

Historical Memory and the Rule of Law

J. Harvie Wilkinson III
Wednesday, October 25, 2017

It is a great privilege to be here today. I can think of no better place to honor the rule of law. Institutions such as the Virginia Holocaust Museum play a vital role in our society. They display the horrors of our past so that we may learn from them. Chief among those lessons is that the rule of law cannot stand alone. Historical memory is necessary to preserve that bedrock feature of any just society: a government of laws, not of men.

The story of Nazi Germany is the story of the rule of law trampled underfoot. As early as 1933, the Third Reich indoctrinated lawyers, dismissed Jewish judges, and demanded oaths of obedience from those jurists who remained. Dissatisfied with legacy Weimar courts, the Nazis created a separate judiciary to try political cases and packed it with party loyalists. Courts are supposed to be instruments of justice. The Nazis perverted them to instruments of discrimination and death. Germany's beholden courts sentenced thousands to execution, and they subjected countless more to sweeping anti-Semitic laws.

By November 1938, Hitler's regime had dropped all pretense that it followed any law but its own barbarous creed. Kristallnacht—the night of crystal—was named for the broken glass littering Germany's streets after state-sponsored thugs destroyed Jewish homes, businesses, and synagogues. Police rounded up some 30,000 men, not for any crime, but for their ancestry. What was left of the rule of law had been shattered. And from the pieces, the horrors of the Holocaust took shape.

Remembering these lawless acts reminds us that the rule of law, and the independent courts it depends upon, must always operate as a restraining force for the worst excesses of society. As Justice Robert Jackson put it in his opening statement at Nuremberg, some wrongs are "so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated." Due process, equal treatment, and free

speech are vital to the identification of such evils. But they are nothing more than paper promises without independent courts to enforce them.

Historical memory counsels constant vigilance in this matter. It helps us guard against any kind of smugness. For even the most enlightened countries have seen the rule of law disintegrate. The Weimar Republic arose in Germany as a reaction against the worst impulses of the First World War. The 1920s saw governmental reforms, scientific advancements, philosophical debates, and artistic creativity thrive there. But Hitler rose to power all the same.

The importance of historical memory has not lessened today. A rising tide of social alienation can still lead those who suffer to look for scapegoats, and to seize upon race or religion as criteria for persecution. A tableau of hatred has been on display in this freest of countries. It is impossible not to see the shoots of intimidation in mass gatherings across our great land. It is impossible not to hear the echoes of humanity's darkest hours. Free speech is our precious value, but our values are not—and must never be—the vehicles of violence. The question is will the center hold. In America it will, but only if law as an instrument of order and human dignity is observed.

The foremost embodiment of the rule of law is our own Constitution, which recognizes that religious faith is both the greatest source of good on our planet and also harbors the greatest potential for division. If one were to single out any act of genius in our Constitution, it might be the two religion clauses, which emphasize the importance of free religious exercise and the dangers of government establishing any single faith. The drafting of those clauses was an act of exquisite balance, and the strife in England between Catholics and Protestants made the Framers aware of its imperative.

But history also warns us that no nation is immune. We Americans know that all too well. The evil of slavery festered in the very same country that proclaimed every man was created equal. Of course Slavery and the Holocaust were not identical tragedies. Slavery lasted longer than the Third Reich. Nazi Germany attempted not just the subjugation of a people, but outright extermination of them. Each was its own inimitable horror, its own stain upon our planet's aspiration to call itself civilized. But remembering them helps us understand that our highest ideals cannot prevent atrocities without the rule of law. It is the great sentinel that guards our free society.

To repeat, the rule of law doesn't exist in a vacuum. It exists in the faith and deeds and aspirations of good people. Historical memory shows not only the evil of persecution, but also the ability of religious faith to rise above it. Great figures of faith—the prophet Isaiah, Jesus of Nazareth—imbue mankind with hope even in its darkest periods. Great works of art—Verdi's opera *Nabucco* comes to mind—immortalize faith's perseverance amidst despair. Though the Holocaust immeasurably scarred its victims, so many have resisted the bitterness that often accompanies tragedy. My friend Henry Abraham, a political science professor at the University of Virginia, fled Germany when he was a boy. He lost sixteen close family members to the concentration camps. And yet he has lived a life in America of exceptional accomplishment and unfailing generosity.

For Henry, historical memory is personal. But it is also personal for the rest of us. And it need not be moments in the grand sweep of history. I will never forget the kindness of Rabbi Jack Spiro and the entire congregation of Beth Ahabah, who took in members of my family's Episcopal church, St. James, after lightning started a fire that destroyed much of the church. The St. James congregation held Sunday services in the synagogue until the church could be repaired.

My family celebrated the Christmas season in a synagogue complete with the poinsettias that so often adorn that time of year. And every year since, members of those congregations have gathered for interfaith dialogue and reflection. Out of tragedy can come great hope.

Thomas Paine once wrote that, “as in absolute governments the King is law, so in free countries the law ought to be king.” In order to ensure that the reign of law continues, we must never forget the dark horror that was the Holocaust. Never. Might we one distant day hope to listen to each other with tenderness and gratitude. I thank you for your important work in that endeavor, and I thank you for the great honor of this award.