

# PERSPECTIVES

## Obama's view of Court unconstitutional A plea for Obama



ZACH BENNETT

At last week's presidential debate, Sen. Barack Obama explained that he "will look for those judges who have an outstanding judicial record, who have the intellect, and who hopefully have a sense of what real world folks are going through," in selecting Supreme Court nominees.

No one would question the first two qualifications. The third, while seemingly benign, is more dubious upon further examination. The rest of his answer sheds more light on this qualification.

He explained, "I think it's important to understand that if a woman is out there trying to raise a family, trying to support a family and is being treated unfairly, then the court has to step up if nobody else will."

While Sen. Obama is right to demand redress for such a woman, he is wrong to suggest that providing it is the province of the Supreme Court. In our democratic republic, the Supreme Court is not a vehicle for social change. Rather, Alexander Hamilton noted in Federalist No. 78, the role of the Supreme Court is to "secure a steady, upright, and impartial administration of the laws." These roles, contrary to what Sen. Obama may think, are mutually exclusive.

though often not in practice, these laws would apply equally and uniformly to all persons. As a result, persons, cognizant of the law, could order their lives without fearing arbitrary coercion from government. Should they find themselves in court, they could expect that their disputes would be resolved on the basis of the law and not on their identity.

To the extent that he wants the Court to "stand up" for "real world folks" who have been treated unfairly, Sen. Obama would inhibit the impartial application of the law Americans have come to expect.

Imagine a scenario in which a "real world" person is being treated legally but "unfairly" by a "non-real world" person, whatever that means. If such a case came before the Supreme Court, would Sen. Obama want it to impartially uphold the law and thereby fail to "stand up" for the "real world" person? Or, would he advise the Court to dispense with impartiality in favor of its social mission?

Sen. Obama arrives at this dilemma by misunderstanding the democratic nature of our regime. The people, inasmuch as their elected representatives in the legislature have the power to establish law, are empowered to define "fairness" in keeping with the Constitution. Given this, the judiciary will necessarily uphold fairness so long as it impartially interprets the law.

Then, contrary to Sen. Obama's vision, a judge ought to take care to prevent his "sense of what real world folks are going through" from obscuring the meaning of the law. In rendering the judiciary a vehicle for social change, Sen. Obama arrogates legislative power to unelected judges and thereby confers on them the sort of arbitrary power (to define "fairness," for example) the founders sought to minimize.

Of course, laws are imperfect and sometimes fail to ensure fairness. And, of course, such laws ought to be changed. Sen. Obama's temptation to have judges affect this change when faced with unfairness is understandable. But, the rule of law and democracy are too precious to be sacrificed at the altar of change.

*Zach Bennet '11 is a political science major from Lancaster, Pa. Contact him at zabennett@davidson.edu.*

SUNNY LEE

Guest Writer

Let's cut to the chase. I'm an Obaman, and I hope you are too. But if you're one of those rare and prized undecided voters, there's a reason I think you should swing our way. It's not that McCain is basically a wrinklier Bush, or even his much criticized choice of the increasingly hapless Palin. I won't waste your time spelling out his errors in policy either - that's what the media's for, there's little about it that isn't out in the open already, and frankly it's boring as hell. My angle's a little different.

Consider this. Two centuries ago it was impossible for blacks to be considered equal. A century ago it was impossible for women to vote. Fifty years ago it was impossible for a dedicated mass of the powerless and disillusioned to make an enduring difference. And no less than a year ago it was simply, manifestly and irrefutably impossible for an upstart young black senator from Illinois to be considered a serious contender in the presidential elections. Yet here we are, engaged now in what may possibly be the single most historically significant—and theoretically the most implausible election this country has ever seen.

Something happened. But what was it? The answer is much easier than you might think. The simple fact of the matter is that Obama exudes charisma like Matthew McConaughey oozes clumsy sexuality. And contrary to what the conservative element presumes, this is far from a bad thing.

What is the main purpose of a leader? It isn't to control, despite Bush's best efforts. Considering how little practical influence the President has on the legislative matters, it isn't even to direct national policy. It is, interestingly enough, to lead - to inspire his or her people to achieve, to give them the courage to act as a nation. Yes, there are mundane sides to leadership—papers to be signed and babies to be kissed—but the main and possibly greatest aspect of leadership is being a symbol of the country.

So why does the GOP seem to think that the fact that Obama is so likable implies an incapability to lead? Obama may indeed be more style than "presidential experience," as some love to parrot—but isn't it ironic that in such little time his "empty rhetoric" has already achieved so much where McCain has achieved so little? Politics has always been about show business, and Obama is good at it. It's true that McCain has incomparable leadership experience in the military—but we don't need a Bismarck. The effectiveness of cowboy diplomacy is fading fast and if we are to maintain our position within the global community we will need a diplomat. The international community has already fallen in love with Obama; his nomination alone garnered us more good will overseas than the last 4 years of failed diplomacy—a very real result from an allegedly unreal candidate.

The conservative element in America has long been the party of detractors, the voice of discouragement that has irresponsibly wielded fear—whether of foreigners, poverty or just simple change—as their primary political weapon. They are so accustomed to dealing in impossibilities that they are seemingly unable to understand a campaign that doesn't seem to mention any. Is it any surprise that their methods stand in such stark contrast with Obama's message, of hope?

It's true, hope is a very vague thing, and it is my sincerest wish that Obama does not betray it should he win - but its effects on the American people and the world at large have been undeniable so far. So why do Republicans insist on dismissing Obama as a misguided dream? Because lobbyists don't pay in hope? Because it doesn't translate well into statistics? No. According to conservatives, Obama is an impossible pipe-dream because politicians (except the conservative ones) are all tricksters and liars.

No way? It's not news that all presidential candidates equivocate, but so far only one of these two has proved to be any good at it. McCain's campaign is composed of just as much glitz and ambiguity as Obama's; he's just so much worse that it's almost embarrassing to talk about. Seriously, if I can't trust him to not suck at something as simple as not appearing like a confused, disoriented liar to Americans, how can I trust him with not appearing like a confused, disoriented liar as the representative of our nation?

The conservative element has always been the persistent voice of doubt content with dictating who can't and who shouldn't, and McCain is no different. Rather than focusing on the future, he chooses to waste time on irrelevant issues of the past like Bill Ayers. If he has his way, the question determining the outcome of this election will be "what is it that we fear the most?" But come November, I invite you to ask yourself this instead: Will this nation's future be defined by the impossibilities that shackle us, or the ones we choose to defy? Sleep on it.

*Sunny Lee '11 is undeclared. He is from New York, N.Y. Contact him at sulee@davidson.edu.*

### In rendering the judiciary a vehicle for social change, Sen. Obama arrogates legislative power to unelected judges.

After declaring independence from the tyranny of Great Britain, America's founders aimed to minimize arbitrary power in the new regime. Pursuant to this, the founders founded government not in the will of its rulers but in the rule of law. As John Adams noted in Massachusetts' Constitution, the goal was to be "a government of laws and not of men."

Limited by a constitution, the people, through their representatives, would pass the laws to order society. In theory,

## Education is answer to homophobia

WILLIAM ROBERT

Guest Writer

I applaud the recent publication of Ashley Semble's article, "Homophobia is elephant on campus." This elephant has been on campus for quite a long time. I appreciate calling attention to what she sees as a double standard regarding racial and sexual slurs and the related but different behaviors that motivate them.

I write in response to this divide that she highlights succinctly in suggesting, however dissonantly, that "gay is new black."

Gay can never be the new black.

Sexuality, especially homosexuality, is tricky. It cuts across—and cuts through—distinctions between private and public, between secrecy and disclosure, in a way that race or ethnicity does not.

Unlike race or ethnicity, sexuality is not (always) visibly discernible, at a distance or up close. My race or ethnicity is not something that I can hide. But my sexuality is. It can be hidden, dissimulated, disavowed; it can go unclaimed or acknowledged; it can remain underground, shared only within a small, closed circle of family and friends. In this way, I could be gay privately and not publicly. (One cannot do the same thing about race or ethnicity, which remains unavoidably public.)

This straddling of the private and public is, in part, what makes words like "faggot" (which remains, at least to me, a derogatory term) their currency. Sexuality is always, to some extent, an individual matter, since unlike race or ethnicity, sexuality—especially homosexuality, bisexuality, or any other sexuality—must be discerned, by an individual, through a series of processes that include inquiry, introspection, recognition, identification and perhaps profession. Even if I am gay, I must acknowledge and accept this identity. If I don't do so publicly, then no one can "prove" that I am. On the other hand, no one can "prove" that I am not.

So, for example, if A maliciously calls B a "faggot" as a racial slur, all that B can finally do is deny the attribution.

Why would A call B a "faggot" in the first place? One possibility might be, in a masculine context, to emasculate B. Emasculation involves a de facto feminization, which increases sexism—latent, perhaps, but still alive. In other words, to use "faggot" as an insult emasculates and feminizes in a single stroke. But it does so only by depending upon the present gender binary that privileges masculinity over femininity. Though this binary usually remains subterranean, it has not disappeared but continues to linger.

Why would (as Ms. Semble effectively describes) the

college generate so much hoopla around a race-related or ethnicity-related incident but not around a sexuality-related incident? Why don't students receive "tsk tsk" emails every time that a man is hatefully called a "faggot" or that a woman is hatefully called a "bitch"—or worse? That the "c-word" is referred to as such, paralleling the "n-word" and the "k-word," at least implicitly identifies these terms as related forms of hate speech.

Of course, the "f-word" is not "faggot," perhaps because "faggot" is not or not yet hateful enough to be silenced in the same way. However, it is hateful enough to do lasting damage and to generate destructive and self-destructive actions, as at least one incident in Davidson's own history makes clear. I mention gendered hate speech because sexism and homophobia seem intimately related. Both remain rooted in the powerful cultural privilege still accorded to masculine, heterosexual normativity.

Ms. Semble's aim, it seems, is to point out the elephant of sexuality to Davidson students, faculty, staff and administrators. Building on her effort, I would point out that this elephant has more than one side and more than one part. Along these lines, I recall the fable of the blind persons who make incorrect deductions about an elephant based on insufficient information. The college, particularly its administration, must carefully and thoroughly examine the entire elephant—after recognizing that the elephant is there. The first step is admitting that there is a problem.

As Ms. Semble rightly notes, "there's no miracle cure for prejudice." Indeed, there might be no cure, no vaccine, to stave off prejudice. But education comes closest and is the most successful way to minimize its symptoms, even into a kind of remission. The Davidson community should therefore take this remission as one of its educational goals, as one of its ethical aims.

Educating its community about sexuality and all that it can engender—ignorance, misunderstanding, prejudice, hate, violence—should become an administrative mandate. Sexuality should become part of Davidson's educational language, such that this language and its use make it impossible to ignore the elephant of sexuality.

I write this, appropriately, on National Coming Out Day, a day devoted to education, to active, vibrant, vital intersections of sexuality, language, profession, acceptance—and love. It has not been and is not easy to be gay at Davidson. But it ought to be easier at Davidson than almost anywhere else.

*William Robert '96 is a Humanities Postdoctoral Faculty Fellow at Syracuse University's Department of Religion. Contact him at wrobert@syr.edu.*