

Constitution Day talk, 9/15/20

Our topic, “U. S. Constitution: Why Shared Values are Important” has special relevance in the year 2020. Our nation is in crisis, accelerated by the COVID pandemic, but begun long ago. A major component is the absence of shared values about race and democracy, and over the relation of two central American values, “liberty” and “equality.” Just a few days ago, the nonpartisan Pew Research Center’s proclaimed, “Voters Attitudes about Race and Gender are Even More Divided than in 2016.”

My remarks this evening will summarize episodes in U. S. history in which American values have been in conflict and occasions in which the American political and constitutional system proved capable of enacting substantial changes.

For openers, we must recall that the Europeans who settled the Thirteen Colonies did not have shared values. New Englanders sought a Puritan Commonwealth after leaving a divided England to do so. Virginians arrived seeking gold, which they did not find—settling for tobacco, which made some rich but brought in African slaves and young white indentured servants--as elites favored the English government Puritans spurned. When Charles II reclaimed the English crown (a dozen years after his father had been beheaded by Puritan rebels in 1649) he gathered allegiance through royal grants to Roman Catholics in Maryland and other supporters in South Carolina, soon a major slave colony. Quakers entered Pennsylvania after some of their co-religionists had been driven from New England. In the 1700s Scots Irish and German immigrants also came, enough of the latter to worry Benjamin Franklin that they might make German the colony’s official language. Colonists divided over the Revolution—John Adams thought one third were for it, one third against, and one third undecided, while African American slaves gratefully accepted Virginia royal governor Dunmore’s promise of freedom if they ran away from revolutionary planters who held them in bondage.

Enough Americans rallied around themes of liberty, equality, and anti-monarchy articulated by Thomas Jefferson’s “Declaration of Independence,” and Thomas Paine’s pamphlet, “Common Sense,” to win both the war and the peace. Several years later they created a Constitution that affirmed the Revolution, states’ rights, and created a stronger federal government to limit democracy through checks and balances. In 2020, we are not happy that the Constitution protected slavery as a means for ending the international slave trade, nor that it gave the slave states greater voting power than their white population justified.

While some founders—George Washington, Thomas Jefferson, James Madison, slaveholders all—deplored the “peculiar institution,” hoping it would gradually disappear, they did little. Other framers, mostly northerners like John Adams and Alexander Hamilton more forthrightly opposed slavery but lacked the power to alter the system. Slaveholder Andrew Jackson became president in 1829, adding the expulsion of Native Americans to the mix. During the 1830s, the proslavery side had enough strength to pass a “gag rule” to prevent the elderly Massachusetts congressman and former president John Quincy Adams from speaking when presenting constituent petitions against slavery in the District of Columbia. South Carolina’s James Henry Hammond led the charge: “Slavery can never be abolished . . . I believe it to be the greatest of all blessings which Providence has bestowed upon our glorious region” (Kaplan, 488). Yet an

antislavery movement also grew and brought additional challenges: prohibition; women's rights, including the vote; immigration restriction. Frederick Douglass, a runaway from slavery, became a polished speaker who participated in reform causes. But what the twenty-eight year old Illinois legislator Abraham Lincoln deplored in an 1838 speech as a "mobocratic spirit" of violence sprang up, from Boston to Louisiana—and to Alton, IL not far away at all, where just a few months earlier pro-slavery forces threw the printing press of the abolitionist editor Elijah Lovejoy into the Mississippi River and then shot Lovejoy to death (Donald, 82).

From hindsight one sees the nation marching inexorably to civil war as institutions alternately pushed the process along or failed to create consensual solutions embodying shared values. Slaveholder president John Tyler forced through the annexation of the Texas Republic and its admission as a slave state and, as if to outdo him, slaveholder President James K. Polk manipulated the nation into war with Mexico which resulted in the taking of much of the West, setting up additional sites for conflict over slavery. An anti-slavery political party, the Republicans, arose in the 1850s, as rival pro- and anti-slavery forces shot it out in the Kansas territory. A southern congressman beat antislavery Senator Charles Sumner unconscious on the Senate floor. By 1859, the abolitionist John Brown, fresh from killing several slaveholders in Kansas, tried to mount a slave rebellion after seizing the federal armory in Harpers Ferry, VA. Lincoln's election as president spurred South Carolina to lead a procession of slave states out of the union and, as Lincoln put it in his Second Inaugural: "Both parties deprecated war; but one of them would *make* war rather than let the nation survive; and the other would *accept* war rather than let it perish. And the war came." Lincoln died from an assassin's bullet five weeks later.

Reconstruction, maligned for much of the 20th century, proved to be, in the words of Eric Foner's most recent book, a "second founding." "During Reconstruction, the United States made its first attempt, flawed but truly remarkable for its time, to build an egalitarian society on the ashes of slavery" (Foner, xix). As we should say on Constitution Day, that achievement rested on three constitutional amendments—13th, 14th, and 15th—ratified in less than five years: abolishing slavery; redefining and extending equal rights (including birthright citizenship); and enabling black male voting. But some Republicans tired of the strife and, wanting to stay in office, made deals that made Rutherford B. Hayes president in return for removing federal troops from the South. An increasingly conservative Supreme Court overturned Reconstruction legislation. And with federal troops gone, Southerners either terrorized the formerly enslaved or developed seemingly race neutral legal subterfuges such as poll taxes, which often disenfranchised poor whites, to keep African Americans from voting.

Sometime between 1890 and the early 1920s a new reform movement gave its name to the "Progressive era." "(A)n explosion, a burst of energy that fired in many directions across America"(McGerr, xv), the movement had a distinctive middle-class, even Victorian sensibility, and aimed to change not only laws and government but also social behavior. Four constitutional amendments marked the decade between 1910 and 1920—16th, 17th, 18th, and 19th. The first two were structural, allowing for a federal income tax, adopted quickly following Progressive victories in 1912; and the direct election of U. S. senators, conceived as giving ordinary citizens more power against state legislative machines. The second two attracted more controversy—the 18th which forbade "the manufacture, sale, or transportation of intoxicating liquors"; and the 19th which declared simply that "the right of citizens . . . to vote shall not be denied or abridged by

the United States or by any State on account of sex.” Many Americans, especially those from Ireland and Germany, opposed prohibition, and many Americans also, especially in the South and northern immigrant communities, had reservations about woman suffrage. Prohibition proved a disaster: bootleg whiskey was sometimes dangerous, “speakeasies” daringly brought unmarried men and women together in public (as opposed all-male Irish saloons), and its biggest benefactor seemed to be the gangster Al Capone, who murdered his Chicago rivals and was worth \$100 million untaxed in 1929. Although Herbert Hoover, a “dry,” defeated the “wet” NY Governor Al Smith in 1928, repeal sentiment grew, led by wealthy businessmen who wanted taxes on legal alcohol to lower their own tax burden. While Hoover had deemed prohibition a “noble” experiment, “Nobility and Capone were words unlikely to be linked” (Rorabaugh, 90), and Franklin Roosevelt, who defeated Hoover in 1932 quickly offered legislation passed in March 1933 to enable federal and state governments to tax alcohol. The repeal amendment (21st) was fully ratified by December, the fastest in history. Al Capone went to jail for income tax evasion and died in 1939.

In each instance, a surge of constitutional activity changed things, but not always through shared values. The 1960s, an enduringly controversial decade, produced four amendments ratified between 1961 and 1971: the 23rd allowed citizens of Washington, DC to vote in national elections; the 24th banned poll taxes; the 25th provided for removing a suddenly-disabled president from office; and the 26th lowered the voting age to 18. Simultaneously, the Civil Rights Act of 1964 and the Voting Rights Act of 1965 enacted major civil rights goals, and immigration legislation ended race and nationality quotas passed in the 1920s. Yet 1960s radicals pressed harder than the nation was ready to accept—draft resistance against the Vietnam War, race riots in Los Angeles, Newark, Detroit, and Chicago; a feminist uprising culminating in the 1973 passage through Congress of an Equal Rights Amendment which was declared to have failed when not ratified by 1979; and movements on behalf of the LGBT community, senior citizens, and the disabled. Some of these would find greater success in the future, but in the short run a diverse conservative coalition of traditionalists; religious conservatives stressing “family values” and especially opposing abortion; neoconservatives favoring a stronger military; and libertarians urging smaller government came together at election time to help elect Ronald Reagan, George H. W. Bush, George W. Bush, and Donald J. Trump. These presidents appointed justices to the Supreme Court who rejected campaign finance regulation and struck down the heart of the Voting Rights Act, which led several states to pass laws that conservative judge Richard Posner deemed “voter suppression,” a term that stuck.

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