

7-1-1986

# A Bicentennial Symposium--The Constitution and Human Values: The Unfinished Agenda

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## Repository Citation

Milner S. Ball, *A Bicentennial Symposium--The Constitution and Human Values: The Unfinished Agenda* (1986),  
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# GEORGIA LAW REVIEW

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VOLUME 20

SUMMER 1986

NUMBER 4

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## INTRODUCTION

### **A BICENTENNIAL SYMPOSIUM— THE CONSTITUTION AND HUMAN VALUES: THE UNFINISHED AGENDA**

*Milner S. Ball\**

It would not be easy to loosen “your Affections for the Belles Lettres,” James Madison wrote to a friend about to embark on the study of law. “A Delicate Taste and warm imagination like yours must find it hard to give up such refined & exquisite enjoyments for the coarse and dry study of the Law: It is like leaving a pleasant flourishing field for a barren desert.”<sup>1</sup>

Two centuries later the desert is being made to bloom. The authors represented in this Symposium are among the chief gardeners. Their conjunction in Athens last Spring—a convocation of friends—was co-sponsored by the Law and Humanities Institute<sup>2</sup>

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<sup>1</sup> Letter from James Madison to William Bradford (Jan. 24, 1774), in 1 *THE PAPERS OF JAMES MADISON* 104, 105 (W. Hutchinson & M. Rachal eds. 1962).

<sup>2</sup> The Law and Humanities Institute was formed in 1979 to nourish scholarship in law and literature. Building on a base established by the Modern Language Association's special sessions on that topic (1976-1978), and on the loosely-knit community of legal and literary scholars already active in the field, the Institute now has an active program and a distinguished membership. Its work has achieved definition in three major areas: theory of interpretation; curricular innovation and expansion; and human rights. The Institute has offices at 545 Fifth Avenue, New York, N.Y., 10017.

The event from which this Symposium is drawn was the Institute's fourth annual meeting. Papers presented at the first meeting can be found at 5 *HUM. RTS. Q.* 109 (1983); those presented at the second at 4 *MISS. C. L. REV.* 245 (1984).

and the University of Georgia School of Law. Professors Richard Weisberg, Chairman of the Board of Governors of the Institute, and J. Ralph Beard, Dean of the School of Law, are due special thanks for making the Symposium possible as well as for their substantive contributions to the deliberations.

The participants in this Symposium share a commitment to explore the question whether law—constitutional law in particular—is one of the humanities and therefore subject to understanding, critique, conceptualization, and practice in freshly humanizing modes. These authors—lawyers, poets, philosophers, writers, activists—make no great claims for their individual labors or their shared enterprise. They prefer instead to let the work speak for itself.

The pieces published in this Symposium compose a robust, imaginative dialogue. Its verve and seriousness will justify the conclusion that more is at stake than frail posies blooming in a dry desert. You will find here elegant, creative scholarship animated by urgent, stubborn willingness to press essential questions in new ways, to examine the fundamentals of the ethics, politics, and rhetoric—the culture—of law. This is a fit spirit for a bicentennial prepared to reckon with the Constitution's future as well as its past, its crushing injustice as well as its triumphant justice. Those who seek authentic humanity in the ongoing politics of the Constitution recognize that there *is* an unfinished agenda, what Lincoln referred to as the "unfinished work" of the nation.<sup>3</sup> This Symposium helps to clarify that agenda.

As I look at the Symposium manuscript, ready for the printer, it is nine months since the fructifying event that produced it—just right for a period of gestation. The act and the issue are connected, but the delight in each is different. This publication is not a transcript of the Athens encounter. It includes versions of the original presentations and some responses but also valuable new reflections and research.

If some material has been added, some also has been lost. There is no way to recapture or reproduce the liveliness of the exchanges that took place. Not included here, for example, are the eloquent,

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<sup>3</sup> A. LINCOLN, *The Gettysburg Address, 1863*, in AN AMERICAN PRIMER 437, 437 (D. Boorstein ed. 1968).

wise remarks and revealing insights of Professor J. Allen Smith, our justly honored "Dean."

There has been another loss. Reading Robert Cover's lecture gives both joy and sorrow. To hear again his voice is to be reminded of the wonder of his living, but it is also to feel the woeful emptiness left by his death. We had no idea this would be his last symposium. There was too much remaining to talk to him about, to ask, to learn, to fuss and laugh over.

Robert Cover came to Georgia twice. The first time he was a college sophomore, come to stand with an oppressed people, and, in a South Georgia jail, he suffered directly the violence of law on his body. The second time, a distinguished chair holder at Yale and accompanied by his son, Avidan, he addressed the violence of law in his paper. On both occasions, as his faith moved him daily to do, he was celebrating life in the face of death.

He had long since been exposed to those words itching for justice from which the inspired like Robert contract a passion to stretch the reality of this world toward another, envisioned one. Readers will catch the sound of such words in his contribution to this Symposium and in the several other wonderful entries that stand companion to it, a final guard of honor for our friend.

A concluding observation. When a messenger reported to Louis XVI the fall of the Bastille, the king's response was: "It is a revolt," whereupon the messenger corrected him: "No, sire, it is a revolution."<sup>4</sup> Scholars of law and humanities are surely not rebels, and they will generate no revolt. There is greater moment to their work. Perhaps I mislead when I liken them to gardeners on a desert. Perhaps they are, instead, more like subsurface miners and sappers who leave no trace on the landscape until an explosion is detonated underground with a great, muffled thud, and the earth slumps, gently enfolding collapsed fortifications. (We make no claims, but we have our dreams.)

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<sup>4</sup> See H. ARENDT, ON REVOLUTION 40-41 (1965).

