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Foreword

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Foreword

THE HONORABLE NATHANIEL R. JONES*

The articles in this issue of The Freedom Center Journal are timely challenges to the persistent efforts to undermine the American values enshrined in the Preamble of the Constitution and the body of the Constitution itself with its three Civil War Amendments. As will be noted, the Thirteenth, Fourteenth, and Fifteenth Amendments were necessary to fill the “oversight” of the drafters to clarify and ensure that newly freed slaves and their descendants were endowed with the same rights as others enjoy.

The continuing struggle to advance freedom into broader areas of our lives involves an understanding of the various elements of the American culture. Certainly, the most dramatic study has to begin with understanding the nation’s racial history from the institution of slavery to the present and the systems that control one’s access to freedom. The aim of this piece is to paint a picture that connects the present with the past and to note the parallels.

Networks of groups targeting the extension of those rights to segments of society from whom they have been denied range from such older or historic white power groups as the Ku Klux Klan on one end of the spectrum to the more sophisticated twenty-first century resisters of the Tea Party variety, on the other. They include those who use assorted schemes to target voting rights and the federal courts’ continued entertainment of racial claims under the Fifth and Fourteenth Amendments and civil rights statutes. Extending those values to black citizens has by no means been easy. At each step along the way, efforts to exercise those guarantees have been met with legislative roadblocks and outright violence. America’s shame has been its history of lynchings and other forms of human degradation. Unfortunately, this history is unknown to many contemporary Americans, and this lack of knowledge provides excuses for those who unashamedly join in efforts to block remedies that have made it possible to move the country forward in extending American values to more citizens. Governor George Wallace’s “stand in the school house door” at the University of Alabama in order to block the entry of Vivian Malone and James. A. Hood, and Arkansas governor Orville Faubus’ defiance of federal court orders that led to the deployment of U.S. paratroopers by President Eisenhower to Central High School in Little Rock, are only markers of the grip that racism has had on crucial institutions.

To aid in the transformation from a Jim Crow nation to one committed to the principles of freedom enunciated in the Constitution, strong legal precedents were established, derived from enlightened jurisprudence, and forged with the aid of the federal government. This has resulted in a remedial

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architecture that is designed to purge the vestiges of the racist doctrine still infecting contemporary institutions and to provide a platform for litigating systemic change. However, the platform for change is now on shaky ground as a result of recent political developments.

During the decade of the Seventies, as general counsel of the National Association for the Advancement of Colored People, I had the responsibility of overseeing major civil rights cases all across the country. That experience convinced me that much of the resistance encountered can be attributed to the harsh reality that too many have too little knowledge about the promises and requisites of American citizenship spelled out in the Preamble to the Constitution and the Constitution itself.

Persistence and unyielding faith in the Constitution by a slowly expanding group of lawyers who kept petitioning courts with civil rights and civil liberties issues had enlightened a few courageous judges. True to the oaths they took to uphold and defend the Constitution, they issued decrees that shook the foundations rooted in racism and State's Rights. From that string of cases, important judicial precedents grew. *Brown v. Board of Education*¹ was no accident. Nor was the enactment of the 1964 Civil Rights Act² or the Voting Rights Act of 1965,³ which made equality of opportunity achievable.

However, litigators for minorities seeking their federally guaranteed constitutional rights steadily confronted the hypocrisy by much of the opposition to extending remedies for the violation of rights. True Americanism compels an understanding that for every constitutional wrong there must be a remedy. The resistance to remedies for civil rights violations was supposedly based, for instance, on overreach by "big government." This reasoning was intended to provide a racially neutral justification for the efforts to shrink the use of federal power, and for the invasion of the independence of the judiciary by those with racially impure motives. An examination of the trial or appellate records in school and housing desegregation, and voting rights cases, since the 1980s, for example, will show the real motives.

In order to understand those motives, no better source exists than Supreme Court Justice Thurgood Marshall, who with his mentor, the brilliant Charles Hamilton Houston, began showing in the 1930s how to breathe life back into the Thirteenth, Fourteenth, and Fifteenth Amendments—Amendments whose vitality had been sapped during Post-Reconstruction.

A timely sharing of his wisdom is found in the Justice's remarkable speech on the occasion of the bicentennial of the Constitution delivered in 1987. He stated:

¹ 347 U.S. 483 (1954).

² Pub. L. No. 88-352, 78 Stat. 241 (1964).

³ Pub. L. No. 89-110, 79 Stat. 437 (1965).

I do not believe that the meaning of the Constitution was forever ‘fixed’ at the Philadelphia Convention. Nor do I find the wisdom, foresight, and sense of justice exhibited by the Framers particularly profound. To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights, we hold as fundamental today.⁴

The seeds for the most recent assault on the means for redressing constitutional wrongs were widely sown as far back as the 1980 presidential election by candidate Ronald Reagan. In his opening campaign speech in Philadelphia, Mississippi—the community where three civil rights workers were kidnapped and murdered in an act of domestic terrorism—Reagan vowed, if elected, to bring about a “sea change” in the makeup of the federal courts.⁵ His aim was to stack the court with “strict constructionists,”⁶ a term applied to judges who were wedded to the black letters in the Constitution that would, of course, legalize segregation once again. Reagan was elected twice, and the record shows his pronouncement took root as he promptly began filling the federal courts with judges who found ways to overrule the civil rights precedents.

This development was reminiscent of the Rutherford Hayes-Samuel Tilden compromise of 1876 that resulted in the withdrawal of federal troops from the South. This “deal” led to the virtual nullification of the Thirteenth, Fourteenth, and Fifteenth Amendments. What ensued was the enactment of a series of Jim Crow laws across the South that disfranchised black voters on a wholesale basis. Black elected officials during Reconstruction in southern states were driven out of office by violence and disfranchising laws.

The effects of this chapter of our history continue to plague the nation. With little or no knowledge of this past, and without the creation of an awareness of it, remnants of many forms of racism operate today. This Freedom Center Journal has a critical role to play in enlightening the American public, so as to halt this restoration of the horrible past.

Justice Marshall pointed out the urgency with a prescient warning in his final dissent in 1991 before retiring as a Justice of the Supreme Court.⁷ He cited examples of the Supreme Court majority, with no change in facts, overturning two of its long-standing precedents, with the only apparent

⁴ Justice Thurgood Marshall, Remarks at the Annual Seminar of the San Francisco Patent and Trademark Law Association (May 6, 1987).

⁵ Ronald Reagan, Speech at the Neshoba County Fair (Aug. 3, 1980).

⁶ *Id.*

⁷ *Payne v. Tennessee*, 501 U.S. 808, 844-56 (1991) (Marshall, J., dissenting).

reason being the addition of new justices—justices appointed because of their conservative, strict constructionist view of the law.⁸ With much sadness, he declared that in civil rights and civil liberties cases, more of this kind of unreasoned decision-making could be expected. He wrote:

Power, not reason, is the new currency of this Court's decisionmaking. ... Neither the law nor the facts supporting *Booth* and *Gathers* underwent any change in the last four years. Only the personnel of this Court did.

In dispatching *Booth* and *Gathers* to their graves, today's majority ominously suggests that an even more extensive upheaval of this Court's precedents may be in store. ... [This Opinion] sends a clear signal that scores of established constitutional liberties are now ripe for reconsideration.⁹

This likelihood cries out for The Freedom Center Journal to be the Paul Revere of our time. As Justice Marshall predicted, the future is threatened due to the shift in the makeup of the Supreme Court. This state of affairs makes the articles in this issue a valuable resource from which believers in freedom should draw new resolve.

The contributions to this volume explore several themes regarding the meaning of American identity in a time of resurgent white supremacy. The first theme involves the shaping and re-visioning of personal identity. The second theme involves the distinctive roles of space and place in contestations over cultural identity. The third theme involves interrelationships between institutions and identity formation.

A number of pieces in this volume explore these themes by focusing on aspects of Cincinnati's distinctive history, culture, and location. The Queen City marks a border between north and south in a county whose shifting demographics reflect the complexity of a swing state in the nation's heartland. Related, multilayered tensions are woven throughout the discussion of identity formation in these essays and articles.

The first contribution to this volume, *The American Dreamer*, exemplifies those tensions. This spoken-word piece by EsQuir3, a student at the University of Cincinnati College of Law, conducts a comprehensive interrogation of the concept "We the People" by tracing the manifestation of racialized exclusion from the founding era to the flood of social media that saturates the current moment. College of Law Professor Sean Mangan reflects on that diversity in discussing a series of dramatic events that

⁸ *Id.* at 849-51.

⁹ *Id.* at 844-45.

occurred in Cincinnati during a few short weeks in the summer of 2015 and their implications for his own self-understanding as an individual, as a member of the local community, and as an American. Those events included weddings in Fountain Square that followed the Supreme Court's vindication of the right to same-sex marriage as well as the tragic shooting deaths of Sonny Kim, Trepierre Hummons, and Samuel DuBose in acts involving police use of force.

Two student pieces continue the exploration of identity formation by focusing directly on the roles of space, place, and culture. Avery Ozimek confronts the myth of Northern exceptionalism through an investigation into the antebellum history of white supremacy in Cincinnati and its manifestations in current racial tensions. Madeline High analyzes the ways that gentrification in Cincinnati's Over the Rhine neighborhood has created an identity crisis by simultaneously displacing low-income and minority community members while opening new possibilities for entrepreneurial economic activity and socioeconomic integration.

No exploration of the current crisis in the meaning of American identity would be complete without discussion of the criminal legal systems that disproportionately impact low-income people and people of color, often by deepening preexisting patterns of disenfranchisement and exclusion. On this topic, we are honored to republish a still-timely article with the permission of Professor Paul Butler and *The Georgetown Law Journal* in which Professor Butler concludes that many of the ill effects from criminal legal systems result from system design, which limits possibilities for sustainable reform.¹⁰

Addressing the role of higher education in identity formation, University of Cincinnati Professor David Stradling dissects growing tensions over the role of the public university—specifically, through a thoughtful examination of the University of Cincinnati's institutional identity amidst preparations for a 2019 bicentennial celebration. The essay ties the University's identity tightly to its distinctive historical mission of engaging in truth-seeking while serving the public good, and cautions against the diminution of that mission and identity through an overly narrow focus on the University's role in promoting economic growth.

In the volume's concluding piece, Ashton Hood, Executive Editor of *The Freedom Center Journal*, engages with local community activist Iris Roley regarding her work on justice reform. This rich intergenerational discussion unpacks the history and current state of police-community relations and Ms. Roley's work in securing one of Cincinnati's crowning achievements, the Collaborative Agreement, which frames policing first and foremost as an exercise in cooperative problem-solving. The interview emphasizes the

¹⁰ Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419 (2016) (reprinted with permission of the author and GEORGETOWN LAW JOURNAL).

importance of pairing community activism with empirical research, as exemplified in a community safety survey conducted in partnership with Brian Calfano, Assistant Professor of Political Science at the University of Cincinnati.

The student editors of this volume intended the selected contributions to offer readers a nuanced view of our nation's current identity crisis. The collection is offered in the hope that it will encourage further thinking and discussion about what it means to be part of the American experiment with democratic self-governance in an age of resurgent white supremacy.