Constitutions, Democracy, and the Rule of Law

Do Constitutions Constrain?
October 16, 2003

Welcome and Introduction

Welcome by Lee C. Bollinger, President, Columbia University

President Lee C. Bollinger: Thank you for coming to this conference, this panel, on "Constitutions, Democracy, and the Rule of Law" symposium. I want to thank our very, very distinguished panelists for coming to Columbia and for those who are already part of Columbia for participating in this. We have tried to celebrate the 250th anniversary of Columbia by doing what we like to do, which is to try to think as hard as we can about serious matters. And this particular subject is of obvious importance in the world today, and the other panel that we will have at this point in the celebration of the 250th—on genomics and the implications for our world—is equally important and somewhat less obvious, but it really is something that should occupy our attentions.

Constitutions are a phenomena that I feel particularly close to, having gone to law school here in the late sixties, in a decade during which the process of thinking about a constitution and its role in both preserving the structure and defining the structure of society, that had, in a sense, reached a height of activity. And I was one of many who naturally gravitated toward this subject and I have since spent my whole career largely thinking about one fraction of that, of that constitution, that is the First Amendment. And one of the things that became clear at that time was that thinking about a constitution and what it means is not only thinking about what the law should be, but about what the fundamental values of a culture, of a society should be. And how that happened, and whether that's a good or bad thing, whether that's a good process in which to do that is, I think, a fascinating and highly important question. I'm sure it will be taken up in the discussions today and tomorrow.

It is my pleasure to introduce Alan Brinkley, who is one of the most distinguished historians and perhaps the most distinguished of modern American history. He has joined the ranks of university administrators here as provost, it is my great good fortune to have him to work with. It is Columbia's enormous good fortune to have him guiding us in the academic decision-making and beyond. His
knowledge about what we’re talking about is deep, extensive; his judgment is unbelievably balanced and nuanced, and to have him take us through this subject is a great blessing for all of us.

The 250th, of course, reminds us that Columbia has many, many distinguished alums and faculty who participated in constitution-making and constitutional interpretation, and over the course of the next year I hope that we will be able to sort of regain some of that history and make it more part of our current conception and future conception of Columbia than perhaps we have. Alan?

**Introduction by Alan Brinkley, Provost, Columbia University**

*Alan Brinkley:* Thank you, Lee. I too am really pleased to be here and to join President Bollinger in welcoming our distinguished guests to this panel, and welcoming all of you to this first of the symposia that we have organized to help Columbia celebrate its 250th anniversary. Despite President Bollinger's very generous remarks, whatever deep knowledge I may or may not have about the Constitution will not be visible to you today since I'm here simply to introduce the panel and not to participate in it. But I am very happy to do that.

Columbia, in celebrating its 250th anniversary, has organized a series of such symposia throughout the year between now and October 2004, which is the actual birthday of Columbia. And it's as Lee has said, it's very appropriate that the first of these symposia be about constitutions, because along with universities, the Constitution is among the oldest institutions in our history, one of the oldest surviving institutions and like universities, it is a complicated and often disputed institution that's played an enormous role in our society, as well as in the societies of the rest of the world. Arguably, the United States was the first nation in the world to create a written constitution, but written constitutions have now spread throughout the world, partly by our example, and sometimes at our urging or even coercion, often successfully, sometimes not. Constitutions have taken many different forms around the world, some of them quite different from ours, and we all have much to learn from each other's political systems. And so it's particularly appropriate I think that we begin this observance of Columbia's 250th year with this symposium.

It's my pleasure now to introduce the moderator of today's panel, Jon Elster, the Robert Merton Professor of Social Sciences here at Columbia, one of the most distinguished American scholars of political theory and political thought. And he will introduce the rest of the panelists and begin the symposium, and I hope you all enjoy it. Thank you very much.
Opening Remarks by Jon Elster, Department of Political Science, Columbia University

Jon Elster: Thank you, Alan. I'm very pleased to introduce this first session of the symposium "Constitutions, Democracy, and the Rule of Law." The topic of this session, as you know, is “Do Constitutions Constrain?” The topic of tomorrow's session, which will be moderated by Akeel Bilgrami, is “Terror and Civil Liberties.” Let me say just a couple of words about the two sessions and how they relate to each other.

The topic of today's session is quite general. We have asked the participants to address two questions: The factual question, how much do constitutions constrain the free interaction of political agents, and a normative question, how tight ought those constraints to be? For answers to these questions we can draw on the experience of two eminent politicians, Michel Rocard and Antanas Mockus, who can tell us about the extent to which they have found constitutional constraints to be welcome or unwelcome, hard and soft. The second question, the normative one, also invites theoretical reflections on the desirable incentive structures to be established through the constitution. On this topic our third presenter, Adam Przeworski, will, I conjecture, provide that perspective.

Tomorrow's session will consider this general issue that I just described with regard to the topical question of terrorism and civil liberties. A classic statement of the tension between the fight against terrorism and defense of civil liberties was that of Justice Robert Jackson, fresh back from Newburgh, when he said that the Bill of Rights is not a suicide pact. Even older, of course, is the adage, Let justice be done even though the heavens might fall. Again, there is both a factual question of how much the heavens would in fact fall down, and a normative question about the costs society should be willing to pay for justice to be done.

Before I introduce the speakers this morning, let me say a little bit about how we shall proceed. This morning each of the three speakers will talk for about thirty minutes. We shall break for lunch at noon and resume at two o'clock with comments by the three panelists who will speak for 20–25 minutes each. After the presentations and the comments, we'll have a discussion among the speakers and the panelists, open-ended discussion, and if there is time, as I hope there will be, we'll have participation by the audience. And I like to just tell you how that participation will be organized.

If you think you might want to say something toward the end of the afternoon session, please come up here to the podium at the end of the morning session with a piece of paper with your name, the speaker or speakers you want to ask a question, and one or two questions. Then depending on time, and depending on how many people submit questions, I will select some and call on some of you to
address, to ask those questions. But once again, this depends on how things work out and whether there will in fact be enough time.

I'm going to introduce all the three speakers now so that I don't have to break the flow of the presentations later. And I'll be brief since you have the biographies of all of them. But first I would like to introduce a nonspeaker, professor and former provost Jonathan Cole, through whose initiative this event is largely due. We in fact asked Jonathan Cole to be a speaker in this symposium, since he has been very concerned with academic freedom in the post-September 11 world, but he had to decline since he is a moderator of another simultaneous symposium taking place on the campus.

Turning from this nonspeaker to the speakers, let me first say how happy I am to have Michel Rocard, former prime minister of France, as one of the speakers. He is currently a deputy in the European Parliament. If you will allow me a personal remark based on my deep and long-standing admiration for Mssr. Rocard, I see him as part of a great and pure tradition in French politics. Beginning about a century ago with Jean Jaurès, passing through Léon Blum, Pierre Mendès-France, and perhaps, although I hope I'm wrong, having Mssr. Rocard as currently at least the last incarnation. It is a tradition of generous and rigorous devotion to public service.

My recent friend Antanas Mockus is the mayor of Bogotá. In a country where the rule of law and civil liberties are on constant siege, I read in the Financial Times this morning that for the upcoming mayoral elections in Bogotá, 27 of the candidates had been assassinated and many others have declined. Candidates have declined to stand for office! Antanas—fortunately for him, perhaps—is prevented by the constitution from standing for office again. His term expires at the end of December. In his conspicuously successful response to violence in Colombia and Bogotá, Mr. Mockus has used imagination rather than counterviolence. His example shows that symbolic politics can have very tangible effects.

Now my very old friend Adam Przeworski is an outstanding academic who has also been for many years in dialogues with heads of states about institutional design. One of his earlier books was called Paper Stones, meaning the ballot as a tool for political change. Today I hope he will tell us about parchment barriers and their robustness as limits to change. So I give the floor to Prime Minister Rocard.