

A Community Built on Words: The Constitution in History and Politics

By H. Jefferson Powell

(Chicago: University of Chicago Press, 2002. Pp. x, 251. Notes, index. \$35.00.)

What explains the success of the United States from uncertain beginnings through more than two centuries of challenges and change: our people, our values, our culture, our natural resources, our faiths? All plausible, and partial, answers. Legal scholar H. Jefferson Powell suggests another: our words, particularly the words of our Constitution.

Powell's rich and ambitious book covers impressive ground, twenty-one chapters devoted to a series of constitutional controversies that span the years 1790 to 1944. Some controversies are relatively familiar: the *M'Culloch v. Maryland* (1819) decision that upheld Congress's authority to establish a national bank and found expansive congressional power to enact federal legislation, and the infamous *Korematsu* (1944) decision that upheld the wartime internment of more than one hundred thousand Japanese Americans. In other chapters, Powell introduces readers to little-known constitutional events of substantial import, such as an obscure period in 1808-1809 that he describes as "one of the most important in the entire history of American constitutional law," in which a Supreme Court Justice, a federal district court judge, and a President each made decisions that were politically unpopular and contrary to personal preferences for the sake of fidelity to the law (p. 110).

Whatever his subject, Powell provides fresh insights and perspectives, as when he compares successive drafts of *State v. Mann* (1829), an important judicial decision regarding slavery. Powell's choice of subjects is notable for its appreciation of the complexity of how we as a nation resolve the meaning of the Constitution's words. He goes beyond the typical Supreme Court focus to include interpretations by other actors, including state court judges and elected and appointed government officials. Each section concludes with valuable contemporary lessons that follow from his analysis of historical events.

Powell presents a strong case for what he terms an "historicist" approach that recognizes constitutional law as "thoroughly historical, dependent throughout on the contingencies of time and political circumstances" (p. 7). He explodes the mythical ideas of law divorced from politics and a bygone age of apolitical constitutional virtue. He establishes that American constitutionalism always has been wracked with sharp, fundamental disagreement shaped by the politics of the time, an especially timely analysis given current views that decry the politicization of the law and misleadingly call for judges who will not "legislate from the bench."

Powell contends that our two-hundred-year tradition of constitutional controversy should be celebrated and appreciated as a source of national strength. American constitutional law, while in some senses inextricably political, also is deeply principled, as evidenced by the author's descriptions of judges and political actors who adopted constitutional positions at odds with their personal preferences and partisan interests. Constitutional law's "coherent tradition of argument" offers "the means by which people of fundamentally different views, beliefs, origins, and visions can become and remain a political community" (pp. 7, 213).

The concluding chapter deserves a particularly careful read and close reflection. Drawing upon his historicist analysis, Powell develops twenty "shared constitutional first principles" that have gained wide acceptance over time as common ground for debate over less settled constitutional issues (p. 205). While the author

may be overly optimistic in his evaluation of the consensus behind one or two of these principles, his approach is normatively attractive and provides a useful summary of fundamental constitutional principles.

Powell's *A Community Built on Words* is a masterful work of constitutional history and theory with profound current relevance. Serious students of constitutional law should consider it essential reading. Anyone with a basic understanding of the subject will come away enriched by the gems of information and wisdom that densely pack this slim volume. All participants in our constitutional democracy, from judges to citizens, should heed Powell's lessons and protect, embrace, and cherish our legacy of reliance on constitutional principles to order political controversy and build community.

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