

Commencing the Discussion on America's Challenge for the Next Five Years: Building Freedom, Building Security

Introductory Remarks by
Senator Gary Hart*

Thank you very much. I want to thank Michael Waldman and all those at the Brennan Center for their very kind invitation for me to join you here today. I am particularly pleased to be reunited with an old friend and colleague, Fritz Schwarz, one of the leading members of the New York bar and a great public servant. Fritz and I had the occasion to work together more than thirty years ago on issues that we are here to discuss, ironically, three decades later. It is also a great honor for me to share the platform with Governor Tom Kean, one of our era's great public servants. Tom Kean and I go back to an age when political parties used to get along with each other. A quaint notion I know for many of the younger people here, but in fact that age did exist and hopefully will return to the United States.

All of us who read American history in the founding era are struck by many things, not least of which is the Founders' reference to the need for vigilance. And once a great republic such as this is founded, one would think, especially after more than two centuries, that the need for vigilance would have long since expired. But, the longer I live and the more I begin to see patterns in American political life, the more I appreciate that admonition of the Founders not only to each other, but to future generations: To remain vigilant with regard to both the structure of government, which they created, and the principles for which it stood and, in theory at least, still stands.

And that vigilance it seems to me relates to a degree to an observation, or at least more than an observation, a theory of the late Arthur Schlesinger Jr.'s about cycles of American history. And Professor Schlesinger's theory, for those of you familiar with that book and that particular idea of his, had to do with 30 or 40-year cycles of reform and then what he called consolidation, or if you will, adoption of those reforms and inculcation or institution of those reforms into our system. Our system then becomes stagnant and occasionally corrupt and then that leads to another era of reform. Were he still with us, and were he participating in a forum such as this, I think it is quite likely that Professor Schlesinger would apply that same idea of reform and consolidation to the whole area of security and liberty because again after the passage of several decades of public service and observation, we are in one of those cycles. And the cycles

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do repeat themselves, if not in predictable, 30-year patterns, but certainly in times of crisis. All of you, who know American history, know about the Alien and Sedition laws of the late 18th century and the first Adams' administration. We are all painfully familiar with President Lincoln's decision to suspend habeas corpus for some 90 days until it was approved by a reconvened Congress. We know the history of the Palmer raids in the 1920s. We know the McCarthy era and the Red Scares of the '50s and beyond. Fritz Schwarz and I and others know the era of Watergate and the abuses of power that occurred then and the reforms that were advocated by the Church Committee and in large part adopted, but not totally. And now, some twenty-five or thirty years later, we see a recycling of some of the same patterns of the abuse of power.

Some of us were discussing a few minutes ago whether or not the trajectory of American history is a more or less upward incline of progress. I wish I could say that it is, as I believed in my youth that every era brought on a more progressive country. I am beginning to think, although I am not sure, that it is more like Schlesinger's cycles of American history: we have crisis, the crisis tempts people to accumulate and consolidate power in the executive branch, and, in the name of security, to either take our liberties or encourage us to surrender them.

And this is what brings us here today. One of the ironies of politics is that, although not inevitably by any means, that it is often—too often—people who claim to be concerned about governmental power, who themselves are guilty of its consolidation and abuse. So I think whether liberal or conservative it is very important. And regardless of ideology for all of us to think very seriously always and particularly in times of national crisis—real or imagined—about the degree to which we are prepared to surrender our liberties to achieve our security.

A few of us met last night over dinner and discussed this issue and I reminded people of a couple of chapters in *The Brothers Karamazov*. "The Grand Inquisitor" and the chapter proceeding it, in which this debate is carried on by "The Grand Inquisitor" about the degree to which people will sacrifice their freedom for bread and in Dostoevsky's notion bread can, I think, be transposed into security in early 21st century America. This is not to be too philosophical, but I think we are at a period in American history where we really do have to deal seriously with this decision on a daily basis. There is no single, simple answer, whether legislative or regulatory or partisan or whatever. It does require an informed electorate. It does require us who salute the flag of the Republic to take seriously the central theme of a republic and that is civic duty and citizen participation. I do believe, despite the cycles of abuse of power in times of crisis, that properly informed and properly engaged, the American people will reach the right conclusions.

Having said that, I must conclude by observing that it was less than a year ago that the Congress of the United States voted to give the incumbent president pretty much unilateral authority and arbitrary authority to suspend the writ of habeas corpus. Those of you who are lawyers, or those of you who have studied the law, know that there is no doctrine or ideal more central to the rule of law than the ideal of habeas corpus: that people cannot be in a democracy of rights, imprisoned without knowing why and without having access to the rule of law and the systems of law. But that is exactly in 2006 what the Congress of the United States has done. And the Great Writ is being abused even as we meet here today. So it does bring us back to that admonition of our founders to be vigilant. And if we are vigilant then we will correct the cycles of abuse when they occur.