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Strom Thurmond

ARTICLES

THE BICENTENNIAL OF THE CONSTITUTION: A TIME FOR EDUCATION

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Within the past decade, Americans have seen several spectacular celebrations — the bicentennial of our Declaration of Independence and the unveiling of the refurbished Statue of Liberty. We are now approaching another celebration, one which will give full meaning to these earlier events.

On September 17, 1987,[1] we will celebrate the bicentennial of the United States Constitution, a document which I believe has provided the fiber that has held our republic together. It is my privilege to serve on the Commission on the Bicenten-

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* Senator Thurmond was originally elected to the United States Senate on November 2, 1954, as a write-in candidate (the first person in U.S. history elected to a major office in this manner) for a term ending January 3, 1961; he resigned as a U.S. Senator on April 4, 1956, to place the office in a primary pursuant to a promise made to the people of South Carolina during the 1954 campaign. He was renominated and reelected to the Senate in 1956, 1960, 1966, 1972, 1978, and 1984. His current term ends January 3, 1991. Senator Thurmond has served on the Judiciary Committee since 1967, serving as Chairman of the Committee from 1981 to 1987. Senator Thurmond has experience in state government, including service as a State Senator from 1933 to 1938, Circuit Judge of South Carolina from 1938 to 1946 and Governor of the State of South Carolina from 1947 to 1951.

1. The Constitutional Convention, which convened in Philadelphia, Pennsylvania, on May 25, 1787, debated the particulars of a national constitution for almost four months. Finally, on September 17, 1787, the final product was adopted, signed and engrossed. On September 28, 1787, the Constitution was submitted to the several states for ratification.

The Delaware Convention was the first to ratify on December 7, 1787. Pennsylvania followed on December 12; New Jersey, December 18; Georgia, January 2, 1788; Connecticut, January 9; Massachusetts, February 6; Maryland, April 28; South Carolina, May 23; and New Hampshire on June 21. These states met the requirement for approval by nine states. They were followed by Virginia on June 25, New York on July 26, North Carolina on November 21, 1789, and Rhode Island (which had not taken part in the Philadelphia Convention) on May 29, 1790. J. ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION (Washington, Taylor & Maury ed. 1861).

nial of the United States Constitution, and I am pleased that the Commission has targeted its resources and efforts toward encouraging and stimulating our citizens to educate or, in some cases, re-educate themselves on the history and importance of our Constitution.

It is my belief that in order for a democracy such as ours to survive, its citizens must possess a basic understanding of the fundamental laws and precepts upon which it was organized. This is not to say that each citizen must be a constitutional scholar. However, through our schools, our leaders, and whatever other means available, citizens need an appreciation of the major role the Constitution plays in our society; an appreciation which some might say is missing.

Under our Constitution, the United States functions as a federal, democratic republic, an indivisible union of fifty sovereign states. The government is "democratic" because the people govern themselves; "representative" because the people choose elected delegates by free ballot; and "republican" because the government derives its power from the will of the people.

Today, the United States is even more of a participatory democracy than was originally envisioned by the Founders when they established a government "of the people, by the people, and for the people."[2] Together with the constitutional responsibilities which go hand-in-hand with citizenship, such as the payment of taxes and military service, citizens are afforded a wide range of opportunities to influence the making of public policy by the government.

At the heart of our participatory democracy lies the right to vote.[3] The right to vote gives citizens an opportunity to

2. Address by President Abraham Lincoln at Gettysburg, Pennsylvania (1863).

3. It should be noted that the Constitution has been amended five times to remove restrictions on voting, thereby guaranteeing almost universal suffrage. The fourteenth amendment, ratified in 1868, directed Congress to reduce the number of representatives from any state that disfranchised adult male citizens for any reason other than the commission of a crime. The fifteenth amendment, ratified in 1870, prohibited the denial of the right to vote "on account of race, color or previous condition of servitude," while the nineteenth amendment in 1920 prohibited denial of that right "on account of sex." The twenty-fourth amendment, which went into effect in 1964, barred denial of the right to vote in any federal election "by reason of failure to pay any poll tax or other tax." Finally, in 1971, the twenty-sixth amendment lowered the voting age to 18 in federal, state and local elections.

participate in the selection of individuals who will ultimately be charged with the responsibility of determining public policy. Beyond the casting of a ballot, citizens may actively participate in the nomination and election of preferred candidates through volunteer activities and campaign donations. It is my belief that the participation of citizens in the electoral process greatly contributes to the government. Yet today we see that an alarmingly low percentage of Americans participate in this constitutional design by exercising their right to vote — to have a voice in the future course of the Nation.

It is my belief that better education about the Constitution will give our citizens a greater understanding of, and appreciation for, the importance of their participation in the system created by that great document. Improved constitutional education will also result in a new awareness by Americans of the major role that the Constitution continues to play in their day-to-day lives.

I am fortunate, as a member of the Senate Judiciary Committee, to work with the Constitution almost daily. I am sure that many citizens occasionally read or hear about the Constitution. However, I believe that all Americans would benefit by looking at the actual text of the Constitution, and I am pleased that the Bicentennial Commission and others are making the text of the document available on a grand scale.

Upon the first reading of the Constitution, several principles become readily apparent. The Constitution is a document meant to grant limited powers to a national or federal government. In the language of the Constitution, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[4] This doctrine of "federalism" is one of the most basic tenets of our Constitution. By allowing the states sufficient sovereignty to govern, we are able to better secure our ultimate goal of political liberty through decentralized government.

A reading of the Constitution also dispels a number of misconceptions held by many Americans. For example, as

4. U.S. CONST. amend. X.

the Chief Justice of the United States, William H. Rehnquist, has noted, the United States Constitution simply

> "can [not] fairly be described as a charter which guarantees rights to individuals against the government . . . . The United States Constitution is a charter ratified by the thirteen original colonies which establishes a limited national government and gives to that government certain powers. As such, it is certainly not a 'guarantee' of individual liberty."[5]

The "Bill of Rights," which is the term commonly applied to the first ten amendments to the United States Constitution, ensures that these individual rights, which exist outside of the Constitution, are not encroached upon by the federal government.

Many of the major debates of today surrounding the governing of our country center on constitutional issues. Recent Supreme Court decisions relating to abortion, separation of church and state, and freedom of speech are examples of how interpretation of the Constitution has made a major impact on our society. Each of these areas of constitutional law is a part of a larger debate centering on how the Constitution is to be interpreted. It is my belief, and the belief of many others, that in the last half century, the Constitution has increasingly been interpreted by activist judges who have imposed their own personal moral judgments on society through extremely expansive interpretations of the Constitution. These interpretations have not been based on the words of the Constitution, nor on the intent of those who drafted the document, nor could they possibly have been foreseen by those who voted for its ratification.

Recently, the Attorney General of the United States, Edwin Meese III, has publicly expressed his concern about judicial activism, which is the judicial exercise of ungranted power. Attorney General Meese noted:

> It is our belief that only "the sense in which the Constitution was accepted and ratified by the nation," and only the sense in which laws were drafted and passed, provide a solid foundation for adjudication. Any other standard suffers the defect of pouring new meaning into old words, thus creating

5. Remarks by Justice William H. Rehnquist, "Government by Cliche," *The Edna Nelson Lecture*, University of Missouri at Columbia (Mar. 7, 1980).

> new powers and new rights totally at odds with the logic of our Constitution and its commitments to rule of law.[6]

The Constitution was intended to be enduring in nature, created for future generations and not merely for the particular circumstances of the moment. The Framers did, however, provide for a process to keep the Constitution in step with the times.[7] Yet to the Framers the process had to be difficult, lest the Constitution be rendered too mutable. Therefore, the only legitimate means of constitutional change is the "solemn and authoritative act" of formal amendment. I believe it is of note that this process has been utilized only twenty-six times in almost two hundred years.[8]

Still there are those who would change the meaning of the Constitution through ordinary interpretation based on an instinct for what is fair, decent, and humane, regardless of constitutional text, original intention, or judicial precedent. For example, in *Roe v. Wade*[9] the Supreme Court ruled that a pregnant woman had a constitutional right to an abortion. Of course, neither abortion nor the "right to privacy" from which the Court found the abortion right to arise, are mentioned in the Constitution. In fact, the Court was not sure where the right was mentioned in the Constitution. Justice Blackmun, writing for the majority, located the right of privacy in the "Fourteenth Amendment's concept of personal liberty," or "in the Ninth Amendment's reservation of rights to the people."[10] Justice White, who vigorously dissented in the companion case, found nothing in the language or history of the Constitution to support the Court's judgment, and described the action by the majority as "an exercise of raw judicial power."[11]

To accept the "activist" role of the judiciary means to ordain the judiciary a super-legislature, one which makes the de-

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6. *See* Meese, *Toward a Jurisprudence of Original Intention,* 2 BENCHMARK 2, 10 (1986).

7. *See* U.S. CONST. art. V (sets forth the procedure for amending the Constitution).

8. I concur with the Framers, believing that amendment of our supreme law is a very serious endeavor. It is an action which should be reserved for those instances when it becomes necessary to protect the fundamental rights of our citizens or to ensure the survival or effectiveness of our system of government.

9. 410 U.S. 113 (1973).

10. *Id.* at 153.

11. Doe v. Bolton, 410 U.S. 179, 222 (1973) (White, J., dissenting).

cisions that Congress either cannot or will not make. Ultimately, this means that the only constraint remaining on constitutional interpretation will be the individual philosophies of nine people — the Supreme Court. The best argument against judicial activism comes from the Court itself. Speaking to his brethren who had decided the infamous *Dred Scott* decision, Justice Benjamin R. Curtis noted:

> Political reasons have not the requisite certainty to afford rules of juridical interpretation. They are different in different men. They are different in the same men at different times . . . . [W]e are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean.[12]

Debates such as this must be understood by our citizens. These debates are based upon principles that are not extremely complex. However, their resolution will have a major impact on our nation and all of our citizens.

Ours is a nation which has been blessed with an abundance of natural resources and a God-fearing people of unique character. The success of our nation is, in great part, the result of our having a written Constitution which allows for the greatest possible development of these immense natural and human resources within an ordered society.

I encourage all of our citizens, young and old, to read their Constitution and dedicate themselves anew to its great principles and purposes and to participate in the marvelous system of government which it established. Only by doing so will they truly appreciate why the Constitution is the greatest document ever penned by the mind of man for the governing of a people.

12. Scott v. Sandford, 60 U.S. (19 How.) 393, 620 (1857) (Curtis, J., dissenting).