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Rowan: Response to Comments

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The comment was made that my talk was journalistic. That was not by accident. I did not come here pretending to be professorial. In fact, I left Washington with the revolutionary notion that, even on a college campus, people can tolerate a little plain talk.

The comment was made that I lack a precise grasp of the Constitution. I plead guilty. Nobody has a precise grasp of the Constitution. If they did, we would not have so many five-to-four Supreme Court decisions.

With regard to affirmative action, I do not sit around trying to figure out whether what the Supreme Court has held is in line with a principle of equality. I look at what it has held as a principle of justice. The Court's position is that if an institution has discriminated over a period of time and has thereby done grave injustice to great numbers and groups of people, including blacks and women, under the Constitution, it may try to solve that problem with a race-conscious remedy.[1] But one cannot practice racism for 200 years and then claim, "This is racism in reverse," when somebody tries to redress a long series of wrongs.

Tonight, I have also talked about Judge Bork, and with a purpose. I believe it would be a terrible mistake for anybody to talk to you about this Constitution as though we are doing nothing but looking at the dusty pages of history books and talking about a dry old piece of parchment.

In light of the Bork nomination we must consider *Roe v. Wade*[2] as hanging on the thread of a five-to-four vote, and discuss what the outcome of a reconsideration of that decision could be with Bork on the Supreme Court. We must discuss what could happen to the *Miranda v. Arizona*[3] ruling if Bork's nomination is approved by the Senate. These are the issues of our time. Any celebration of the Constitution is a farce if you are too timid to talk about them.

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1. *See, e.g.*, Johnson v. Transportation Agency, Santa Clara County, 107 S. Ct. 1442 (1987) (holding county agency could take female employee's gender into account and promote her over male employee with higher test score); United States v. Paradise, 107 S. Ct. 1053 (1987) (approving Alabama state trooper promotion requirement favoring blacks).

2. 410 U.S. 113 (1973).

3. 384 U.S. 436 (1966).