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## Barbara Jordan: Constitutional Conscience

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## BARBARA JORDAN: CONSTITUTIONAL CONSCIENCE

Philip C. Bobbitt\*

Many of us learned for the first time in the press accounts following Barbara Jordan's death that she carried with her a small pocket copy of the U.S. Constitution. From some apparently early point, and then throughout her life, this small paper pamphlet was always with her. What was unreported was the fact that within this copy of the Constitution, there was folded a slip of paper on which was written a quotation from Albert Einstein. I do not believe this quotation is written in Barbara Jordan's hand; but it has clearly lain within her copy of the Constitution for some time. On that piece of paper is written:

The only thing which the individual can do is to give a fine example and to have the courage seriously to stand up for ethical convictions in the company of cynics.

The United States Constitution is not complete in and of itself, but leaves a space for—indeed compels—the use of conscience in deciding the issues that it structures for our decision-making. No truly difficult issue can be decided in every way, as the nihilists sometimes claim; nor can it be decided in only one way, as the positivists allege. Difficult issues are difficult because they can be decided in more than one way, but not in just any way: the few ways in which constitutional arguments may be made each draw on deep cultural and historical resources within us and, doing so, they pull us in their different directions. We resort to conscience to decide these choices.

For some years since she electrified the nation with her unforgettable presence at the Watergate Hearings, Barbara Jordan was a kind of *constitutional conscience* for this country. Unflinchingly, often boldly,

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Barbara Jordan spoke for that decisive voice that resolves constitutional questions on a moral and spiritual plane. Her words entwined the sometimes discordant themes of our law and our culture in a way that gave reality to our constitutional commitments. When she spoke we heard the still, small voice of conscience—but that voice was not small and once engaged, it was never still.

What is the “conscience” in such an activity as constitutional decision-making? It is enfolded within our decision-making just as that small piece of paper was enfolded within Barbara Jordan’s pocket copy of the Constitution. The character of the deciding conscience is well described by the content of Einstein’s remark, because the conscience is not some sort of moral calculus but more a way of living that requires of us, over and over again, to make difficult decisions and to live in a certain way.

On countless questions that could have been resolved either way—whether the ethical lapses of talented, resourceful political appointees should be disqualifying; whether to deprive the American-born children of illegal immigrants of American citizenship, when to do otherwise is evidently so costly; whether it is permitted to resort to the deep and brilliant well of demagoguery in service of the noble ideal of defeating racism; whether the teacher ought to remove rigor from the classroom in order to make the willing and intelligent student more at ease; whether, in the face of daily suffering, one ought to undertake grueling physical choices that could so understandably have been perpetually postponed—in all of these “cases,” and in countless others, Barbara Jordan decided the matter on the basis of conscience. She gave us a fine example. She was a model of courage. She stood up for ethical convictions, without irony, without apology, in a society that is becoming increasingly characterized by a pervasive and soul-sapping cynicism.

A cynic is someone who knows a half-truth about the world: he knows that self interest is a surer guide to explaining behavior than any other. In a comfortable age such as ours, where human experience is hemmed in on all sides by the homogeneity and buffers of technology, there will always be persons who explain why our dreams of a better world must be unrealistic or they would have been realized long ago, or that our dreams are simply masks for a self-aggrandizement of which we may not be aware. There is indeed something comfortable about cynicism because it counsels us that the less we do for our fellow man the better—after all, our efforts are doomed to failure and in any case are probably actuated by low-minded motives. The cynic never risks looking ridiculous; he invests in irony rather than earnestness.

How can we expect our souls to thrive in an atmosphere so choked with pointlessness? Yet often there are persons just as worldly, but not world-weary, just as realistic—for what is less real than the illusion that

nothing changes or can be changed?—just as knowing as any cynic, and these persons find the courage to stand up for ethical convictions that strike the cynic as irrelevant. Such persons don't always win the argument. But we know when they stand up—as Barbara Jordan often did, though she was cruelly confined to a wheelchair for so many years. When such persons “stand” as they do, they give others the courage to stand with them. They allow a little space in our lives for the conscience to flourish when it would be otherwise crowded out by the insistent and false half-truths of expediency.

Perhaps it's best not to talk about this. It sounds preachy and, in any case, it's not words that describe the conscience but acts. All one can do is try to act rightly and set an example. The American Constitution, which can only function if the American people make it their responsibility, has a crucial place for such examples. In fact, I would say that without the resort to individual conscience, law itself is arid and will not long be able to call on our devotion.

To unfold that small, creased piece of paper at the heart of Barbara Jordan's Constitution is to unfold something that lies deep within the heart of every one of us, something on which Barbara Jordan called in her life and for which she will be honored thereafter. Her beautiful voice calls to us still, and if we are as true to our convictions as she was, we will always be able to respond to that call.