers, and legal scholars with fertile ground for debate and controversy. In particular, the free exercise of religion clause has captured people’s attention throughout the nation’s history. The Clough Center, in collaboration with the Political Science Department, the History Department, and the BC Legal History Roundtable, was proud to host distinguished scholar Jack Rakove, who discussed his forthcoming book *Beyond Belief, Beyond Conscience: The Radical Significance of the Free Exercise of Religion*. Winner of the Pulitzer Prize for History and the current William Robertson Coe Professor of History and American Studies at Stanford University, Rakove is uniquely qualified to discuss this important and divisive aspect of Constitutional law. In addition to these credentials, his other publications further highlight his expertise on this matter, with such works as *The Beginnings of National Politics: An Interpretive History of the Continental Congress*, *Interpreting the Constitution: The Debate over Original Intent*, and *Original Meanings: Politics and Ideas in the Making of the Constitution*.



JACK RAKOVE

Rakove noted that, to the founding fathers, the issue of free exercise was not isolated from other aspects of constitutional governing. For example, he quoted James Madison’s notion of an “organic relationship” between religious freedoms and others, claiming that the founders believed free exercise to be fundamentally intertwined with other civil liberties. Rakove also cited Thomas Jefferson, who – when discussing the founding documents of the United States – claimed, “it was a great thing to go so far...as [John Locke] himself says...but where he stopped short, we can go on.” According to Rakove, religious liberty was of the utmost importance to the founders, but the extensive protections against governmental power they sought to establish were not the most radical part of their ideas. The ideals set down in the First Amendment, he claims, actually reflect a much more extreme change in political thinking and governance.

Rakove argued that the truly radical significance of the free exercise clause stems from two main points. First, he noted that before the Bill of Rights, liberties were mostly thought of as existing collectively against the power of the state. The free exercise

clause, however, which evolved from the enlightenment idea of freedom of conscience, was highly individualistic—a novel idea for the time. Rakove claimed that this change may have originated in the Founders’ conception of this freedom as not merely a legal principle, but rather as an inherent right for all human beings. The second radical aspect of this clause, Rakove contends, is that it changed the nature of state power. Traditionally, the state had been viewed as imposing its will on the people, but in this case, it established a new precedent of legislative authority. In an unprecedented manner, the founding fathers established the basis of legislative power in favor of individual citizens rather than the state or the collective citizenry.

In the modern day, the issue religious liberty is still important and, at times, controversial. Recent examples, such as the dispute over whether to permit the construction of a mosque and Islamic community center in the immediate vicinity of the World Trade Center site in New York, illustrates the difficulty of determining the limits of the free exercise clause, as well as other Constitutional liberties. Rakove raised another such example, noting the need to manage religious freedom for prisoners in a safe and practical manner. Overall, he quite reasonably called for a balance to be struck – maintaining a safe and stable society while also promoting the liberties that the founding fathers set down with such radical ambition.

## Imperfect Constitutions, Imperfect Courts, and the Ideal of Justice: Hon. Margaret H. Marshall and the Magna Carta come to Boston College

JOHN LOUIS  
GRADUATE STAFF

From September 4th to December 11th the McMullen Museum of Art at Boston College featured an exhibit entitled *Making History: Antiquaries in Britain*. The collection, on loan from the Society of Antiquaries in London, included one of four remaining copies of the 1225 Magna Carta. On November 15th, the Clough Center in cooperation with the McMullen Museum, the BC Legal History Roundtable, and the Political Science and History departments invited former Chief Justice of the Massachusetts Supreme Judicial Court, Margaret H. Marshall to campus to speak on the Magna Carta.

Hon. Marshall spent lunch engaged with a group of Boston College undergraduates on a tour of the exhibit (see photo on page 7). After the tour, the former Chief Justice took time for an informal question and answer session with students. Her answers reflected upon her experiences fighting apartheid in South Africa, discussed her legal career, and recounted some of the challenges she faced while on the bench. After lunch, Hon. Marshall delivered a moving speech entitled “Imperfect



HON. MARGARET H. MARSHALL

Constitutions, Imperfect Courts and the Ideal of Justice.”

Marshall began by asking, “In the United States, the birthplace of constitutional democracy, has the rule of law, that ‘most powerful obstacle to tyranny,’ begun to erode?” To explain, she returned to Magna Carta’s Chapter 40—“to no one will we deny or delay right or justice”—which first gave expression to the “principle of equal justice” essential for the rule of law. The Magna Carta replaced unlimited kingly authority with the authority of written word. The rule of law conceived in Magna Carta provid-

ed the most powerful potential check against tyranny yet constructed; yet as Marshall explained, if “Parliament could violate its own laws with impunity” the rule of law remained a hollow promise.

John Adams, constructing the Massachusetts Constitution in 1780, devised a radical solution to Magna Carta’s enforcement problem: a co-equal judiciary “subservient to none, except the rule of law.” Adams’ political invention of judicial review, however, carried only the force of opinion. How could a powerless institution limit the power of government? Expounding upon a number of controversial Supreme Court cases, Marshall asked “Why do Americans routinely obey court rulings, even controversial rulings that in other countries might lead to blood in the streets?”

American democracy, Marshall argued, owes its success to the perceived impartiality of its courts, and widespread belief in the rule of law. Marshall lauded the global spread of constitutional democracy, but worried about growing American legal isolationism and declining popular approval for the judiciary. She indicated two sources of this erosion: popular political polemics against Supreme Court decisions and originalist jurisprudence.

Marshall denounced political candidates vowing to punish judges as demagogues using their “rhetorical

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THE CLOUGH CENTER OFFERS SUMMER FUNDING FOR FACULTY, GRADUATE STUDENTS AND UNDERGRADUATE STUDENTS. FOR MORE INFORMATION ON CLOUGH CENTER FACULTY RESEARCH ASSISTANTSHIPS, GRADUATE AND UNDERGRADUATE RESEARCH GRANTS, AND CIVIC INTERNSHIPS, PLEASE SEE THE CENTER’S WEBSITE AT: [BC.EDU/CLOUGHCENTER/RESOURCE](http://bc.edu/cloughcenter/resource)

## Clough Center Hosts Discussion of Gerard Magliocca's *The Tragedy of William Jennings Bryan*

BRENDAN KNEELAND  
UNDERGRADUATE STAFF

The Clough Center welcomed Gerard Magliocca, Samuel Rosen professor of law at Indiana University, to campus for a panel on his new book, *The Tragedy of William Jennings Bryan: Constitutional Law and the Politics of Backlash*, on October 24, 2011.

Kenneth Kersch, director of the Center, hosted the event and participated on the panel with Elizabeth Sanders, Professor of Government at Cornell University and Michael Kazin, biographer of William Jennings Bryan and Professor of History at Georgetown, to the panel.



PARTICIPANTS IN THE PANEL DISCUSSION

The structure of the conversation was a roundtable with a brief introduction, critiques, and a question and answer period. Professor Kersch introduced and spoke briefly about the book. In this era of elections, economic concerns, and popular uprisings at home and abroad, there appear to be shades of populism in the modern dialogue. For that reason, Professor Kersch saw this book as especially timely and relevant to the current state of American politics.

Professor Magliocca gave a brief overview of himself and his book for the audience before the panel gave their thoughts. His book chronicles the legal backlash that took place after Bryan led the populist movement at the turn of the 20th century by examining the constitutional history of the 1890s—

the development of constitutional law in relation to Jim Crow, the Liberty of Contract doctrine, and the elevation of the Commerce Clause in American constitutional law. All these things, Magliocca claimed, are to a certain extent reactions to the failure of the populist movement—an effort to prevent it from happening again.

After the heyday of the populists, the nation was met by a powerful conservative backlash that did not just restore the status quo, but actually changed the law.

All three professors praised the book for its originality. Of course, each had his or her problems with certain interpretations of the history of the era. One of the points Sanders made was that she believes the Progressive Movement as more of a continuation of the Populist movement, rather than a different era entirely. Kazin, in his comment, described Magliocca's way of reading Bryan as at times original, and expressed his admiration of the argument in the book that political passions rule judges more or as much as their legal reasoning.

Gerard Magliocca then responded to the various readings of his work. He acknowledged that he is drawing conclusions based on evidence, not making absolute truth claims. He pointed out the fact that, for the most part, all we have from that era and before is circumstantial evidence, and while issues like statutory development and Jim Crow certainly have their complexities, he drew his own conclusions from the evidence at hand. "There's no stopping point in politics," Magliocca said. "A book has to end, but these things never stop."

*The Tragedy of William Jennings Bryan: Constitutional Law and the Politics of Backlash* was published by Yale University Press and is now available.

### New Research Opportunities!

The Clough Center for the Study of Constitutional Democracy is happy to announce two new research fellowships beginning this Spring. These include a travel grant awarded on an ad hoc basis and a fellowship that funds undergraduate senior thesis research. For more information see:

[bc.edu/cloughcenter/resource](http://bc.edu/cloughcenter/resource)

*Marshall continued from page 5*

ability to exploit people’s anxieties for cheap political gain.” She then declaimed that originalism bent on constructing constitutional meaning from 18th century grammar sent the “message to the American people that the Federal Constitution is more like a coffin than a framework for living democracy.” Holding the U.S. Supreme Court accountable for its current “image problem,” Marshall decried the current partisan wrangling on the bench as publicly undermining judges’ “foremost allegiance to the rule of law.” The courts should not forget the frailty of constitutional government, but must realize that judicial authority depends on public respect for the rule of law.

Respect, argued Hon. Marshall, requires public confidence in judicial neutrality. In Adams’ ideal mani-

festation of the rule of law judges were co-equal, but also impartial. Interpreting the fundamental law according to partisan affiliation weakens the courts and exposes the inherent fragility of the rule of law. A mummified jurisprudence distances the people from the law, thus weakening the Constitution. Both the Constitution and the courts may be imperfect, but protecting the ideal of justice requires constant vigilance. Marshall began her remarks with the statement, “respect for the rule of law is not innate: it must be relearned in every generation.” She concluded by reminding us of the need to hold public officials accountable, urging us to understand the delicate task of Constitutional government, and remaining hopeful that Americans could preserve John Adams’s bold vision of “a government of laws, not of men” for many generations to come.

## Clough Center Staff

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Christopher Fitzpatrick  
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Brendan Kneeland  
*Undergraduate Assistant*



ABOVE: HON. MARGARET MARSHALL, NANCY NETZER, DIRECTOR OF THE McMULLEN MUSEUM, KEN KERSCH, DIRECTOR OF THE CLOUGH CENTER, AND CLOUGH CENTER JUNIOR FELLOWS POSE IN FRONT OF A COPY OF THE MAGNA CARTA (SCROLL ON THE RIGHT).

## MISS AN EVENT?

### CHECK OUT OUR RECORDED PROGRAMS AT:

BC.EDU/CLOUGHCENTER/  
MULTIMEDIA

## CLOUGH CENTER SPRING 2012 EVENTS

**February 29, 2012**  
**4:30 pm**

Justin Vaïsse, "Woodrow Wilson's heirs from the Cold War to the Arab Spring: American Schools of Thought in Democracy Promotion"

**March 21, 2012**  
**4:30 pm**

Morton Keller, "Three Years In: The Works and Progress of the Obama Administration"

**March 15, 2012**  
**4:30 pm**

Book panel on Gary Jacobsohn's book "Constitutional Identity"

**April 25, 2012**  
**4:30 pm**

JJ Mulhern, "The Prospects for Constitution Making: Two Ancient Perspectives"

For more information on Clough Center events, please see the Center's website.

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