

and the principles that they would bring to that process of decision-making.

I don't, with respect, think that Judge Thomas was willing to do that on that issue in particular.

Senator GRASSLEY. Well, I am done questioning, but from a practical standpoint, if every Senator with a pet project or pet political issue or pet constitutional issue we have would expect a litmus test-type approach from everybody who came before us, we would never confirm anybody to the Supreme Court.

Ms. LAW. Senator Grassley, with respect, I don't think basic commitment to racial equality, to gender equality, to core notions of privacy and autonomy are pet projects. You know, they are—the Constitution has—

Senator GRASSLEY. Well, I think—

Ms. LAW [continuing]. Free speech would be another. The Constitution has a substantive value because it has been given content by Justices over the last 200 years. And it is legitimate to be concerned about that content.

Senator GRASSLEY. Well, with the exception of one or two of the issues you just mentioned, he has already spoken to those before this hearing, in support of his view, and would agree in the same general approach you did of those being very basic and I would too. But I am still saying—whether it is a 200-year history or something as recent as 10 years—if every Senator took that view, we would never confirm anybody.

I am done.

The CHAIRMAN. Thank you very much.

Senator Simon.

Senator SIMON. Just very briefly, and I want to thank all three witnesses. I will just comment on a point that Professor Grey made that I think is extremely important.

In connection with the Washington Post editorial, and the idea that we should not consider ideology or philosophy, whoever wrote that editorial was a major in journalism and not history. It is interesting. It is used by both sides. When you have a liberal President, the liberals say, oh, you can't look at ideology. When you have a conservative President, it goes the other way.

But historically, from George Washington's first term on his nominee for Chief Justice, from that point forward it has always been a consideration. It was assumed by the Constitutional Convention that it would be a consideration. Up until the next to the last day of the Constitutional Convention, the Senate was naming the Supreme Court, not the President of the United States. We go through this phrase "advice and consent." We have forgotten totally about the "advice" part of it. And some people want us simply to rubber stamp the nominee. That should not be what we do. I think your point is well taken, and I appreciate the testimony of all three witnesses.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Professor Grey, you refer to the documents which have been submitted on September 5 signed by a number of professors, including

you, and I note there is a comment on page 4, the heading of section No. 2, "Judge Thomas endorses a natural law right to life from conception." My question is: Where does the reference come from that he views that from conception?

Mr. GREY. That is what is implicit in his endorsement of the Lehrman article, his picking up the Lehrman article and saying it was a splendid application of natural law.

Senator SPECTER. So it comes from what Lewis Lehrman said—

Mr. GREY. That is right.

Senator SPECTER. Is there anything more that you know about to your contention about Judge Thomas endorsing the Lehrman article besides that one line in his speech?

Mr. GREY. No, but I think that is a very significant line, Senator. I think he said—he did not say Lewis Lehrman is a great benefactor of the conservative cause. He said—Lewis Lehrman is a nice man. We all respect him. He said, "This is a splendid example of applying natural law theory," and he referred to it in his article about the right to life, his argument about the right to life. So he wasn't referring to the abstract fact that he endorsed natural law, but to the fact that he had applied natural law to the right to life.

Senator SPECTER. Well, that sentence says, "But Heritage trustee Lewis Lehrman's recent essay in *The American Spectator* on 'The Declaration of Independence and the Meaning of the Right to Life' is a splendid example of applying natural law."

Mr. GREY. Right.

Senator SPECTER. That is the sole basis for the contention that Judge Thomas endorses life beginning at conception?

Mr. GREY. Yes, it is. It is the only clear statement that he has made on that. He has had some other hints, but that was the only clear statement, I thought.

Senator SPECTER. You say there are other hints?

Mr. GREY. Yes. His—

Senator SPECTER. What hints?

Mr. GREY. Well, the reference in the Harvard article on the privileges and immunities clause to *Roe v. Wade* as the decision that conservatives are most concerned with. Now, that doesn't go nearly this far. That simply suggests—

Senator SPECTER. That doesn't say anything about—

Mr. GREY. From the moment of conception—

Senator SPECTER [continuing]. Conception or about natural law.

Mr. GREY. Oh, yes, it does, because the whole thrust of the article thereafter is to say that if we apply natural law in constitutional reasoning we can get past these problems.

Senator SPECTER. He has written quite a lot on natural law, but it has been largely in the context of the Declaration of Independence as a source for eliminating slavery or as a source for the decision in *Brown v. Board of Education*. There is a reference to natural law as it relates to economics. But is there any reference anywhere—Professor Law, you also in your statement refer extensively, in criticism of Judge Thomas, to the right—to the abortion issue. Is there anything else in any of his other writings which supports your conclusion that he would rely on natural law to deal with the abortion question?