

## NOW THAT THE BICENTENNIAL IS OVER. .

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I'm delighted to visit Oglethorpe. This is my first visit here, though Professor Knippenberg rightly recalls our meeting several years ago now. It was, in fact, squarely in the middle of years of Bicentennial celebration, which I emphasize because I think our country did a remarkably fine job of marking the Bicentennial of the Constitution in contrast with the events which surrounded the Bicentennial of the Declaration of Independence.

We celebrated the Declaration of Independence, which may or may not seem appropriate, particularly given the discussions currently taking place in Washington, D.C., where the role of the Declaration in our polity is very much in doubt in the minds of some high officials. So, perhaps, at least for them, it's not appropriate to celebrate it. But many of us, at the time, thought how much more wonderful it might be if, in addition to tall ships, which I happen to love the sight of, we nevertheless could have profound thoughts in company with such an august occasion. Thus, as the Bicentennial of the Constitution approached, we were determined to see to it that this time it would be a cerebation, and not just a celebration, and one of the consequences of that determination was the decade-long series of programs that the Liberty Fund sponsored, called *The Political Philosophy of the Founding Fathers*.

The Clemson program at which we met fell squarely in the middle of the series. The series itself was directed by Professor Eugene Miller from the University of Georgia at Athens and me. So, by January 1990, my friend Gene Miller and I had, in fact, personally directed and mounted 21 conferences between the years 1982 and 1990 devoted to the Bicentennial of the United States' Constitution. The conference at Clemson was a 22<sup>nd</sup> conference among, in fact, very many others in which he and I separately participated over the span of those years. In addition, another good friend and close colleague of mine, a Dr. Jeffrey Wallin, happened to be well placed as the years approached the Bicentennial at the National Endowment on the Humanities and in a position to influence the drafting of legislation that created the United States Commission on the Bicentennial of the United States' Constitution.

So, we took that opportunity as well to influence the process sufficiently that most of the work of the commission has been devoted to cerebation, rather than merely celebration. I was just yesterday evening in Bainbridge, Georgia, where the DeKalb County Bicentennial Commission was holding its next-to-last Bicentennial commemoration throughout this long series and this, of course, is not the most central county in the United States. I suppose I offend no one by making that observation, but I make it in order to make a point. For it is precisely in such places all across the nation that conversations such as we held in Bainbridge, Georgia last night, have inspired for almost a decade now the reality that, from Alaska to Florida and points in between, people in communities small and large have, in fact, gathered to perform what I think was more than just a ritual. They have gotten together, actually to talk about the Constitution, not as an historical event, but as a living presence, almost, you might imagine, doing ourselves what we have sometimes in our most idealistic interpretations conceived the entire generation of Amer-

ica's founders to have done. That is, we somehow imagine this country of only 3 million in which all 3 million somehow were swept up in the wave of 18<sup>th</sup> century enthusiasm for new ways of life, new forms of government and new meaning for humanity.

Now, that is an exaggeration. It is certainly correct to say that there was somewhere, someone who did not pay a bit of attention to the Constitutional Convention, the radical debates, and that long process that produced our Constitution. On the other hand, we do have a remarkable record of the involvement of citizens throughout the country in 1787 through 1791 in reflecting on the meaning of the new departure in human governing that our constitution represented. We have the letters, we have more important things than the letters: we have their occasional contributions to the press, in which this debate was carried on.

You find, in some cases, even barely lettered contributions. I use the expression *barely lettered* as opposed to the expression *barely literate* because, when you read the essays of the people who were barely lettered, you discover that they were, nevertheless, remarkably literate, insofar as their familiarity with the terms of discourse, and the sources from which principles were drawn. They would quote authors, they would quote the Bible at great length, and they would participate, they would engage in the debate. This phenomenon was so pervasive throughout the country, that we, in fact, may be granted title to imagine that everyone was swept up in this wave of enthusiasm.

Thus, we wish to imagine our Bicentennial celebration to recreate a sense of responsibility to the work that had begun 200 years earlier and which continues in our time. Perhaps the most inspiring aspect of American constitutionalism is not to be discovered in the debates presently transpiring in Washington but, rather, the fact that each and every one of us, in some way is a founder.

I don't mean to make a trivial point with that observation. I am not a moral relativist and I'm not one of those who says that everyone has a philosophy or everyone has values and everybody's values are as good as anyone else's. I mean something a little more urgent and important than that when I observe that we are, each and every one of us, we Americans, founders. Namely, that the kind of government that was brought to be in the founding; of the United States places upon our shoulders the burden of constant judgment of the fundamental principles and not just the incidental performance of the government of the United States.

Sometimes it is difficult for us to remember that. We sometimes get lost in reflection on the incidental performance of government because the incidental performances go so directly to the lives we live immediately; they determine whether we receive the cost-of-living increases in our wages, or in our student aid packages. They determine very many questions which seem to us more or less urgent, depending upon our circumstances at the moment.

It is nevertheless true that the way in which those questions are resolved is in fact more important than the questions themselves. The way in which they are resolved is that which is revealed through the constitutional forms and principles which underlie those constitutional forms.

This is, if I remember correctly, and I haven't been committed to something I'm not aware of, my next-to-last Bicentennial lecture throughout this past decade. My last Bicentennial lecture will be given on 15<sup>th</sup> of December at the Huntington Library in San Marino, California. The 15<sup>th</sup> of December is the exact Bicentennial anniversary of the final approval of the Bill of Rights to the Constitution, so, I have been somewhat anachronistic in entitling these remarks "*After the Bicentennial*," as though I were already complete in the work that I undertook. I really won't be finished for a couple of months yet.

But, imagine, if you will, that I'd come to that point. Come to that moment where I have said the last word about the Bicentennial of the United States' Constitution. I emphasize that, by

the way, because by scheduling an evening lecture in California on the 15<sup>th</sup> of December, the odds are very good that I will give the last lecture of the evening on the Bicentennial of the Bill of Rights. So, I shall have the last word on the Bicentennial of the United States' Constitution and its Bill of Rights, but, after I will have taken that last word the question becomes, what then? If this is indeed a cerebation, and not a celebration, must we not expect it to issue in some conclusion, some judgments and resolves about American constitutionalism?

Well, at the first level, we can point to the obvious facts. Clearly, there have been new departures in scholarship that have been generated or inspired if not directly caused by the intensity of reflection on the Bicentennial. I predict that we shall see for several years to come the emergence of new perspectives on the American founding, which will have one characteristic above all, namely, they will incorporate us as participants in the founding discussions. For too long, in the history of the academy in the United States, American history has set off the founding period as an object to be regarded, but not as a continuing activity in which to become involved.

This is especially meaningful for people throughout the world who, today, witness what may become for the peoples of eastern Europe, an opportunity like unto that which we enjoyed in this country in 1787, or throughout that Revolutionary period. They do not know yet if eastern Europeans will proceed in the manner that we did, and with as dramatic results as we did in this country.

But we see over there, at least, a clear opportunity to unfold. In regarding what transpires we can also see the character of the duties imposed upon us as participants in a founding as opposed to observers of a founding. If these new departures in scholarship do indeed supervene, then it becomes possible for us to anticipate certain consequences. One of the things we know about American scholarship is that its relationship to American life is surely pronounced, if delayed.

We saw this, dramatically, a few years ago in Alan Bloom's discussions in *The Closing of the American Mind*, when he talks about how it is that certain principles came to have a dominating influence in American culture. He traced these principles back to the work of a handful of scholars who first set the tone in the academy but, thereafter, through the instruction of successive generations of students, created a broad social or cultural effect in this way.

I submit it will surely follow, after the Bicentennial, that if scholarship continues in the path it seems presently to be set in, we will begin to see the emergence in the country at large of a new sense of responsibility to our institutions, one that will carry our views beyond the incidental performances of institutions and representatives, including representatives on the Supreme Court. It will also be one in which our own judgment about the nature of the government will begin to play a much more significant role.

This is not to suggest that the new lines of scholarship will be without controversy, or will offer us a single view of the founding or a single view of our roles. There will be no less controversy, no less dispute over central points than there has been in the past. But, I suspect, what we're going to discover is a new respect for the role that we've come to play in settling those disputes.

Assuming, then, that these two things happen—scholarship continues to develop new lines of inquiry, the public comes broadly to be influenced by these new lines of inquiry—lines of inquiry, by the way, in order to make this very substantive and specific, which highlight a growing role for citizens, beyond that we ordinarily conceive of, in looking at the institutions of our political system. Let me give you one concrete example, which I think has already arisen, and more as a direct result of the fundamental reflections on the Constitution than of frustration with politics in this country: the growing interest in term limitations throughout the United States, I

submit, is in part generated by the close attention that has been given to constitutional principles in recent years? With the silence about fundamentals that existed hitherto, people were much more reluctant to tinker with something so dramatic as the question of how their legislature should be organized and whether the principles through which we carry out our elections ought to be reconsidered.

There was an inertial thrust to our political system that placed certain questions out of reach. The only question we could get systematic discussion of throughout the states, generally speaking, was the question whether to require majority vote on certain issues or two-thirds vote on certain issues and that was always hotly contested. People always talked about it as if the heavens would stand still if they made a change in that particular disposition of their constitutional life.

Suddenly, we see a greater openness to think about these things and I think it has been generated by these fundamental reflections. Part of the reason for this is because people have had occasion to rediscover that in the era of the founding term limitations as they applied to the states were part and parcel of the founding. The founders were able to draft a national constitution without term limitations and to implement it in the presence of state constitutions, all of which had term limitations at the founding. That is, in fact, an interesting historical development to bear in mind as we think about the larger questions that will come before us

The evolution of state constitutions without term limitations, which began somewhere after about 1830 and continued into this century, was primarily an evolution that was determined by the indirect influence of the federal Constitution. That is, our states became, generally speaking, as imitative of the federal Constitution as Latin American countries became imitative of the federal Constitution. They imitated blindly, you might say.

Without doing real fundamental reflection on the issues at stake, they've done the same thing in areas such as rights, subsequent to the Fourteenth Amendment when new constitutions were being adopted throughout the south, in particular, but elsewhere also. You find it Hawaii, in Illinois, and many other states. You find whole passages incorporated wholesale into these state constitutions, sometimes even going beyond the spare language of the federal Constitution, introducing safeguards with very little debate about their meaning.

They are taken over in an imitative fashion. It is an emulation of the accomplishment of the federal Constitution, but one can understand why that emulative spirit would have emerged. The success of the federal constitution in the first 50 years was so dramatic that, in fact, it determined all people's thinking about questions of constitutionality. So, we began this period of imitation. Well, what I'm saying now is that, because we have returned for a space to fundamental reflections on constitutionalism, we're able to see beyond mere imitations. We're able to think about the questions, the fundamental questions of government which allow us to make choices—allow us to make distinctions and term limitations is an example of that kind of distinction.

After the Bicentennial is over, we can expect to see more of such occurrences throughout our country, keeping step with the spreading influence of new lines of scholarly interpretation. What more can we expect after the Bicentennial, or what more ought we to charge ourselves to do in the aftermath of the Bicentennial? Well, I suppose it would occur to all of you, first and foremost, that we wouldn't want to lose that degree of attentiveness that we have thus far generated. That we might want, specifically, in the context of the university, to build in greater systematic encouragement of this kind of deep reflection.

One of the products that I produced through the Bicentennial began as a radio drama of the Constitutional Convention in 1787. It was produced in association with National Radio Theatre and several scholars from around the country. That radio drama played throughout this coun-

try and around the world in the Bicentennial year, 1987.

Subsequently to that, I took the drama itself into a second phase in which we produced a curriculum package aimed primarily at schools, high schools. That curriculum package is going to press at present and before we can even get the basic curriculum package printed and distributed, the publisher, who has agreed to undertake this venture, has insisted that we expand the project, that we do an edition for fifth grade, an edition for eighth grade, an edition for tenth grade, an edition for junior college, adult school, literacy programs, civic literacy programs, and, an edition for distribution abroad. That's one example, out of very many examples, of an attempt to build a return to 1787 systematically into school curricula.

The fact is, that prior to this Bicentennial, we had largely lost a sense of exactly how to fit the founding into American history. As you know, in most public schools, civics disappeared. It has begun to reemerge. There was a lawsuit in the state of Louisiana, a few years back, to enforce a provision written into the Louisiana constitution in 1947. The provision in Louisiana was that every high school student had to study the *Federalist Papers*. It was a dead letter from the moment it was written; it had not been enforced in 40 years, but in '87-'88 a lawsuit was brought in the context of all the Bicentennial excitement. The successful suit meant that Louisiana started a process of reintroducing the teaching of the *Federalist Papers*, of sending teachers to *Federalist Papers* institutes, and expanding from there to reinvigorating the teaching of civics.

Well, it would be, of course, something for an historian to reflect on—how we ever lost the central place of civics in our school curriculum to begin with. How is it our mind ever wandered off the track of inculcating fundamental attention to founding principles? I think the answer is relatively simple.

Clearly, we live in an age in which cultural relativism came to influence our thinking, meaning that we ceased to regard ourselves as special or unique. In fact, the whole idea that America was unique came under attack within the academy and one of the consequences of the attack on America as unique, one of the consequences of cultural relativism, was to undermine the authority of the argument that every student needs to learn about the founding.

Now, to be fair to those who attack civics courses, it is also true that they had declined into a mere formalism over the years. They ceased to be meaningful, intellectual experiences. They had become merely edifying, in fact, at their worst—for some people, this was their pinnacle—but, at their worst, they were nothing other than courses called “Communism vs. Democracy.” Remember that? They had been taken over by a mere temporary phenomenon at the expense of those permanent, deep-rooted questions to be found in the American founding and, so, what we are witnessing—happening silently without a great ballyhoo going on—is a rediscovery of the true basis of civics instruction, which is not memorizing the Preamble to the Constitution. It's fine to memorize the Preamble. In fact, I'll tell you a story about this.

I have a son who is now a freshman at a university. This was a long time ago. He had, early in his life, some slight degree of speech impediment and we sent him to a therapist in order to work on this problem. The therapist worked with him after school hours and in special hours. Along the way I asked the therapist to have him memorize *The Gettysburg Address* as part of his routine, because I've always been a believer in doing things from which you can learn, at the same time as you acquire mere techniques, mere skills. The therapist said, “Well, he's too young for that.” He was in the fourth grade at the time. “We can't do that, it's too difficult, it's not for his age.” I was rather shocked because I memorized *The Gettysburg Address* when I was in the fourth grade and it didn't present any great problems. I didn't imagine I had been scarred for life by the experience. So, we had to assign him the memorization of *The Gettysburg Address* at home, since we couldn't get his teacher to perform that essential task. He proceeded to do it, and I think this was of some help in getting him over the slight impediment that he had and leading him

ultimately on to a successful academic career.

Well, no one, of course, thinks about asking students to memorize things because of their content any longer and, therefore, no longer being inspired by content it becomes easy to dismiss the mere formalism of memorization. It has been critiqued as a tool of learning, even in foreign languages, the one place where it's evidently of some utility. But, when you reconnect content with procedure, then you gain new arguments for carrying on certain practices that are important in developing our understanding.

This is what is happening with civics instruction in the United States. We are rediscovering the need to have a genuine, thoughtful understanding of fundamental questions of what?—natural law and natural rights. How can I neglect to speak of them when you've heard so much about them? It is surely a wonder that it is a question of debate in the Senate of the United States whether the founding principles have any relationship to constitutional interpretation.

Now, that's the question—that's stating the question entirely, despite all the extra verbiage and all the rhetoric—the question is, do all the founding principles have any relationship to constitutional interpretation? You would think the question oxymoronic in any other environment. You say, "Well of course they do, how could they not?" Without them there is no constitutional interpretation in the first place—there is only politics and power—so, of course they must. And yet, you find highly educated people in positions of enormous power and authority for whom that is a question, though these were all people who were educated primarily prior to the era initiated by this Bicentennial celebration.

They were educated at the end of the period of the great decline of civics instruction of America, and you see the effects of that decline in the statements that they are now making about natural law and natural rights. Now, I don't mean to slur any of these important senators; I don't mean to call into question their good faith or their integrity, but I do mean what I say, seriously, that a good part of what's represented in the exchanges you're listening to is a fundamental ignorance which is a direct result of a decay that took place in American education.

After the Bicentennial, what we must look for most of all is to sustain the renewed emphasis on fundamental criticism so as to avoid a new season, a new generation of ignorance that will, on national television, call into question the relationship between the Declaration of Independence and the constitution.

This is no small matter. As we can see in the questions being debated, much of the future of this country hinges on the outcome of the American people being familiar with fundamental terms of discourse, being able to recur to them in such a fashion that they become foundations of judgment in critical moments. I spoke earlier of the incidental performances of government, the things that we usually focus upon. It is only when those processes break down that we usually discover we need something else to rely on, that we need something to inform us how to reconstruct it, how to pull them back together.

If we neglect to build sure foundations, what we discover in moments where incidental performances break down, is that we have nowhere else to go, nowhere to turn, nothing to stand on. We discover that it is in fact the case that the only reason we don't practice slavery in the United States is because it's written in the constitution and not because it's wrong.

If, the habits and processes of government suddenly break down, if the consensus breaks down and we're not sure anymore why we prohibited slavery and if, in circumstances it seems to someone that slavery might solve some particular problem, then suddenly you hold nothing to raise as an objection to that kind of expedient approach to political life. This is the danger to which we were subjected by the decline of general understanding among the American people of fundamental questions.

One more point, it is often wondered by people whether what we're asking for is accessible to ordinary humanity. They cite the apothegms of people who refer to the founding fathers at the Constitutional Convention as an assembly of demigods. They quote Lord Bryce, who described the Constitution itself as the "most wonderful work ever struck off by the mind of man," as an "extraordinary accomplishment," and therefore, beyond the reach of ordinary understanding, which then raises a legitimate question—do you, in fact, rely on ordinary citizens to ask the fundamental questions, are they capable of giving answers to those questions?

One of the things we have discovered in the course of the bicentennial is that the founding project—I no longer call it an experiment—the founding project was based on a single, fundamental premise, call it hypothesis if you will, namely, that all mankind is capable of self government.

The Declaration speaks of a right of consent, which is nothing other than the recognition that every human being is ultimately capable of self government sufficiently to be able to consent knowingly to forms of political life.

Now, that's a palpable, plain statement. There's no way to interpret our way around it; either it's true or it's false. If it's true, then we can propose fundamental questions to everyone—and ask them to make decisions. If it's false, our entire way of life is an illusion based on false premises. Perhaps the (Justice Thomas confirmation) hearings are successful thus far but, if so, the reasons for it we can't possibly fathom... a mere accident.

Those are the alternatives. Either we accept the character of life in the United States as a result of historical accident, saying nothing therefore about our ability to purvey it to a distant future, to posterity, or we reaffirm the founding commitment to the capacity of mankind for self government.

What I would like us to say after the Bicentennial is over is that 200 years of the application of this hypothesis is more than enough to conclude a successful experiment—that it is no longer an experiment—that it is proved true by the example of the United States that mankind is capable of self government and that, from now on, we do not stand in the posture of wondering whether mankind is capable of self government but, rather, wondering only whether Americans will continue to accept the burden of self government. For once we know it can be done, then it only remains to ask whether we're willing to do what we know we're capable of.

This affects us in so many ways I can scarcely begin to enumerate them for you. They affect the most ordinary policy discussions in areas such as social welfare for example. Our whole attitude to those questions is affected by what we think of this doctrine, that mankind is capable of self government. That would require a sea change. We would no longer talk about peoples elsewhere in the world not being ready for democracy. It may be that they do not make the decision for democracy. It may be that they aren't sufficiently inspired with the knowledge that we possess that they're capable of democracy, but to ask whether they're ready for democracy would no longer be a question for us. We would say all human beings are ready for it—the only question is whether they will accept it, and then we recognize that it is as much a question for us as for any other human beings.

It's posed to us every day, in every political proposal, in every policy opinion; that question is posed. Do we abandon the burden, the duty, the obligation of self government, or do we reaffirm it? That, to me, will be the most critical question to be posed after the Bicentennial.