THE CONSTITUTION IN AMERICAN CULTURE FROM 1787 TO THE PRESENT

Michael Kammen

A debate of major importance began during the autumn of 1985 concerning the Constitution of the United States, and, with the bicentennial of the United States Constitution approaching in 1987, this debate shows signs of gaining strength and becoming livelier in the year ahead. The debate was initiated in July of 1985 by United States Attorney General Edwin Meese. He has argued in several speeches that there should be a return to federalism in the American system as the Founding Fathers intended. In another speech Meese has argued that constitutional interpretation in the United States has become too loose, and he pleaded for a return to what he called, "original intent," saying that it is possible for us to know the original intentions of the authors of the Constitution and that we should not go beyond those intentions in interpreting what the constitution permits or forbids today.

Very swiftly, a critical response attacked the Attorney General's speeches. One of those responses came from Associate Justice of the United States Supreme Court, William Brennan. Another, late in 1985, came from Associate Justice John Paul Stevens. Both men believe in the concept of a living constitution, the idea that the Constitution must be adapted to changing circumstances. In addition, since the Constitution was not written by a single person, but by a rather large committee, and because so many compromises were required in the writing of the Constitution, it is really impossible to say consistently that the authors of the Constitution intended a particular thing with respect to

a particular point. Although particular points that can be documented in a factual way—for example, how old you have to be in order to be president, or, how many years you have to be an American citizen in order to serve in Congress—do not really create interpretation problems, tough questions involving due process of law or the meaning of implied powers pose difficult issues of constitutional interpretation. It is precisely these kinds of issues that make it so difficult for us to conclude exactly what any single founder of the Constitution intended, never mind what the entire group intended. This is the essence of the dialogue between the Attorney General along with the Reagan Administration on the one side, and a number of associate justices of the court, constitutional lawyers, and many jurists, on the other.

Additions to this debate emerge almost weekly in the United States today. They appear in the popular press as well as in scholarly journals. In many ways, I am extremely glad that this debate has emerged because if it continues into our bicentennial year, it is likely to stimulate genuine interest in the Constitution in a way that pure celebration, or pure commemoration could not possibly do.

My interest and my emphasis is upon constitutionalism, rather than upon the United States Constitution itself as a document. Constitutionalism involves three points: the framework of values that the Constitution has provided for the American people, the whole matter of American perceptions and misperceptions of the Constitution, and the uses and abuses of the Constitution by politicians and by various other people throughout American history. Essentially, my concern is with what the Constitution has meant in American culture. I am going to try to cover four very broad topics. The first will sketch out some basic aspects of American attitudes toward the Constitution. It will address the question of American knowledge of the Constitution. The second topic will deal with the relationship between the United States Supreme Court as an institution on the one hand, and American constitutionalism on the other hand. The third topic that I want to discuss is the changing nature of Federalism, which is the very essence of our constitutional system of government. This is, of course, quite different from the Japanese system which does not have anything comparable to our level of state government below the level of national

government. The Japanese system does have local government but does not have states that existed and had sovereignty before the nation as a whole came into being. My fourth topic will return to questions dealing with American constitutional traditions, and what their implications may be for the future.

A very strange gap exists between American reverence for their Constitution, on the one hand, and American ignorance or indifference toward the Constitution, on the other hand. Throughout the almost 200 years of their life under the Constitution, Americans have not often criticized the Constitution. They usually discuss it accompanied by adjectives, such as sacred, wonderful, revered, and other such positive adjectives. In reality, however, politicians and educators throughout the nineteenth century complained, and public polls administered from the middle of the 1930s, when public polling began, have demonstrated, that Americans are woefully ignorant of the actual content of the U.S. Constitution as well as the particular ways in which the Bill of Rights protects their civil liberties. It is very interesting to compare the subsequent cultural impact of 1787, when the United States Constitution was written, with 1776, when the Declaration of Independence was drafted, upon American art. You will find many paintings, and a great deal of iconography that deals with 1776 and the signing of the Declaration of Independence. Yet you will find very little iconography or art that is related in any way to 1787 and the creation of our national government. I think that this contrast is one symptom of the neglect of the Constitution in American culture.

Another way of addressing the question of American perceptions of their Constitution is to examine the metaphors that Americans have used to describe and to discuss their Constitution. There have been quite a number of metaphors that have been used over the last 200 years. There are two, however, that particularly reveal the shift that occurred in the late nineteenth century in the way Americans view their Constitution. This shift involved a change in thinking from the notion of the United States Constitution as a machine, or a mechanism, to the notion of the United States Constitution as a growing, living organism. The Founding Fathers themselves were very impressed with what they knew of the work of Sir Isaac Newton, and they were very

impressed by the possibility of creating a science of politics. They believed that in creating a governmental system, if you got all the pieces right and if all the pieces fit together properly, you could construct a government that would function like a well-oiled machine. This piece of machinery would be extraordinarily reliable and perhaps would only need to have a check-up once every ten thousand miles or so. This gave rise to the use of this "mechanistic" metaphor for the first century after 1787.

By the late nineteenth century, however, criticism began to emerge from people who felt that American citizens were neglecting their responsibilities as citizens. Many were failing to vote or were neglecting to run for public office to the extent that they were capable of at various levels of the governmental system. In 1888, in the very middle of the centennial of our Constitution, James Russell Lowell, perhaps the most famous American poet of that time, gave a speech in New York City in which he criticized the American people for regarding the U.S. Constitution as a "machine that would go of itself." He criticized the American people for acting as though the Founding Fathers had created a perpetual motion machine that did not require any special input, any special involvement on the part of American citizens. This kind of criticism, which began to be heard during the 1880s and 1890s, was accompanied by the impact of Darwinian thought on American culture. Darwin's emphasis was upon evolution in nature and it had a direct transfer effect in terms of the way people began to think about politics. There was a shift that began to appear in the works of prominent political scientists who urged Americans to think about their constitutional system not as a machine but as an organism that had evolved, and would continue to evolve over time. A. Lawrence Lowell, who was then a professor of political science at Harvard University, urged this point in many essays and books. He subsequently became the President of Harvard University. Woodrow Wilson, when he was a professor of politics at Princeton University, urged this point of view and continued to do so during his political career. In his book *The New Freedom,* which is a collection of his campaign speeches when he ran for president in 1912, a central theme is that we must regard our Constitution not as a machine as Newton would have conceived it, but

rather as an organism as Darwin would have conceived it.

The dialogue that occurred during the late nineteenth century between the conservative advocates of a "mechanistic" notion and the progressive advocates of an "organismic" notion, provides the antecedents for the debate that is currently raging in the United States today between Attorney General Meese and Justices Brennan, John Paul Stevens, and others. Fundamentally, what Brennan and Stevens are arguing for is the notion of a living constitution that has to be, if not formally revised, at least adapted and interpreted to suit the changing circumstances of American life. Attorney General Meese is arguing for a more fixed notion: the idea that the founders carved in stone principles that are just as workable in 1987 as they were in 1787.

There are direct links between the positions taken in the late nineteenth century and the positions that are being taken today. There are also direct links between the positions being taken today and what we refer to as broad constructionism and strict constructionism; the two different forms of constitutional interpretation that emerged at the very beginning of the nineteenth century. People such as Alexander Hamilton and Chief Justice John Marshall would be the best known early advocates of broad construction or broad interpretation of the Constitution, and people like James Madison and Thomas Jefferson would be the best known advocates of strict or narrow construction.

I would now like to discuss one more aspect of American attitudes toward their Constitution which has also involved the major shift that occurred late in the nineteenth century. When the Constitution was written, and for more than two generations after it went into effect, Americans believed that their Constitution was unique. They believed that their Constitution was particularly well-suited to their national character. James Madison said this many times throughout his life up until his death in 1836. Daniel Webster made the point over and over again in public speeches during the 1820s, '30s, '40s, and '50s. The American Constitution is unique because it is a written document rather than an unwritten constitution. A comparison was constantly being made with the British system. Americans had some awareness of other constitutional systems, but the one that they knew best was the British system, and they liked to insist that America had a written,

rather than an unwritten constitution. The United States Constitution, with its original ten amendments, is less than 6,000 words long and serves as a form of higher law against which all other forms of law have to be measured or tested. By comparison, the British constitution consists of everything from Magna Carta to the Petition of Right, the British Bill of Rights, as well as British common law, statutes passed by Parliament, and an array of other legal codes and actions taken by various British courts. This view that the American Constitution is unique and that it is in stark contrast to the British system was dominant for about a century.

This idea began to change late in the nineteenth century. In part it began to change because, by the time of our centennial, we also had laws passed by the United States Congress, by the American states, Federal common law, state common law, and numerous volumes of the so-called "United States reports," which were the collected, printed opinions of the United States Supreme Court, as well as various commentaries upon the Constitution, and codifications of American law. In order for one to understand the constitutional system, in order for one to be an effective judge or a successful lawyer, one had to know this entire system and the way it had evolved. Consequently, simply by virtue of historical evolution, our constitutional system had become much more similar to the British constitutional system.

Explicit recognition of that reality began to develop immediately after 1878 when William Gladstone, who was then out of power as Prime Minister of Great Britain, published a speech in the *North American Review* called "Kin Beyond Sea," in which he said that the American Constitution was the most perfect document ever struck off in a single moment by the hand of man. One might assume that Americans would take this as a great compliment. But Americans were of two minds concerning Gladstone's very widely read and widely quoted statement. Some Americans felt that it was a compliment. In fact this quotation continued to appear in American history and social studies textbooks for secondary students, as well as constitutional textbooks for university students and law students for sixty or seventy years. However, a great many Americans were very offended by Gladstone's statement because they did not like the implication that the

United States Constitution had been artificially created at a very particular moment in time. That seemed inferior in terms of legitimate constitutional origins to having a constitution evolve over a long period of time. Also, many Americans were still in a very anti-British mood. There was still a strong residue of anti-British feeling that had lingered from the age of the American Revolution.

Consequently, there were two different schools of thought about the origins of the United States Constitution that emerged at the end of nineteenth century. The anti-British group in the United States criticized Gladstone's remark, and called attention to the fact that America had had almost 200 years of experience with colonial charters. Each of the colonies had had its own charter which had served as a form of higher law against which the performance of government, the actions taken by legislative bodies as well as the governor in any colony, could be measured. This anti-British school of thought tended to regard the colonial charter as proto, or embryonic constitutions. They also emphasized the experience that Americans had had with state constitutions which had to be written in 1776 when the various states became independent from Great Britain.

The other school of thought, which was much more Anglophile and much less concerned with continuing to repudiate British origins, insisted upon the Anglo-American origins of the American constitutional system. They argued that, in order for us to understand the Constitution properly, one had to look back to the Magna Carta and trace our entire Anglo-American legal and constitutional heritage. It is symptomatic of this second school of thought that Oliver Wendell Holmes, in 1881, published his very famous book on English common law. The reason why Oliver Wendell Holmes went to the trouble to write a book about English common law was precisely because he believed that we could not understand the American legal and constitutional system without understanding English common law.

These two schools of thought essentially debated and contested the proper interpretation of the origins of the United States Constitution for almost forty years until finally, in the late 1920s and 1930s, the school that emphasized America's colonial origins, won out and tended to become the dominant school of thought.

There is more that we could say about changing American attitudes and perceptions of the Constitution ; but I want to shift to the second of my themes and discuss the changing relationship between the United States Supreme Court and the Constitution. In 1930, when Felix Frankfurter was still a professor of law at Harvard University, nine years before he was appointed to the United States Supreme Court, he wrote that the "Court is the Constitution." This statement became frequently quoted, became the title of many books about the American Constitution, as well as the title of chapters in political science texts that American students learned from. A few decades earlier, Justice Charles Evans Hughes stated that the Constitution is "what the judges say it is." These two statements have essentially become a form of conventional wisdom concerning the nature of the relationship between the Court and the Constitution. That conventional wisdom ought to be challenged. The validity of these statements depends upon whether or not the United States Supreme Court is in an activist phase or not. When the Court is in an activist phase, when it is quite actively involved in shaping social and political policies, then it is reasonable to say that the Court is the Constitution because it is doing more than any other single institution to affect the nature of the constitutional system. When the Court is not in an activist mode, there are many other agencies of government—the executive branch, the legislative branch, judges at lower levels of the federal system, the House Judiciary Committee, and the Senate Judiciary Committee—shaping the nature of American constitutionalism.

The reason why I am inclined to challenge these widely quoted statements made by Felix Frankfurter and Charles Evans Hughes is because for more than half of our history, the Court has *not* been in an activist mode. It was for a brief portion of the time when John Marshall was Chief Justice. It was again from about 1890 until around 1937, and again for part of the period when Earl Warren was Chief Justice of the United States, particularly from about 1954 until 1966 or 1967. However, for much of the rest of our history as a nation under the Constitution, the Court has exercised a great deal of what can be called "judicial restraint." During the times when it has exercised judicial restraint, it is not accurate to make the simplistic statement

that the Court is the Constitution.

The Founding Fathers did not intend the Supreme Court to be the exclusive or even the primary custodian of the United States Constitution. This is a mistake that a great many Americans make in thinking about their constitutional system. There is a tendency in America for people to believe that the Court was designated by the Founding Fathers to be the primary custodian, the primary determinant, of what is constitutional and what is not. The Founding Fathers, in fact, believed that each of the three major branches of our national government should have the responsibility to police itself and that the president and the Congress, before taking any action to pursue any policy, should consult with counselors and advisors in order to determine whether or not actions that it contemplated were in fact, constitutional. If one tries to trace the history of the House and Senate Judiciary Committees, you would find thousands and thousands of bills that were referred by Congress to those committees that never came out of those committees because the legal advisors to those committees believed that those bills would be found unconstitutional.

Thus, while it is true that the Supreme Court has the ultimate responsibility, it is equally true that each major branch of the government is supposed to be self-policing and, with our system of checks and balances, is supposed to keep an eye on the other two branches in order to make sure that its behavior is constitutional. Consequently, for example, it is possible for the United States Congress not only to impeach a president but also to impeach and convict justices of the United States Supreme Court. It has never happened, but it could happen. There have been occasions when it has been proposed. During the 1960s, there was a movement to impeach Chief Justice Earl Warren on the part of members of the John Birch Society. My point here is simply that the authors of the Constitution intended that all members of the national government be responsible under the Constitution.

This leads us to a very important paradox that requires consideration. It has to do with the nature of judicial review, the role for which the Supreme Court is best known. On the one hand, judicial review —the power and responsibility of the Supreme Court to pass judgment on laws passed by both the Congress and the American states—is

traditionally regarded as the single most important contribution of the United States to the entire history of constitutionalism. Where is the paradox? The paradox lies in the fact that judicial review is never mentioned in the United States Constitution. It is not explicitly provided for. It is discussed by Hamilton in Federalist No. 78, and it was anticipated by various state supreme courts in the years between 1776 and 1789 that did, from time to time, declare state laws to be constitutional or unconstitutional. For these reasons, not many people were surprised when the Supreme Court did eventually exercise judicial review. What very few Americans are aware of, however, is the fact that during the first century of our history, judicial review was only exercised negatively ten times. There were only ten occasions between 1790 and 1890 when the United States Supreme Court declared laws of the United States Congress to be unconstitutional. Judicial review, the great contribution to the history of constitutionalism, was very infrequently exercised during the first century.

Beginning in 1890, though, it began to be exercised with greater frequency. The Supreme Court declared many laws passed by the states, as well as by the United States Congress, to be unconstitutional. It was during the period from 1890 to 1937 that many other nations around the world began to pay attention to and imitate our system of judicial review.

The final aspect to this paradox is that from the mid-1930s onward judicial review has become increasingly controversial. First, in the 1930s, the Supreme Court declared unconstitutional many of the laws passed by Congress as part of the New Deal program that President Roosevelt proposed in order to get the United States out of the Great Depression. Many liberals became deeply concerned that the one branch of our government which was not elected by the people could veto programs jointly planned by the two branches of government that were elected by the people.

There has also been, since 1954, a steady criticism of judicial review by conservatives, who were unhappy with racial desegregation decisions made by the Warren Supreme Court, and who were unhappy with the reapportionment decision requiring one person, one vote. People were also quite unhappy with the Warren Supreme Court declaring

that prayer in public schools was unconstitutional. The decision to make abortion legal in 1973 added even more critics of judicial review. As a result we get a new phrase emerging in our constitutional culture, "judicial usurpation." Essentially, this involved the belief that a usurpation or an excessive use of power had occurred on the part of the one branch of government not elected by the people. For these three reasons, I would like to suggest that judicial review is an extremely paradoxical, as well as controversial, aspect of our constitutional system.

Let me shift now to federalism and its changing nature in the American constitutional system. Essentially, the Founding Fathers recognized that because the states already existed, many concessions would have to be made to the states in order to get them to approve this new constitutional system. In theory, this system would require a sharing of power on the part of the national government and the state governments. One of the most creative acts on the part of the Founding Fathers, and one of the greatest innovations in the history of political theory, was to devise a system where sovereignty would be distributed. The conventional wisdom of the eighteenth century was that sovereignty was indivisible. In the British system this meant that sovereignty was located in the King and Parliament and that it was indivisible. The Americans, faced with the reality that states already existed, realized that, in the words of the Founding Fathers, a more "energetic national government" was needed. How does one work out a system in which there exists a more energetic national government without taking all the power away from the states? The solution was Federalism: a system of power sharing that required a whole new rationale for the division of sovereignty, the very notion that sovereignty could be divisible. I think that this idea has had a very significant impact upon political theory and constitutional theory around the world in the 200 years since it was initiated in 1787.

In the twentieth century, however, there has been a steady shift in the balance of power away from the states and towards the national government. That shift began in the years immediately following the American Civil War. It accelerated rapidly during the 1930s, and then during World War II, and then again even more in the years immediate-

ly following the Second World War. This has brought about a critical response on the part of many Americans who believe that the government which is closest to the people will most likely be successful; that is, most knowledgeable about the needs of the people. Thus, there has been and still is, a strong impulse since the later 1960s to achieve a better balance between national power and state power. President Nixon, during his first administration, as well as President Reagan, have both called for a New Federalism. The speeches given last year by Attorney General Meese re-ignited this whole controversy. His point of departure was the Reagan administration's appeal for a redistribution of governing responsibility between the national and state levels of government.

Nevertheless, in recent years, the Supreme Court has continued to give more and more power to the national government. In 1985, for example, the Supreme Court decided that the United States Congress could determine minimum wages for employees in American cities. One would assume that this level of decision making ought to be made either by the city in question or by the state in which that city is to be found. However, the Supreme Court argued that this was a reasonable interpretation of Federalism. This proved to be a very controversial decision. It was decided by a five to four margin, and it brought a very stinging and appropriate dissent from Justice Sandra Day O'Connor, the first woman to sit on the United States Supreme Court. So, if one simply looks at recent decisions made by the United States Supreme Court, one will get the impression that American Federalism is not in very good shape. I think it is fair to say that if James Madison could visit the United States today, he would be quite shocked. In fact, most of the delegates who attended the constitutional convention in 1787, regardless of the positions they took at that time, would all be shocked by the way the balance of power has shifted to a point where the national government has so much power and state government has so little.

There are signs, though, that Federalism is not entirely dead and that it is, in fact, in certain respects, quite healthy. Let me give you just one example. There is a trend that was reported in some detail last month in the *New York Times* concerning jurisprudence, something not

common in American newspapers today. This was, however, a particularly fine and thorough analysis of recent trends in American state courts. What this study found was that, in many respects, state courts in the United States were more progressive than the United States Supreme Court in their concern for civil liberties. One example is in deciding the circumstances under which the police could search the home of a private individual with or without a search warrant. The study also showed that the Supreme Court of the United States frequently refers to these innovative decisions made by progressive state supreme court judges. The study also pointed out the extent to which the states all faced common problems due to the fact that American citizens are facing in common, certain changes in their way of life. This has caused judges on the various state courts to pay much more attention to their colleagues in other states than ever before. Consequently, this development is being referred to as horizontal Federalism and is an extremely interesting development. Justice William Brennan of the United States Supreme Court has called this the single most important development or trend in American constitutionalism today.

Lastly, I want to return briefly to issues concerning American constitutional traditions and their implications for the twentieth century. Our basic constitutional tradition in the United States is one that I would describe as a tradition of conflict within consensus. What I mean by this is that everyone, regardless of ideological persuasion, agrees that the United States Constitution serves and ought to serve as our higher law as well as the blueprint against which we should measure the legitimacy of actions taken by all governmental official bodies. Whether one is a strict constructionist, a loose constructionist, or a broad constructionist; whether one believes in original intent or in a living constitution, everyone essentially operates within this consensual framework. This may seem a rather simple-minded generalization, and it may not seem to tell you anything that you did not already know.

I think, however, that the nature of our system of conflict-within-consensus becomes more clear and more meaningful and tells us something about the distinctiveness of our constitutional system when we look historically at the experience of many other nations with

constitutionalism over the past 200 years. France, which drafted a constitution in 1791, in 1792, and then again in 1793, kept rejecting constitutions because there was no consensus that the constitution would serve adequately as the highest law of the land. If you look at the experience in Latin America throughout the nineteenth century, you find many opposition parties and factions never accepting the legitimacy of whatever constitution is in effect. Thus, constitutions have been treated very cynically, very casually in Latin America. The range of examples is enormous. If we simply skip to the twentieth century, Hitler in Germany in the early 1930s, simply ignored the Weimar Constitution. He and the national socialists did what they wanted to do. They took a long time to formally discard the Weimar Constitution, yet they very cynically pretended that it did not exist. In the Soviet Union, in 1936, a new constitution was passed. It became very clear by 1937 and 1938, however, that Stalin was going to pay absolutely no attention to the requirements of the constitution and the ways it was supposed to protect the civil liberties of Soviet citizens.

Let's return to the American system. The interesting thing about the origins of our system is that those anti-Federalists who opposed the Constitution in 1787, '88, and '89, almost all accepted it by the middle of the 1790s. The consensus and the constraints around constitutional conflict in the United States become considerably more meaningful when we compare our experience with constitutionalism with those of other nations. I think that the most remarkable thing about the American constitutional system has been its endurance, and the fact that it has provided America with so much political stability. This is due to this pattern of conflict-within-consensus.

The last point I would like to make about our situation today, again in historical and cultual context, is that constitutionalism in the United States has thrived on controversy rather than on worship of the Constitution. We have had phases of constitution worship, particularly during the 1920s and 1930s, when in the words of people at that time, the United States Constitution literally became a fetish. I would submit that at those moments in time when we have had constitution worship, there has been relatively little interest in the Constitution in terms of people actually reading it and knowing what it contains.

When we have had controversies, such as the nullification crisis between 1829 and 1833, or the Dred Scott decision in 1857, or the controversy that arose in 1895 when the Supreme Court declared the first attempt to pass an income tax unconstitutional, or the decision by the Supreme Court to put an end to racial segregation in 1954 and 1955, Americans have paid the greatest attention to the Constitution. It is very interesting to compare the response of Americans to the Constitution in 1887-89, when we celebrated our centennial, with the response of Americans between 1937 and 1939, when we celebrated the 150th anniversary of the Constitution. Between 1887 and 1889, there was very little that was constitutionally controversial and the centennial anniversary of our Constitution was really very boring. It was very difficult to get anyone interested in the Constitution, and the Federal government did not appropriate a single dollar to make a celebration possible. All of the celebrations that did occur were financed entirely out of private funds.

By contrast, in 1937 when we began the two year celebration of the 150th anniversary, Franklin D. Roosevelt did a great favor to the country by trying to pack the Supreme Court when he suggested that he would add six new justices to the Supreme Court if the "nine old men," as they were then called, refused to retire at the age of seventy. That got a lot of people very upset, including members of Roosevelt's own party. The result was intense interest in the nature of our constitutional system throughout the year 1937. It meant that the 150th anniversary of the Constitution was very successful precisely because there was a real live constitutional controversy going on at the time.

This leads me to a concluding question that you yourself may be asking. That is, is there anything on the horizon that might provide a spark of controversy for the Constitution's bicentennial in 1987 to give it some life? The answer is yes. There are several possibilities. The most unique and the most unprecedented is the strong support for a constitutional convention. The United States Constitution provides that if two thirds of the states request a constitutional convention, one must then be called. There has never been a second constitutional convention since the first one in Philadelphia in 1787. Beginning early in the 1980s, however, concern began to develop throughout the United

States over the problem of America's unbalanced budget. In response to this problem, states began to pass resolutions requesting that a constitutional convention be called in order to consider the whole problem of the fiscal arrangements of our national government. We have now reached the point where 32 states have formally requested a constitutional convention. You do not have to be a mathematical genius to figure out that if just two more states pass a resolution requesting a constitutional convention, one will have to be held. With the Gramm-Rudman Bill about to be declared unconstitutional, it is conceivable that two more states will request a constitutional convention. Therefore, it is possible that America will have the unique experience of celebrating its bicentennial by having a second constitutional convention in the United States.

What are the implications of this? Let me just indicate, first, that James Madison, the father of our Constitution, thought that the idea of a second convention would be disastrous. When Chief Justice Warren Burger was asked recently what he thought of the idea, he said, "It would be a colossal waste of time." In fact, no one can imagine where it would end. If a second constitutional convention were called, even though the nominal reason would be to consider the problem of balancing the budget, there is nothing to prevent that constitutional convention from taking up such issues as abortion, prayer in the schools, school busing to achieve greater racial desegregation, or a whole variety of issues that are politically very sensitive in the United States today. Therefore, it is conceivable that this second constitutional convention might take actions which the United States Supreme Court would then decide are unconstitutional.

We have this huge question mark facing us with respect to what might happen in 1987. From my own point of view, I hope that we stop short of having a constitutional crisis. But I do hope that we have, perhaps several lively and significant constitutional controversies so that the bicentennial of the American Constitution will be not merely a celebration, but in fact, an educational experience for the American people as well.