

Is the United States at a constitutional crossroad?



The U.S. Constitution, drafted by our nation's founding fathers well over 200 years ago, remains as the primary document guiding our nation's system of democracy. However, in times of national emergencies, absolute adherence is sometimes set aside to meet immediate needs.

The events of September 11 provide the most recent example of this conflict between strict constitutional fidelity and presidential emergency powers, Sanford V. Levinson, a chaired professor at the University of Texas School of Law, said when he delivered the 99th Sibley Lecture in March.

National security issues and the ongoing war on terror have made the relationship between executive power and constitutional allegiance even more important, Levinson said.

"Claims of enhanced presidential authority with regard to emergency powers, however based, involve permanent changes in the conception of American government," he said.

A conflict exists in that absolute fidelity to the law is often desired, but so is a president who will do what is necessary when faced with emergencies, Levinson added, while also expressing concerns that the U.S. government could be moving toward a more authoritarian model.

Levinson noted that, last year, the U.S. Supreme Court did not accept some of the executive branch's arguments for indefinitely retaining American citizens, because Congress had not agreed to a suspension of *habeas corpus*. "However, it is far too early to tell whether that represents a genuine willingness on the part of judges to stand firm against executive overreaching or a construction, basically, of a judicial fig leaf that

will do little more than legitimate significant incursions on any serious notion of due process of the law," Levinson said.

If a terrorist attack were to disable more than half of the members of Congress, the president would likely gain considerable executive power, he continued. The U.S. Constitution requires a majority of House and Senate members to be present for Congress to function. Yet, there are no current provisions for appointing, without election, temporary members in the event of an emergency, Levinson said.

Earlier this year, he spoke to the U.S. Senate Committee on the Judiciary in favor of a constitutional amendment that would change this.

"We are, I believe, at a crossroads in American constitutional development," he said.

Levinson, who joined the University of Texas law faculty in 1980, holds the school's W. St. John Garwood and W. St. John Garwood Jr. Centennial Chair in Law and has a faculty appointment in the university's Department of Government.

An internationally renowned constitutional law scholar, he has written several books and more than 200 articles. His book *Constitutional Faith* won the 1989 Scribes Award, an honor given annually to top works of legal scholarship. He has also authored *Written in Stone: Public Monuments in Changing Societies* and *Wrestling With Diversity*.

He received his undergraduate degree at Duke University, his doctorate degree at Harvard University and his Juris Doctor at Stanford University.

Before joining the faculty at the University of Texas, he was a professor at the Princeton University Department of Politics. He also taught courses at Harvard, Yale, New York and Boston universities as well as the University of Paris II, Central European University in Budapest and Hebrew University in Jerusalem.

The Sibley Lecture Series, established in 1964 by the Charles Lovidans Foundation of Atlanta in tribute to the late John A. Sibley, is designed to attract outstanding legal scholars of national prominence to Georgia Law. Sibley was a 1911 graduate of the law school.

- Julie Camp

Red Clay focuses on Georgia's energy potential

Georgia's energy policy and future alternatives were the focus of the 17th annual Red Clay Conference held in April.

The conference, "Georgia's Energy Potential: Policy, Alternatives, and Long-Term Solutions," included panel discussions on sustainable development and energy use, hydroelectric power, alternative fuels for mobile sources of pollution and the building industry's response to the new Georgia energy code.

Conference speakers included authorities from the private legal sector, the corporate/business sector, the government and public interest groups.

Jigar Shah, chief executive officer of SunEdison, served as the keynote speaker. Shah's company helps public, private and nonprofit organizations explore using solar power as an energy alternative. Additionally, Shah has worked with the U.S. Department of Energy on alternative vehicles and fuel cell programs.

The conference drew more than 75 attorneys, government leaders, environmental advocates, academics and students.

Sponsored by the Environmental Law Association, the Red Clay Conference was established to increase public awareness of environmental issues of regional, national and international significance through a series of educational presentations and open forum discussions.

The breaking of barriers for women in the legal profession



By the early 20th century, all state bars admitted women; but long before then, females were already entering the legal profession.

At the annual Edith House Lecture in March, South Carolina Supreme Court Chief Justice Jean H. Toal examined the turning points of women's legal history in the United States.

Toal, the first and only woman to serve on the South Carolina Supreme Court, chronicled the stories of the many other women who were firsts in their time – women like Margaret Brent, the nation's first unofficial female lawyer; Belle B. Mansfield, the first official female lawyer; and Charlotte E. Ray, the first African-American female lawyer.

Eighteenth and 19th century women faced many challenges in the legal profession. Myra C. Bradwell, for example, was not admitted to the Chicago bar because she was married. Bradwell brought her case before the U.S. Supreme Court, where justices upheld the decision, claiming there were natural differences between men and women.

By 1870 though, the nation had its first female law school graduate – Ada H. Kepley. Yet, Wisconsin Supreme Court justices told R. Lavinia Goodell in 1875 that as a woman she was not fit to practice before the high court. Four years later, Belva A. Lockwood became the first female to argue a case before the U.S. Supreme Court.

“These 19th century pioneers faced a profession and a society that espoused the cult of domesticity – a view that women are by nature different than men,” Toal said. “Women were thought to be ill-qualified for adversarial litigation because it required

sharp logic and shrewd negotiation as well as exposure to the unjust and immoral.”

Even though all state bars admitted women by 1914, many prestigious law schools such as Harvard did not admit women until 1950 or later, Toal added. In the 1970s, women constituted less than 10 percent of law school graduates. Today, females make up nearly half of all law students.

According to Toal, there must first be a diverse group of law students before there is to be equality in the field of law. However, despite the fact that more women are becoming lawyers and judges, not many females stay in the legal profession long enough to become partners in law firms, she said.

Toal became a litigator after obtaining her law degree in 1968 from the University of South Carolina, where she was the managing editor, leading articles editor and book review editor for the *South Carolina Law Review*.

Later, as an associate with the Haynsworth Law Firm and an associate and a partner with the Columbia, S.C., law firm Belser,

Baker, Barwick, Ravenel, Toal & Bender, she started arguing cases at a time when women litigators were scarce in the Palmetto state.

When she became the South Carolina Supreme Court's chief justice in 2000, only six women held the same position in other states. Currently, there are 22 female chief justices.

“Women lawyers have encountered barriers grounded in established traditions, and it has taken a great deal of time and effort to break these barriers down,” she said.

In 2004, Toal was recognized as one of the female pioneers of the legal profession when she was presented with the prestigious Margaret Brent Women Lawyers of Achievement Award from the American Bar Association's Commission on Women in the Profession.

The Edith House Lecture Series, hosted annually by the Women Law Students Association, is named in honor of Edith House, one of the first female graduates of Georgia Law.

- Julie Camp

Rusk Center hosts conference on trade with China

The economic relationship between the United States and China was the focus of a two-day conference sponsored by the Dean Rusk Center – International, Comparative and Graduate Legal Studies in mid-April.

While the U.S. is already one of China's largest trade partners, there are still enormous opportunities and challenges as China is home to one of the world's fastest growing economies, according to C. Donald Johnson (J.D.'73), director of the Dean Rusk Center. “China's dynamic economic growth and potential demand a better understanding of the challenges that face the economic relationship between our two countries and show a need for stronger ties between Georgia businesses and China. This was the prime motivator for organizing this conference.”

The conference's speakers – business, legal and policy specialists from the government, academic and private sectors – discussed investment, services, market access, agriculture, textiles, intellectual property and export controls in relation to trade between the two countries. U.S. Deputy Secretary of Commerce Theodore W. Kassinger (J.D.'78) delivered the keynote address.

The Dean Rusk Center partnered with the UGA Center for International Trade and Security, the Georgia Department of Economic Development and the Georgia China Alliance to organize the event.

The conference's proceedings will be published in a forthcoming issue of the *Georgia Journal of International and Comparative Law*.