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### January 5, 2017: Why Law Matters, the presidential transition

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Title: Why Law Matters, the presidential transition

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1/5/2017—I just went to the AALS plenary session on the election of Donald Trump. The session was so one-sided, self-righteous and thoughtless that it made me weep. There is a lot to say, but let me just start out with this—Donald Trump got elected because of what law professors have been saying for 30 or 40 years. Erwin Chemerinsky, the Dean at UC Irvine, said early that Donald Trump does not believe in truth. Well, if that is the case, then Donald Trump should be teaching at a law school because almost every law professor teaches value skepticism and that there is no truth. Nietzsche said in effect that with the death of God, you would get fake news. Well, law professors are happy about the death of God and so they should expect fake news. Martha Minow, currently the Dean of Harvard Law School, actually said you are entitled to your own opinion but not to your own facts. Well, you're not entitled to your own opinion. Your opinion can be just as false about values as it can be false about any fact. Or, as Hilary Putnam put it, if you start by denying the truth of values, you will end up denying the truth of facts too. Martha Minow does not realize what a nihilist she is. Let me put this a different way. Is there a truth about human nature? This is usually called essentialism. Is there a truth about the universe? That is usually called foundationalism. In the fight about same-sex marriage, the progressive strategy was to assert that there is no human nature. Therefore, when the Catholic Church, for example, says that gay marriage is unnatural, the Church is wrong by definition. But that was not a satisfying defense of gay marriage. It was a stance of skepticism about truth. A satisfying defense of gay marriage is to assert, and try to show, that gay marriage is consistent with human flourishing and is not unnatural. You have to say the Catholic Church is wrong. It's much easier to say there is no truth and therefore the Church's assertion is without proof. How does all this relate to Donald Trump? The only way it makes sense to talk to someone you don't agree with is on the assumption that both of you want the same thing and that you can reason your way to a right answer about something. If fundamentally you don't believe that, then everything is power. And we will not be able to talk to each other. One last thing. The session was supposed to have been about the rule of law. Donald Trump may very well not be a threat to the rule of law. After all, his party controls all the branches of government. Why should he do anything other than write a statute to get what he wants? The person who was a threat to the rule of law was President Obama, who wrote executive orders when he could not get his way with Congress. I don't blame him for doing that, but why should we now hypocritically claim that all we care about is the rule of law?