

YOU WERE THERE

JUSTICE THOMAS E. BRENNAN*

First and foremost, I want to express my personal thanks, and those of all the panel members, to President Don LeDuc, for his generous and enthusiastic commitment to this program. Under his leadership, Cooley Law School has become, as Phil said, the largest accredited school of law in the United States, if not in the world. But Don has not been satisfied to measure success only by size. He's built the reputation of Cooley on every score—from academics to ethics, to professional formation, and to community service. It was Don's suggestion that this symposium be held as the law school's compliance with federal law, requiring observance of Constitution Day. And it is indeed fitting and proper that what we're doing here today commemorates the signing of the United States Constitution in Philadelphia, on September 17, 1787.

You know, I never return to this campus without suffering a rash of goose bumps as I look around at the vibrant activity of so many students and faculty, and I think of the puny and fragile beginning of this great institution. Recently, Jack Cote sent me a copy of a photograph of the original board of directors taken on the opening day of the first class in 1973. Only three of those men are still living. I look at that picture and I remember how we shared a vision. It was a vision of a law school that would offer the American dream of opportunity to every qualified college graduate who wanted to knock on the door of the legal profession, and who was willing to work hard to achieve the level of professional competence that we insisted on.

Over the years Cooley has done that, and it has done much, much more. It has become the place where the obfuscation of redundant legalese has been replaced by Plain English. It has become the place where ponderous, academic legal theories are weighed on the scales of practical, common sense. And it has become the place where the reliable moral compasses of faith and family contribute to a standard of professional ethics that knows the difference between right and wrong.

From the beginning, we emphasized respect for tradition and history. That's why the semesters here are named for the terms of the English courts of common law. And that's why Cooley, Campbell, Christiancy, and Graves are pictured on the side of this building. And that's why this symposium, with its theme of *Renewing the Compact*, belongs in this

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Temple and on this campus. If you'll bear with me just a minute, maybe I can tell you why.

You may know that Cooley Law School educates more black lawyers than any other law school, including the historically Negro colleges. You may not know that this has been done without any racial preference in admissions, without the controversial affirmative-action programs used by some of the law schools. People ask me, *How is that possible?* I say, *It's easy. All you have to do is admit a lot of Italians from New Jersey, too.* The point is very simple and obvious: if you open the front door wide enough to let in a cross section of the community, you get students of every race, color, and creed. And if your student body looks, and acts, and thinks like a cross section of the people of the United States, then you become a microcosm of the nation, a community that reflects the attitudes, the hopes, the fears, the aspirations, and the strength of the American people.

The first words of the Preamble to the Federal Constitution are *We the People*. It doesn't say *We the Geniuses*, or *We the Gifted*, or *We the Published Scholars*. The Constitution is the compact between the people and their government. It is the solemn, written document that expresses the consent of the governed and empowers the people who are elected and appointed to public office to do what they are elected and appointed to do. It's a solemn, written document that expresses the intention of the people who drafted it and the intention of the people who ratified it. It is a solemn, written document that says what it means and means what it says. It was, and it was intended to be, addressed to every citizen, expressed, as one delegate said, *In the plain language of mankind*.

Now if you've studied under Professor Joe Kimble, you know that contracts, and statutes, and constitutions can be written, should be written, in Plain English. A newspaper called the *Philadelphia Packet* published the complete text of the Constitution within a few days after the convention adjourned in 1787, and so did newspapers throughout the thirteen original states. People talked about it. They argued about it. We tend to romanticize the Constitution. We like to think that it was celebrated and embraced by all the people in all of the original thirteen states. But that's not the way it was. There was a lot of opposition. As a matter of fact, it never would have been ratified if it had not been for the built-in process of amendment contained in Article V. In state after state, the promise of immediate amendment to include a bill of rights was necessary to get Convention delegates to vote in favor of ratification. In state after state, the fact that the new Constitution would be easier to amend than the old Articles of Confederation was the most-telling argument for ratification.

We've come here today to talk about Article V. We've come here to consider how Article V empowers the people of all the states to draft, to debate, to propose, and to adopt amendments to the Federal Constitution. We know that the Congress can propose amendments: they've done it at

least twenty-eight times in the last 200 years. But Article V also provides for calling a convention to propose amendments. And that's never been done. The amendatory convention was put in Article V because some of our Founders—some of the Founders of our nation—were afraid that the Congress would become too powerful, too uncontrolled, too out of touch with the American people to propose the kind of amendments which would be needed. The Article V Convention, then, is a vital and a critical part of our Constitution. It is the open door through which every generation can enter into the compact and express the consent of the governed. That compact, that written agreement between the people and their government, was unique in the history of mankind.

Alexander Hamilton said that the people of this country had to decide the important question: *whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their constitutions on accident and force.* The Founders knew that throughout human history most governments had been established by a process of usurpation and acquiescence—that the consent of the governed is most often given by passive acceptance of domination—and that ruthless bullies and dictators usually come to power through fear and manipulation. The Declaration of Independence reminds us that *mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they have become accustomed.* And we know that law-abiding, peace-loving men and women usually don't want to get involved. They don't want to make waves. They don't want to have trouble. We call them the *Silent Majority*. But it was a silent majority in Germany that empowered Adolf Hitler and a silent majority in Russia that empowered Joseph Stalin. Silent majorities in Italy, and Cuba, and Venezuela, and Iraq have been the consent of the governed for dictators. I don't think that's going to happen in the United States of America.

You know, there's a lot of noise around the country today. You've heard some of the references to it by the other speakers. A lot of people are echoing the famous words of Howard Beale in the movie *Network*. If you remember him looking out the window, shouting, waving his arms—*I'm mad as hell, and I'm not going to take it any longer!* You hear that a lot. People in this country are sick of massive federal debt. They're sick of a Congress full of career politicians who feather their own nests, play footsie with powerful lobbyists, vote for legislation they've never read, and sell their votes to get pork-barrel appropriations for their pals back home. They're sick of presidential-interim appointments that duck the process of confirmation. They're sick of inconclusive, interminable wars; of presidential edicts; of socialistic bailouts; of favoritism, and czars, and politics as usual. Liberals and conservatives, Republicans and Democrats, Independents, Libertarians, Progressives, people of every political stripe

and persuasion are fed up with the mess in Washington. And they're beginning to realize that you can't do away with corrupt politics just by electing a new batch of banal politicians.

The Internet is beginning to crackle with talk about Article V. Of course, the John Birch Society, the ACLU, and a few other minions of the status quo are getting apoplectic, wringing their hands with worry about an Article V Convention that somehow could abolish the Bill of Rights or fill the Constitution with crackpot, hair-brained schemes and ideas. But thankfully, there are people such as you heard here this morning, and you'll hear this afternoon, who understand that no proposal becomes part of the Constitution without the concurrence of thirty-eight states. Three-quarters of the states have to ratify any proposed amendment that comes out of a convention, just as they have to ratify any proposal that comes from the Congress. And that isn't easy to do. Constitutional amendments don't get slipped through in the middle of the night like some acts of Congress. They take a long time. They're exposed to public examination and debate—just like in 1787. You heard from Bill Walker this morning. He insists that the states have already asked for a convention, and he makes a strong argument that the Congress has failed to live up to its sworn duty to call an Article V Convention. Bill Fruth, you will hear this afternoon, he will tell you about his efforts to persuade the legislatures of thirty-four states to file new petitions in Washington using identical language.

Article V says very clearly, in plain English, that if two-thirds of the state legislatures petition for a convention, the Congress must call a convention. And I support every effort to make that happen. As you heard, I wrote about it thirty years ago, and I haven't changed my mind. But the fact is that I'm not very optimistic. Most of the problems in America today stem from the fact that the Congress, the President, and the Supreme Court have all bought into the idea that the Constitution is nothing more than a set of aspirational guidelines, which gives the federal government supreme power to rule over the people of the United States.

The process of amending the Constitution is political. It requires the concurrence and enthusiastic support of the people of the United States. Not just some of the people. Not just legislators or congressmen. Amending the Constitution requires more than a majority of the American people. It requires a supermajority. It requires what former Michigan governor George Romney used to call *substantial unanimity*. It requires what George Washington called *the explicit and authentic act of the whole people*. In short, the Constitution doesn't get amended unless just about everybody is in favor of it. Now I ask myself, *What if everybody is in favor of an amendment, and Congress still refuses to propose it, and still refuses to call a convention under Article V? What then? What recourse do We the People have?*

In 1776, Thomas Jefferson and his cohorts declared that free men have the inalienable right to establish their government. They pledged their lives, their fortunes, and their sacred honor, and they formed a new nation. Fortunately, we don't have to do that. Fortunately for us, and for all future generations of Americans, our Founding Fathers gave us an amendable Constitution. And even more fortunately, the development of modern technology makes it possible for the people of the United States—the people of the United States—to come together in convention to draft, debate, and propose amendments to the Constitution in precisely the manner contemplated by the Founders. And that is why I have organized Convention USA.

Convention USA is a non-profit corporation supported by voluntary contributions. It will operate an interactive, virtual Article V Convention on the Internet. And we're just getting started. We have fifty delegates representing twenty states. When we get delegates from two-thirds of the states, thirty-four states, we will call the convention to order. And we'll stay in business until the Congress of the United States calls an actual Article V Convention.

Like Cooley Law School, our convention has an open front door. Any American citizen can register as a delegate. You know us; we're your friends and neighbors. The folks who live next door and down the street: a builder from Colorado, a grandmother from Florida, a sheriff from Washington, a priest from Michigan, a writer from California, a grad student from Louisiana, a businessman from Arizona, computer guys, teachers, lawyers, doctors, students, manufacturers, economists, and actors. People you've never met, and never heard about, but people just like the people in this room, who care about America, who love our country, its history, its Constitution, and its promise of liberty and opportunity. We're coming together because we care about the United States. We're worried about our beloved nation, and we don't think the government in Washington, D.C., is working the way Thomas Jefferson, James Madison, Alexander Hamilton, and George Washington intended it to work.

It was supposed to be a federal government comprised of sovereign states exercising limited powers. It was not supposed to be in charge of everything. It was not supposed to be dictating every aspect of our lives from the cradle to the grave. The government created in Philadelphia in 1789 was not supposed to have an unwritten constitution. It didn't create a ruling-class oligarchy or authorize politicians to spend the people's money to build up their own power or keep themselves in office. The Founders knew that self-interest and partisanship are the enemies of liberty. They recognized that the government they designed could become corrupted by the very individuals who were elected to run it. And they provided a way for the people to react, to come together, and to fix it. They gave us a remedy, and *We the People* intend to use it.

The Article V Convention is an amendatory convention—a way for the people to draft, refine, and propose individual amendments to strengthen the Constitution we already have. It's not empowered to write a new Constitution. The Founders expected the Constitution they gave us to be a living document. They expected us to adopt amendments that would keep America the land of the free. When the Philadelphia Convention was finished, a lady asked Benjamin Franklin what sort of a government had been created. His answer echoes down through the years to each and every one of us—*It is a republic*, he said, *if you can keep it*.

I invite you to visit www.conventionusa.org. See what we're doing there. See if you want to be part of it. In the early days of the twentieth century, a progressive movement swept America. In state after state, constitutions were amended to provide new ways for the people to participate in their government. By the process of initiative and referendum, citizens were enabled to have a direct and a personal voice in framing state constitutions and laws. That was a hundred years ago. This is a new millennium. This is 2010. This is the age of computers and the Internet. The explicit and authentic act of the whole people no longer depends on paper petitions and big meeting halls. It is now possible to hold a convention in which every registered voter in every state of the Union can participate directly, immediately, and personally. We are no longer captives of media conglomerates who limit our choices, who dictate our agenda, and who manipulate our decisions. In Convention USA, every citizen will have a chance to speak, to be heard, to be part of the give and take of political debate, and to vote on every proposal that comes to the floor of the Convention.

My friends, what we're doing in Convention USA is new and exciting. It's bold. It's not a revolution, but it is revolutionary. It's going to change the whole process of politics in America. You know, I don't expect to live to see it happen. I'm eighty-one years old. But you—you young people, you law students—you will see it. You will be part of it. And someday, when millions of your fellow Americans are routinely participating in Convention USA or something like it, and the Constitution of the United States once again gives them the republic that Benjamin Franklin promised, you will be able to remember this day. And you'll be able to remember September 16, 2010. And you'll be able to tell your grandchildren that it all began at the Thomas M. Cooley Law School in Lansing, Michigan, and you were there. Thank you.