

We the People

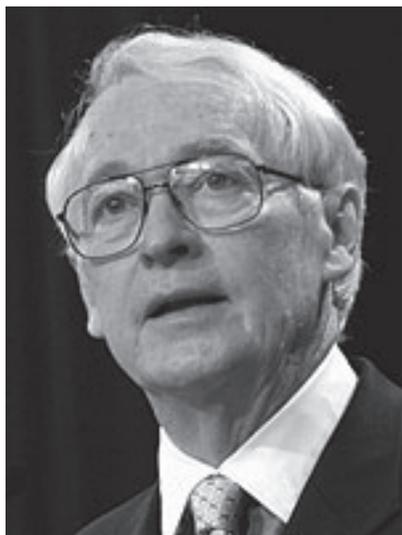
The Clough Center Report

The Gloria L. and Charles I. Clough Jr. Center for the Study of Constitutional Democracy
 Boston College

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Center Announces James Q. Wilson as First Clough Senior Fellow



The Clough Center is pleased to announce that James Q. Wilson will join us in the fall of 2009 as Senior Fellow at the Center – our first – and Distinguished Scholar in Boston College’s Department of Political Science. One of the nation’s most eminent and influential scholars, Wilson taught political science at Harvard University, where he was Shattuck Professor of Government, from 1961-1987. From 1985 -1997, he was the James Collins Professor of Management and Public Policy at UCLA, and, from 1998-2008, was the Ronald Reagan Professor of Public Policy at Pepperdine University. Wilson is the author of many articles, and is author or co-author of fourteen books, the most recent of which are *The Marriage Problem: How Our Culture Has Weakened Families* (Harper Collins, 2002), *Moral Judgment* (Basic Books, 1997), *The Moral Sense* (Free Press, 1993). His other books include *Bureaucracy* (Basic Books, 1989), *Thinking About Crime* (Vintage Books, 1985), *Varieties of Police Behavior* (Harvard University Press, 1978), *Political Organizations* (Princeton University Press, 1995), and *Crime and Human Nature* (with Richard Herrnstein)(Simon and Schuster, 1985). Wilson is a member both of the

American Academy of Arts and Sciences and the American Philosophical Society. He is the author of the leading textbook on American government. He is a past president of the American Political Science Association, and the recipient of the organization’s Lifetime Achievement Award. Wilson was awarded an honorary doctorate by Harvard, and was presented the Presidential Medal of Freedom at the White House. I hope you will join us in welcoming Professor Wilson to Boston College.

From the Director:



The Gloria L. and Charles I. Clough Center for the Study of Constitutional Democracy at Boston College has just celebrated its one year anniversary, and I am pleased to report that, while there are many improvements to be made, we are off to a very strong start.

The Center was created to support interdisciplinary reflection on the promise and problems of constitutional government in the United States and throughout the world. In my initial discussions with the Center's benefactors and university officials, we agreed that there would be certain touchstones that would ground the Clough Center at BC – touchstones that would likely make it distinctive from other such centers at American universities, and, perhaps, a model for others. First, in a reflection of BC's character as a liberal arts university, the Center will place significant emphasis on the participation and formation of its undergraduates. Second – again in a reflection of BC's liberal arts commitments – the Center will strive to be interdisciplinary, and will strive to play a leadership role in breaking down the walls that have characterized intellectual life, not only at BC but in academia more generally. Third, in a reflection of our changing, increasingly globalized world, the Center will endeavor to enhance our understanding of the nature and practice of democratic constitutional government, not only in the United States, but also around the world. And, fourth, the Center will welcome the participation of scholars, students, and practitioners approaching the study of constitutionalism from a range of political, ideological, intellectual, and personal perspectives.

While I will call your attention to the variety and range of our programs – a lecture series, a junior fellows program, an undergraduate journal of constitutional democracy, civic internship grants for undergraduates, research grants for graduate students and faculty, academic conferences, paper prizes, a Boston Area Public Law workshop, a “links” page directing interested visitors to the ‘best of the web’ on matters related to the U.S. Supreme Court and constitutionalism more generally – the best way for you to see what we are doing is to visit our website for yourself. I would add that, as a relatively new initiative, we welcome any ideas or suggestions you may have.

In closing, and on a somewhat more personal note, I want to let you know – as a relative newcomer to BC myself – how delighted I have been to discover a university community that not only has supported the creation of this exciting new Center, but has also provided the foundations that have enabled it to thrive from its inception. BC is blessed by generous benefactors like Gloria and Chuck Clough, whose substantial commitment to the Center – lest we forget, the fruit of a lifetime of work – is driven by a manifest love for the university and its students. I have been genuinely moved by the enthusiasm with which so many of BC's undergraduates have availed themselves of the full range of opportunities that a Center of this sort can provide. Our students are not only very smart, and intellectually curious, but they are eager to take the initiative in their education, and their communities, both at BC and beyond. They are also a lot of fun to teach, to work with, and to be around. The Center's running start was made possible to a significant extent by groundwork laid prior to my arrival at BC by Professors Marc Landy (who played an important role in organizing the lecture series during our first year), Dennis Hale, and others in the political science department, who have been working on a proto-center under the rubric of the Initiative for the Study of Constitutional Democracy (funded by the Veritas Foundation). And, last but hardly least, our relatively successful start would not have been possible without the consistent leadership, support, and wise counsel of key BC administrators, including Father Leahy, Bert Garza, Pat De Leeuw, Ben Birnbaum, David Quigley, Susan Shell, and the help of their superb staffs, including Anita Tien, Susan Hynes, Nancy Samya, Brock Dilworth, and Shirley Gee, along with my graduate assistants, Courtney Shannahan, and Hillary Thompson.

I very much look forward to the year – and years – ahead, and encourage those interested in the Center's programs and mission to get involved, and to join us.

BC Alum Agresto Discusses Iraq, Religion, Education and Freedom

Boston College alumnus John Agresto, the former Coalition Provisional Authority Senior Advisor to the Iraqi Ministry of Higher Education under President George W. Bush, told a large audience assembled in a Fulton Hall auditorium that he didn't really understand the nature of American democracy until he spent substantial time in Iraq. This distance from home taught him much about what it means to be an American: it clarified and magnified his view of American ideals as rare and precious, and cemented a belief that those ideals, or something like them, are central to fostering free and stable democracy. After four trips to Iraq working to reestablish and improve the Iraqi system of higher education, Agresto was convinced that Americans seriously misunderstood what promoting liberty and democracy in other societies entailed. He is now highly pessimistic about the prospects that Iraq will be able to make the successful transition to a stable and free democratic society.

American democracy owes a great deal, Agresto argued, to the Christian religion of its founding, and the ideals that Christianity promotes. He pointed to the story of the Good Samaritan, which called all Christians to see strangers as their neighbors. The fundamental equality of all men, Agresto claimed, is an essential teaching for people living together as democratic fellow countrymen. It is also, he claimed, a rare teaching among religions. Religions much more commonly teach the equality or brotherhood of all believers.

Despite being (as self-described) "very conservative" politically, Agresto denied what he characterized as the common conservative claim that liberty and equality are opposites. Instead, he argued that liberties and rights in our system stem irreversibly from our belief in our fundamental equality, "because we are equals, I have rights and so do you." The American reconstruction strategy in Iraq, he contended, has been aimed at engendering democratic sentiments by way of a democratic government. But without a preceding commitment to equality, Agresto argued, this aim is impossible.

The second source for Agresto's pessimism for the future of a democratic Iraq related to its educational

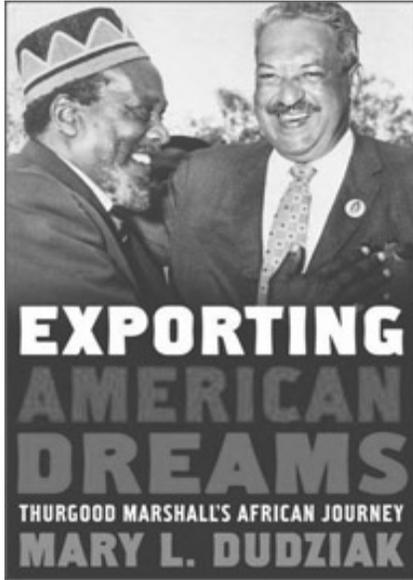


system. The religious insistence that Truth is written, and that argument against Truth is blasphemy, Agresto argued, forestalls the possibility of disagreement and critical debate. Likewise, the absolute paternal authority in the Iraqi family structure reinforces the culture of obedience and authoritarianism. Finally, the educational system is one of memorization. It is a system that does not educate, he claims, but trains. Agresto therefore concludes that the nature and structure of religion, education, and family in Iraq bode poorly for that country's future as a free and democratic society.

Michael Greve Announced as Clough Adjunct Professor

This fall, Michael Greve joins the faculty of Boston College's Political Science department as the first Clough Center Adjunct Professor of Political Science. Professor Greve is a scholar at the American Enterprise Institute for Public Policy Research, where he is a well-known constitutional law scholar, with expertise in both American and foreign constitutions. Michael Greve co-founded and (from 1989 to 2000) directed the Center for Individual Rights, a public interest law firm. He has written extensively on many aspects of the American legal system, and his publications include numerous law review articles and books. His teaching at Boston College will focus on questions of comparative constitutional design.

Two Authors discuss Recent Works on History, Race, and the Law



Perhaps the most significant American lawyer of the twentieth century, Thurgood Marshall is famous for his work in the 1940s and 1950s with the NAACP Legal Defense and Education Fund against segregation, racial covenants, white primaries, and, in particular, for arguing *Brown v. Board of Education* (1954), which held racial segregation in the public schools unconstitutional. Marshall is also well known as the Supreme Court's first black Justice. As such, Marshall's life has been the subject of considerable scholarly interest for many years. U.S.C. law professor Mary Dudziak's new book, and the talk she gave in the fall at Boston College arising out of it, however, examined a part of Marshall's life that had for a long time gone almost totally unstudied.

Dudziak's talk, which she illustrated with photographs of Marshall's time in Africa,

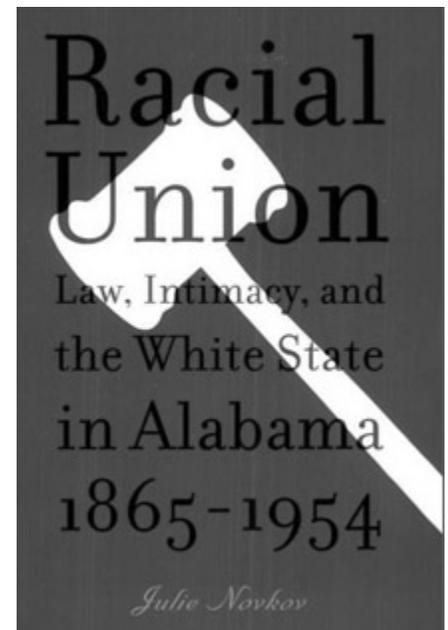
emphasized the stories of his time in Kenya. In 1960, Marshall was invited by African nationalist leaders to help write Kenya's independence constitution, which was to include a bill of rights that would protect the Kenyan minorities, and institute a legitimate constitutional government. From peril in the airport to strong differences on provisions of the proposed Kenyan Constitution, Dudziak showed the assembled Boston College students and faculty the way the Civil Rights leader focused on the role of law in instantiating and institutionalizing justice, and in protecting the weak from the strong, whatever each group's color or past abuses.

The quest for racial and gender equality in the United States often focuses on political and constitutional dynamics taking place at the federal level. In the process, it misses the rich vein of information that a consideration of state experiences can provide. Professor Julie Novkov of SUNY Albany urged listeners at Boston College this past March to consider the importance of studying states in understanding our nation's progress concerning racial and gender equality. Novkov's research examined the development of anti-miscegenation jurisprudence and policies in Alabama from 1865 through the 1940s through the examination of trial records and judgments in appellate courts.

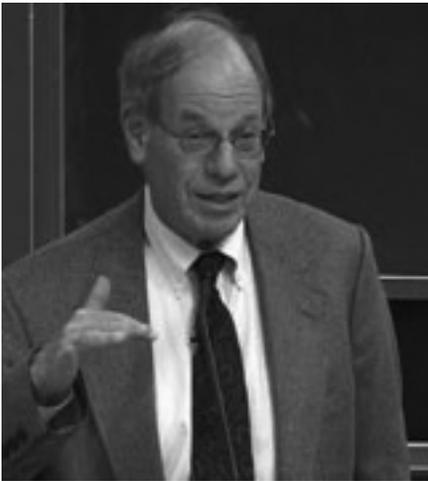
Novkov found that Alabama's

experience with miscegenation laws started with an attempt, during and after Reconstruction, to embed white supremacy in the ordinary operation of law. Rather than being self-consciously inflammatory, these laws sought transition from uncontrolled Klan violence to the more peaceful administration of a thoroughly racialized state.

By the 1940s and 1950s, Alabama's highest court found that miscegenation required a familial relationship -- that mere intercourse was insufficient. This evidence reinforced the notion that miscegenation laws focused on the perceived threat to the (white) family. Novkov's topic, particularly relevant to contemporary political debate on same-sex marriage, focused listeners' attention on the often-overlooked ties between laws and one of society's most fundamental structures: the family.



Noted Public Law Scholar Speaks on Corporate Social Responsibility



In late October 2008, Professor Robert Kagan of UC Berkeley spoke to a crowded classroom of students and faculty on “The Selective Greening of American Business: The Role of Social Norms, Politics, and Law.” The central question Kagan considered was why businesses comply with regulations, especially environmental regulations. Kagan explained three major causes of regulatory compliance by businesses: fear of punishment, fear of humiliation (social pressure), and a sense of civic duty. In addition, he discussed the role of professional norms and accepted good practice, quite apart from government regulation, as one major factor motivating compliance.

Professor Kagan noted that “most firms comply with most regulations most of the time.” Citing numerous different studies of the effect and causes of regulation, Kagan concluded that regulation, when properly enforced, provides the floor for environmental compliance, while economic considerations provide the ceiling for measures that firms will take.

Competitive markets are less likely to see meaningful regulations, since the political will is not there to pass the kinds of regulation that would make significant changes. Kagan explained, “Significant greening of business occurs only where governments gather the political will to enact and enforce demanding regulations, and they don’t always generate that will.”

Following the lecture, graduate and undergraduate students peppered Kagan with an array of questions suggesting a serious interest in questions of environmental protection and corporate social responsibility.

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Future Clough Senior Fellow Discusses the Future of Free Will

In 1975, the eminent political scientist James Q. Wilson published his classic book *Thinking About Crime*. In that book, he took issue with the the prevailing view that crime was caused by social conditions such as poverty. If indeed these conditions were the causes of crime, it necessarily implied that society had the ability to reduce or eliminate crime through public policy. In contrast, Wilson’s 1975 work argued that government could not solve crime by eliminating poverty, since crime was caused by factors other than economic want. In his talk at Boston College this past spring, the incoming Clough Center Senior Fellow reflected upon his influential 1975 thesis in light of massive advances in biology and psychiatry which argue that genes shape, to varying degrees, almost every aspect of human behavior. Wilson’s talk focused on the implications for the criminal justice system for crimes with a significant biological component.

Contemporary thinking increasingly hews to a biological determinism that excuses a person from personal responsibility, Wilson claimed. This is as mistaken as the earlier wisdom that social conditions caused crime. He argued at length before a large audience in McGuinn Auditorium that hewing to either extreme in the nature or nurture debate would be misguided. For example, Wilson explained that antisocial behavior has been linked to possession of a particular gene, but that this gene only has influence when it exists in conjunction with certain environmental factors.

In the future, could punishments for certain crimes be limited to taking a pill that would change a criminal’s biology and make him never again commit the crime? Wilson argued that our criminal justice system is fundamentally about retribution, not rehabilitation. Biological causes notwithstanding, human beings equate justice with retribution, and therefore, Wilson argues, biological causes will never fundamentally change the justice system. This argument was provocative, and, following the talk, a lively and wide-ranging discussion ensued.

Other Lectures from the Clough Center’s Inaugural Year

William Galston and Pietro Nivola: Red and Blue Nation-Partisanship and the 2008 Election

In the weeks leading up to the 2008 election, the Clough Center hosted Brookings Institution Fellows William Galston and Pietro Nivola who led a discussion for students and faculty on the 2008 presidential election. Galston and Nivola are the authors of a recent two volume book project on the issue of American political polarization, which was a significant contribution to the raging debate around American “culture wars.” They argued that the progress of the presidential race was not an indication that the country was less polarized than in the past. Instead, it represented the “catastrophic” event of the economic crisis, which sabotaged the McCain campaign the same way another terrorist attack on the United States would have hurt the Obama campaign. They argued that, while the country is deeply divided, it is not closely divided. The differences between the parties are real and deep, but their strength in the electorate is not equal.

James Stoner: Science and Humanities at the Founding

In September of 2008, Professor James Stoner of Louisiana State University gave an evening lecture entitled “Science and Humanities at the Founding” in which he raised the question of

the role of scientific thinking in the American Founding, and the relevance that role should have to our consideration of questions of science in our contemporary political and constitutional system. Stoner characterized today’s science as vast and highly specialized and (in many respects) an imperialistic project dominating the study of nature and extending its reach into the study of all aspects of human nature and human affairs. The nature of modern science, Stoner contended, has had several major consequences for human and moral life, from the abandonment of tradition, to the rejection of religion, to the celebration of democracy, and finally to a dissolution of a commitment to personal responsibility. To address these faults modern science has brought us, Stoner suggested understanding science as he believes the Founders did.

Sidney Milkis: Theodore Roosevelt, The Progressive Party Campaign, and the “Critical” Election of 1912

The historic nature of the 2008 Presidential race motivated strong interest in lessons the country can learn from past elections. In this context, a large crowd gathered at the end of September for Sidney Milkis’ presentation on “Theodore Roosevelt, The Progressive Party Campaign, and the ‘Critical’

Election of 1912.” In a speech that outlined the importance of the 1912 election for the modern state, Professor Milkis frequently tied his analysis of this election nearly a century ago to the 2008 presidential election. He suggested that the 1912 election helps us probe the deep historical roots of contemporary politics in the United States.

The Clough Journal Prepares First Issue



The Clough Center provides support for the Clough Journal of Constitutional Democracy, a student-run online journal seeking to build a more insightful and inclusive understanding of what constitutes a democracy and to correct domestic and global misconceptions of democracy. The Journal seeks submissions of multidisciplinary work in history, economics, sociology, political science, international studies, and law. The Journal focuses on logistic, moral, and ethical questions that are closely related to the world’s democracies. The deadline for submission of articles for the Journal’s first issue was June 12, 2009. More information and the Journal itself can be found at: <http://bc.edu/clubs/clough/>



Kris Munden ('11), Michael Reer ('10), Rachel Lamorte ('10), Stuart Pike ('10), Michael Stork ('10), and Patrick Cassidy ('10) join Professor Ken Kersch outside the famed Nassau Inn in Princeton, N.J.

Junior Fellows Attend Princeton Conference on Law and Religion

In April, six members of the Clough Center Junior Fellows Program accompanied the Center's director to Princeton University to attend a conference entitled "Law and Religion: Philosophical and Historical Perspectives." The conference was organized by Princeton's James Madison Program in American Ideals and Institutions, and co-sponsored by The Witherspoon Institute, The Clough Center, and The Tikvah Project. The conference consisted of four sessions, each consisting of scholarly presentations, comments of and responses to discussants, and questions and comments from the audience. Such a forum allowed for lively debate and active audience engagement.

Church/state relations dominated the discussion, with a special emphasis placed on the Constitution's Establishment Clause. In addition to the formal discussions, the Clough Junior

Fellows had opportunity to engage with speakers and other attendees during meals and social events. Professors and judges from across the country discussed a plethora of subjects with the Fellows, ranging from current political issues to long-standing collegiate sporting rivalries. The conference was a unique opportunity for the Clough Junior Fellows to experience how the foremost scholars of law scrutinize and refine their ideas.

Clough Junior Fellows

The Center's Junior Fellows Program enlists students with a strong interest in questions concerning the virtues and limits of constitutional democracy. As Junior Fellows, students receive special access to Clough Center events and visiting speakers, and are invited to participate in Junior Fellow-only conversations and events throughout the academic year.

Center Sponsors Undergraduate Attendance at NATO Conference

In June 2009, The Clough Center sponsored the participation of two BC undergraduates in an international conference on "NATO at 60: The Future of the Free World" held in Cascais, Portugal. The conference was sponsored by the Institute of Political Studies of the Catholic University of Portugal. Featured speakers included Pierre Hassner, Zalmay Khalilzad, and Jose Manuel Barroso, President of the European Commission. The Boston College students were joined by counterparts from Brown University, King's College (London), and the National-Louis University of Poland. In reflecting on the Conference, Clough-sponsored student Alex Batchilo noted that the conference focused broadly on "The Future of the Free World." The NATO Conference, Batchilo writes, focused on NATO's overarching goals to "contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions...and by promoting conditions of stability and well-being" rather than on more narrow strategic or military considerations. Students were also quick to note the pleasure they took from the opportunity to visit Portugal, experiencing her culture and food.

Fall 2009 Events

September 30, 2009
James W. Ely Jr.
“What Ever Happened to the
Contract Clause?”
4:30 PM

October 22, 2009
Mark F. Plattner
“Populism, Pluralism, and Liberal
Democracy”
4:30 PM

November 9, 2009
Aurelian Craiutu, Harvey Mansfield,
Cheryl Welch, and R. Shep Melnick
Roundtable: Craiutu’s *Tocqueville’s
Views on America after 1840: Letters
and Other Writings*
4:30 PM

November 16, 2009
Danièle Hervieu-Léger
“Secularization and Contemporary
Religious Renewal in Europe”
Time TBD

Stay Tuned!

In the spring of 2010, the Clough Center has several exciting speakers planned, and a major conference titled:

*Executive Power in the First Year
of the Obama Administration*

Please visit our website for up-to-date Center news and events:
www.bc.edu/centers/cloughcenter

The Gloria L. and
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