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Whitman H. Ridgway

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Foreword

A CONSTITUTIONAL BICENTENNIAL CELEBRATION

WHITMAN H. RIDGWAY*

The founding fathers created a remarkable system of government when they met in Philadelphia between May and September of 1787. Power and responsibility were divided between the executive, legislative, and judicial branches of government in a system of checks and balances. As James Madison observed in *The Federalist* No. 51:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.¹

It is remarkable that this system of government has adapted to the many changes that have swept over the Nation since 1787. The United States was then composed of thirteen states. The majority of the population lived east of the Appalachian Mountains and tilled the soil for its livelihood. The country felt secure from foreign intervention, isolated as it was from Europe by the broad Atlantic Ocean.

Today there are fifty states, the first forty-eight straddling the entire continent between the Atlantic and Pacific Oceans, joined in a union which many eighteenth-century political theorists thought would be ungovernable because of its sheer size. Many people have abandoned agriculture for other forms of employment, while the United States has passed through the industrial revolution and is now well settled in the post-industrial phase of economic development.

The successful adaptability of the Constitution throughout this period of economic and political development may be attributable

^{*} Associate Professor of History, University of Maryland College Park. A.B., Kenyon College, 1963; M.A., San Francisco State College, 1967; Ph.D., University of Pennsylvania, 1973; J.D., University of Maryland School of Law, 1985.

^{1.} THE FEDERALIST No. 51, at 158 (J. Madison) (R.P. Fairchild 2d ed. 1981).

to the tradition of the rule of law. The supremacy clause of article VI² made the Constitution, federal statutes, and treaties the supreme law of the land and bound the states to them. The Supreme Court, under the leadership of Chief Justice John Marshall, established itself as the ultimate arbiter of the Constitution.³ From the beginning of the Republic, then, the role of the judiciary was flexible and influential. While the Supreme Court may have little practical power to enforce its decisions, tradition and constitutional policy ensure that the mandate of law in American society is profound.⁴

The precise effect of any law, however, is always a question of its construction. Since its inception the proper interpretation of the Constitution has often been the subject of rancorous political debate. For example, George Washington's Cabinet was divided over Secretary of the Treasury Hamilton's reading of the implied powers of the Constitution to justify Hamilton's fiscal program. In the 1820s John C. Calhoun and other states rights defenders argued that the national government had usurped the traditional power of the states so that the whole federal system of government was out of balance. During the turbulent 1850s the nationalists and the sectionalists each claimed that the Constitution justified their positions.

Such debates continue today. During this bicentennial year some question the veneration lavished on the founding fathers and the product of the Philadelphia Convention. The post-Convention Republic may have been more democratic than other forms of eighteenth-century government, but several injustices existed then that would be intolerable in American society today. When the Constitution was adopted, there was no Bill of Rights to protect the citizen from governmental tyranny, the failure to mention women reflected their dependent status in that time, and most black Americans were slaves.

In an address in Maui, Hawaii, Justice Thurgood Marshall recently questioned the wisdom of the founding fathers who tolerated slavery. He asserted that the original Constitution did not survive the Civil War. Justice Marshall felt that the original document was

^{2.} U.S. Const. art. VI, § 2.

^{3.} Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

^{4.} This was demonstrated when President Dwight D. Eisenhower used federal authority to implement the desegregation of southern public schools in the face of state defiance of the Court's decision in Brown v. Board of Education, 347 U.S. 483 (1954), and more recently in United States v. Nixon, 418 U.S. 683 (1974), when the Court ordered President Richard M. Nixon to surrender the Watergate tapes to the Special Prosecutor.

deeply flawed and that the real significance of the Constitution has been its ability to adapt to changing conditions over time. As he concluded:

Thus, in this bicentennial year, we may not all participate in the festivities with flag-waving fervor. Some may more quietly commemorate the suffering, struggle, and sacrifice that has triumphed over much of what was wrong with the original document, and observe the anniversary with hopes not realized and promises not fulfilled. I plan to celebrate the bicentennial of the Constitution as a living document, including the Bill of Rights and the other amendments protecting individual freedoms and human rights.⁵

This symposium was originally presented as a series of lectures held on the campus of the University of Maryland College Park in July 1987 to celebrate the 200th anniversary of the adoption of the United States Constitution. The series was the product of a joint effort by the Summer Schools of three major land grant universities. Dr. Melvin Bernstein, Academic Dean of the Office of Summer Programs at the University of Maryland College Park, Dr. Jerome V. Reel, Vice-Provost and Dean for Undergraduate Studies at Clemson University, and Dr. Helen Warren, Associate Director of Summer Session at The Pennsylvania State University, decided to celebrate the bicentennial of the Constitution by inviting four prominent speakers to lecture at each campus. Also, each university organized its own set of debaters for the lectures.⁶

Many people contributed to the success of the University of Maryland College Park program. Dr. Melvin Bernstein sponsored the series and closely monitored its progress while his staff in the Office of Summer Programs facilitated its implementation at all stages. Dr. Whitman H. Ridgway, Associate Professor of History at the University of Maryland College Park, organized and managed the programs, and edited the papers for publication. The secretaries in the Department of History, especially Ms. Patti Linton, always responded with good cheer whenever a new request was added to their already full work schedule and did excellent work. Ms. Mary Beth Corrigan, a graduate student, helped to implement the programs and transcribed and edited the sessions for publication. The

^{5.} T. Marshall, Remarks at the Annual Seminar of the San Francisco Patent and Trademark Law Association in Maui, Hawaii 9 (May 6, 1987) (available at the *Maryland Law Review*).

^{6.} The lectures contained in this issue are the four programs presented at the University of Maryland College Park.

final editorial work was done by the editorial staff of the Maryland Law Review under the direction of Mr. Charlton Howard, Editor-in-Chief. Special thanks are due Professor Herman Belz, Department of History, University of Maryland College Park, and Professor Herman Schwartz, Washington School of Law, The American University, for their help in identifying potential participants for these programs.

The topics of this lecture-debate series highlight the relevance of the Constitution in contemporary American life. In much the same way that the Constitution was presented to the American people in 1787, each speaker discussed an important constitutional issue. The debaters, chosen for their knowledge and expertise in each of these areas, probed how the speaker's interpretation conformed or deviated from their own understanding of what the Constitution allows. Just as reasonable men differed on the wisdom of replacing the Articles of Confederation with the Constitution, reasonable people still differ in their views of these important contemporary issues. The opportunity for such open debate has been and continues to be the cornerstone of American constitutional democracy.