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Introduction

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SYMPOSIUM THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

INTRODUCTION

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St. John's Law Review has chosen an appropriate theme for this issue: the Bicentennial of the United States Constitution. Most students, professors, and practitioners of law well appreciate the vitality of our national charter; it has survived 200 years of change, war, and economic depression and it still functions today. In 1787, the delegates in Philadelphia did not set forth solutions to all the problems that might arise in the new nation, but they did create a blueprint for a government that could develop those solutions. The Constitution is therefore a "living document," as John Marshall said, because it created a system of government that has certain fixed limits on power but is sufficiently accommodating to changing political, economic, and social conditions. Countless cases over 200 years attest to that reality.

Federalism, one of the features of our Constitution that provides for flexible governance by having the state and federal governments coordinate efforts, is a consistent theme in the essays

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that follow. We are reminded of the important role that state courts play in enforcing the Constitution. If Congress did not exercise its power to "ordain and establish" a system of inferior courts,[1] state courts of general jurisdiction would nonetheless be available to enforce constitutional rights. Even now, with our vast network of federal courts, there are probably more constitutional claims adjudicated in state courts than in all federal courts combined.

These essays also demonstrate another important role played by state courts in our system. Although the Constitution guarantees certain freedoms, it does not purport to deal with every significant liberty.[2] Indeed, those powers of government affecting perhaps the most intimate and personal facets of life—such as family, health, moral, and criminal matters—are primarily left to the states and to regulation by state constitutions. In this issue, Judge Kaye points out that federalism permits state courts to apply and develop state constitutions independently of the federal Constitution.[3] Judge Titone observes in his essay that this independence may extend even to the state courts using different theories or methods of interpretation with respect to their state constitutions.[4] Federalism leaves "elbow room"; the decision in 1787 to leave this independent power and responsibility to state courts is an important part of our Constitution that, like so many others, deserves continuing study.

During this 200th anniversary period, it is important that we come to understand our Constitution—the most remarkable document of its kind in all history—and how it came into being. As Chief Judge Wachtler puts it, this 200th anniversary is a "celebration of reflection."[5] Yes, with a history and civics lesson for us all.

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[1] U.S. CONST. art. III, § 1.

[2] *Cf.* U.S. CONST. amend. IX.

[3] Kaye, *Dual Constitutionalism in Practice and Principle*, 61 ST. JOHN'S L. REV. 401, 426 (1987).

[4] Titone, *State Constitutional Interpretation: The Search for an Anchor in a Rough Sea*, 61 ST. JOHN'S L. REV. 433, 435 (1987).

[5] Wachtler, *Our Constitutions—Alive and Well*, 61 ST. JOHN'S L. REV. 383, 384 (1987).