



Taking Issue

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Taking Issue

According to Peter Berkowitz and Benjamin Wittes ["The Professors and *Bush v. Gore*," *WQ*, Autumn '01], my "work dripped with disdain for the conservative majority" of the Supreme Court long before *Bush v. Gore*. This is simply not true.

In fact, a forthcoming book of mine goes out of its way to defend the Supreme Court's decisions in the area of campaign finance. In contrast to the harsh judgments of *Buckley v. Valeo* (1976) and its progeny that generally prevail in the academy, I defend the basic principles of the Court's jurisprudence. In contrast, I challenge the authors to point to a single essay or book of mine that engages in disdainful criticism of a major area of the Rehnquist Court's work.

I leave it to your readers to compare my essay in the *London Review of Books* with the Berkowitz/Wittes characterization of my arguments concerning the 2000 election. This can be done by searching www.lrb.co.uk. But it is harder to check on their broad-brush mischaracterizations, and so it seems appropriate to set this part of the record straight.

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Peter Berkowitz and Benjamin Wittes are certainly right to say that "scholars who assume the office of public intellectual must exercise a heightened degree of care and restraint in their public pronouncements." But they do not live up to their own standards.

As Berkowitz and Wittes well know, my little piece in the *Chronicle of Higher Education* was a response to the editors' somewhat whimsical request for a very brief essay on how historians in the far distant future would regard *Bush v. Gore*. I chose to accept the invitation with an obviously whimsical piece from an imaginary historian. The piece was not intended to reflect my own considered views on the subject. (Anyone who doubts the element of whimsy should consult the piece itself, with its multiple references to made-up

events in the first half of the 21st century.) By contrast, my comments on National Public Radio *did* reflect my own views, indeed, the same view that I have elaborated in my academic writing: On the one hand, the Court, with its decision on *Bush v. Gore*, might well have done the nation a big favor, and no one should accuse the justices of partisan motives. (In his strident book on *Bush v. Gore*, Alan Dershowitz sharply criticizes me for saying this.) On the other hand, the Court's reasoning was embarrassingly weak as a matter of law, and for this reason it has serious problems from the standpoint of legitimacy.

Berkowitz and Wittes take the hilarious step of juxtaposing my comments on NPR with my science-fictional piece in the *Chronicle*, thus manufacturing a conflict between "two seemingly irreconcilable views" and lumping me together with scholars making "flamboyant assertions supported only by their authority." Berkowitz and Wittes are certainly entitled to defend *Bush v. Gore* against its critics. But they should be more careful about converting disagreements on the merits into attacks on the good faith of their fellow citizens. They should exercise a heightened degree of care in their public pronouncements.

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Teaching History

Wilfred M. McClay has written a perceptive and poignant essay ["History for a Democracy," *WQ*, Autumn '01] advocating a long-needed great awakening for the place of history in American life. Endorsing his plea, I add a few words.

When Lincoln said we must "disenthral ourselves," it was from the "dogmas" of the past and not from the past itself, for in the same speech he declared, "We cannot escape history." Similarly, John Adams stated that we must "disabuse" ourselves of the past. "The dogma of Aristotle is the most unphilosophical of the world, the most inhuman and cruel. Until this wicked position, which is worse than the slavery of the ancient republics, or