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THE ENDURING CONSTITUTION: A BICENTENNIAL PERSPECTIVE

*Robert F. Drinan**

THE ENDURING CONSTITUTION: A BICENTENNIAL PERSPECTIVE. By *Jethro K. Lieberman*. St. Paul: West Publishing Company. 1987. Pp. xvii, 483. \$29.95.†

In 1976, the West Publishing Company, in order to celebrate its own one hundredth birthday and the nation's bicentennial, published *Milestones!: 200 Years of American Law*¹ by Jethro Lieberman. The book was a legal history of the United States based on eighteen events selected by a poll of American lawyers.

To celebrate the bicentennial of the Constitution, West Publishing Company again asked Mr. Lieberman to write a popular but solid book about the work of the fifty-five men at the Constitutional Convention in the summer of 1787 in Philadelphia. Mr. Lieberman, a graduate of Harvard Law School, and a successful journalist, as well as the author of *The Litigious Society*² (winner of the 1982 American Bar Association's Silver Gavel Award), has authored a very valuable book filled with little known historical facts about the two-hundred-year history of the U.S. Constitution. The book, entitled *The Enduring Constitution* is handsomely put together, and contains several truly splendid photos. The work is uncluttered by footnotes, although there are ample references and a bibliography.

By almost any norm, a reader has to conclude that Mr. Lieberman's book is a success. Its prose flows, and indeed is often captivating. "Sidebars" with photos and write-ups of the framers of the Constitution are universally interesting, and the book's nineteen chapters touch on every major issue confronted by the Supreme Court in almost two hundred years.

The downside of Mr. Lieberman's book is its "panegyric" tone. The author concedes this (p. 5), but exalts in the spirit of the bicentennial by seeking to "nurture a sophisticated reverence for the most suc-

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† This book was published simultaneously as THE ENDURING CONSTITUTION: AN EXPLORATION OF THE FIRST TWO HUNDRED YEARS. By *Jethro K. Lieberman*. New York: Harper & Row. 1987. Pp. xiv, 494. \$27.95. — Ed.

1. J. LIEBERMAN, *MILESTONES!: 200 YEARS OF AMERICAN LAW* (1976).

2. J. LIEBERMAN, *THE LITIGIOUS SOCIETY* (1981).

cessful charter of freedom the world has ever known" (p. 5). The author concedes that the five thousand words in the Constitution constitute one of the sources of American strength, but also notes that the freedom enjoyed by Americans may be the result of "our national character, and an open society" (p. 394).

Lawyers will find little new in this volume, but will happily discover here a remarkably good synthesis of the nature of the Constitution, and the 479 volumes of Supreme Court decisions explicating the Constitution. In the nature of things, the treatment of each issue has to be superficial. But the author, a skilled journalist who for many years was legal affairs editor of *Business Week*, has a talent for getting to the heart of issues, and explaining them in crisp prose. His fourteen pages on church and state (pp. 245-59), for example, focus on every major principle in that ever more tortuous area of constitutional law. The author does not suggest that he is undertaking a complete analysis of the tests employed by the Supreme Court to reconcile the establishment and the free exercise clauses of the first amendment. But Mr. Lieberman's straightforward prose gives coherence to a vast amount of material.

The author has, of course, attempted to synthesize in one book material adequate for several books — the story of the Constitutional Convention in 1787, the birth of the separation of powers, the struggles of the Supreme Court with slavery, and the post-Civil War amendments, along with the explosion of litigation in the last forty years over the guarantees of the Bill of Rights. It is all very readable — even for a person like this reviewer, who teaches Constitutional Law I and II. What is in short supply, of course — by design and not by default — is a serious attempt to analyze where the U.S. Constitution has been deficient. Mr. Lieberman is upbeat and glowing almost to a fault. He lauds the Constitution as a "marvelously intricate system, set into motion two centuries ago . . . capable of producing progressive and heartening change, even as it is always in danger of proceeding toward heartless change" (p. 395). Continuing the eulogy, he concludes his book with this flourish: "But it is the possibility of peaceful reform — toward more equal rights and more equal possibilities, toward more freedom from arbitrary, unknown law, for more people, rather than for fewer — that distinguishes the American system from all the others on the globe" (p. 395).

Good bicentennial rhetoric! But, again, Mr. Lieberman has an approach which is credible, plausible, interesting, and worthwhile.

The author of *The Enduring Constitution* makes it clear at every moment in his book that he is only summarizing or synthesizing the 353 books directly on the Constitution, listed in the New York Public Library. Similarly, he is just touching on the 150 articles directly on the Constitution published each year in legal periodicals. Mr. Lieber-

man has done it all well even though he tends to overstate his case when, for example, he proclaims: "Let the bicentennial nurture a sophisticated reverence for the most successful charter of freedom the world has ever known — and let the commemoration also fan the flames of disputation that have kept it that way" (p. 5).

This very worthwhile volume, splendidly illustrated, is a welcome reminder that the United States Constitution has helped to save Americans from the twin disasters of anarchy and tyranny. What more could anyone ask of a nation's legal institutions?