

THE PRESERVATION OF CONSTITUTIONAL RIGHTS

Address by Robert Morgan
United States Senator
Ervin-Hatcher Testimonial
Morganton
April 22, 1978

↓ Saw Day
ECU
April 21, 1978

Just over two hundred years ago, the representatives of American colonists made a declaration, the intent of which was revolutionary in its every word. A little over a decade later, after a desparate war, many of those same representatives gathered to write another document, which was equally revolutionary--the United States Constitution.

And what was the revolutionary message of both those documents, the Declaration of Independence and the Constitution? It was this: "We the people of this land, in cities and towns, on farms and in frontier cabins, take upon ourselves complete and total responsibility for our own government and our own well-being.

Upon our own initiative, we will succeed or fail."

There were to be no "ifs, ands, or buts" about it. From that time forward, no one was going to step in to save us, no one was to be blamed for failure or mediocrity but ourselves.

Government is not men in high places. It is not bureaucratic machinery. There is no sovereign to whom we owe duty, who has rights we must respect. Instead, the rights are ours alone, and it is the duty of those who represent us never to undermine what we the people, reserve to ourselves.

That sounds very abstract, but it should not be. It means that what we do in Washington is not for our own aggrandizement, but for the service of people like those gathered in this room tonight. We are given a little power for a little time. We are

asked to use our best judgement, and cast our votes in a way we think will be of most benefit to the people. But we are not the true government. When we return to such a place as this, to this banquet room, we do not come as ambassadors from a distant and powerful ruler. Rather, we ourselves come into the august presence of ultimate authority -- the people themselves.

The men the people of this community honor tonight have seen much of public life. They have played roles on many great stages, as judges and as legislators.

The men that we honor tonight have served their county, their state, and their nation in times of war and peace. Neither has acquired wealth and this was not a high priority with either. Each has so loved his nation to serve it on the battlefields of Europe in World War I and World War II and yet neither has ever hesitated to be critical of governmental action when such action in their opinion infringed needlessly upon the individual rights of their fellow citizens.

But there can be nothing more satisfying, I am sure, than to return to the community from which they came, let the curtain be drawn before the glare of television lights, and to join once again the people in whose behalf all their efforts were done. That

is to return to the real source of government -- the neighbors who loaned their authority for a while.

The founding fathers understood that men whose power is loaned to them might forget that fact, and begin to think of it as their own.

And I think this continues today. And there are no men anywhere more cognizant of this fact, in my mind, than Judge Hatcher who has for years performed the awesome responsibility of sitting in judgement on those who have stood accused of abusing their rights and authority and Senator Ervin who more than any single man in history has sought out and brought to judgement the most powerful men on earth who had used the power entrusted to them by the people in wrongful ways for their own selfish interest and aggrandizement.

Abuse of power by government officials is nothing new. That is the sort of thing the American colonists rebelled against in 1776. After that great struggle, there were those who realized we could not stay free unless our own government was to be kept in check. North Carolinians played a key role in determining how we were going to preserve our liberties against government encroachment. In Hillsborough, almost 200 years ago, North Carolinians were holding their convention on the question of whether or not to ratify the new Constitution. In that convention, the representatives of the people of North Carolina refused to ratify the Federal Constitution as it was then written. North

Carolina was the next to the last state to ratify the Constitution.

I think we ought to remember and be proud that the people of

North Carolina did this, because they had a very good reason.

The problem that the people of North Carolina recognized was that there was no bill of rights guaranteeing the liberties of individual Americans, in the face of a powerful central government.

Unless federal power were restricted and individual liberty and states rights duly safeguarded by the adoption of amendments to the Constitution, the antifederalists meeting in Hillsborough were determined that North Carolina should not ratify.

I want to digress for just a moment to tell you I think the most beautiful story in North Carolina history. And a story, whether consciously or not, influenced the lives of Senator Ervin and one of his predecessors in the Senate seat as well as many others as well as myself.

There runs a strand of rugged individualism through North Carolinians that is just as clearly and well-defined and well-marked as the traditions of the Jewish people. North Carolinians came to this land long, long ago to escape the tyranny of a powerful monarch. They came to escape the tyranny of the trade guilds and the merchant guilds and they wanted to earn their livelihood in whatever way they chose and to be free to worship in any way they chose. And when these rights were infringed upon by King George we North Carolinians were

the first to express our discontent. Remember the Mecklenburg Declaration of Independence. You remember three months before the Declaration of Independence in Philadelphia the Halifax Resolves were adopted at Halifax when we expressed our desire to be free. We were the first to take up in arms at Moores' Creek but when we won the Revolutionary War we'd won our freedom we came back. We came back to North Carolina and we wanted to be let alone. We wanted no part of a strong central government and on a number of occasions we refused to even send delegates to the conventions to amend the Articles of Confederation. But when we did send them to the convention in Philadelphia and they came back with a new constitution. North Carolinians were dubious. And there in that convention when our forefathers examined that constitution and

found that all that it did really was to set up the executive branch of government headed by the President, the judicial branch headed by the Supreme Court and the Congress and no guarantees of individual liberties, our people were not about to have any part of it. The proponents of the constitution argued you know you don't have to write these guarantees into our basic document because after all we are the rulers. We'll have no monarch. We rule ourselves and surely we wouldn't deprive ourselves of these precious liberties. And there was a gentleman there at that convention and I found a transcript of it whose name was Mr. Lenore and in essence he said this: There lies within the breast of every human being a secret lust for power and we cannot entrust these sacred rights for which we have bled and died even to our own. And so we

in North Carolina refused to become a part of the United States.

And for a solid year we were an independent state and I heard

Senator Sam say on the morning show which he may not remember

but I do, I remember him saying that we didn't vote for George

Washington because we were not a part of the United States.

We were not a part, we had no members of the United States

Senate in that first Senate. But what we did do when we rejected

that constitution we set out a declaration of rights and we

said if and when you write these basic rights into our

constitution then we will consider coming in and it was not

until after the first Congress had met and the Bill of Rights

had been adopted by the Congress and ratified by one state,

nearly a year later, that North Carolina agreed to become a

part of the United States. And you know it is remarkable as

you trace the history of North Carolinians that that thread of individualism has always come down through the years. Governor Zeb Vance, governor of this state during the Civil War and later occupied the same Senate seat that Senator Sam and I have now occupied, refused during the Civil War to suspend the writ of habeas corpus even though President Lincoln had done it in the North and President Jefferson Davis had done it in the South. And you know, when I went to the Senate I didn't ask to go on the Judiciary Committee. I'd been a lawyer all my life and I thought; you know, I want to put my efforts somewhere else. I want to put my work in housing and I want to put my efforts in public works. But there is something about being a North Carolinian that drew me back to these basic human rights and Senator Mansfield put me on that committee and then I began

to realize what Senator Ervin had been saying for so long in the Congress of the United States. I know now that no North Carolinian could ever serve in the Congress of the United States without being jealous of these sacred rights which have meant so much to us from time to time.

From time to time, Congress or the courts are called upon to redress the balance of power written into our Constitution. Sam Ervin spent much of his time in Congress fighting for this Constitutional principle. I think one of the best things said about Sam Ervin at the time of his retirement from the Senate was this: "Let us remember him for his long, patient, and courageous stewardship of our rights. Let us remember him simply this way -- he

looked after the Constitution."

What this meant in practice was the Senator Ervin, in Washington, spent enormous energy trying to see to it that Senator Hatcher, in Raleigh, could remain the people's primary lawmaker, as the Constitution said he should be, without interference from the federal government. He labored to keep the Executive Branch and even the Supreme Court in check. In fact, when he lost control of his car one day and smashed it into the side of the Supreme Court building, it was hard to convince a lot of people that he didn't do it on purpose.

I am proud the people of North Carolina sent me to Washington to follow in Senator Ervin's footsteps. I am fully aware he carried on a great North Carolina tradition of sticking up for our Constitutional rights. I have already mentioned our state's refusal to ratify the Constitution until it contained a Bill of Rights. We should always remember as I mentioned before that during the Civil War we still supported and maintained those rights.

North Carolina, we felt we could go through the turmoil of civil war without giving up our legal rights, when all around us those rights were being put aside in the interest of "national

security." That shows something about the concern we have always had in our state about protecting individuals against the power of government. So you can see how Sam Ervin came by his interest in the subject.

Senator Ervin's work on behalf of the people's Constitution became a legend during the Watergate hearings. He gave the lie to the thesis that appointed officials and White House aides were above the law.

He exposed to the American people that burglary, perjury, and bribery were being used in violation of the law the rest of us must live by, and he discredited the notion that such things could be kept quiet under the cover of national security and executive privilege.

But it didn't end there. When I was sent to Washington, I soon found that an attitude of lawlessness was widespread, and that it had been going on a long time. During my service on the original Church Committee, and subsequently on the Senate Intelligence Committee, I was shocked at the cavalier treatment the rights of Americans were getting in Washington.

It was amply demonstrated that the Government did take action against individuals and organizations, not because they have

have committed any crime, but because someone in Washington didn't like their politics.

In the course of its COINTELPRO operation, the FBI attempted to break up marriages; fomented violence between rival groups; attempted to discredit individuals with their employers and financial backers; planted false news items about people in the media; prevented people from getting honorary degrees and from speaking on college campuses.

In one case over two hundred and fifteen thousand first-class letters were opened in direct violation of the law.

The U.S. Army kept a file on over one hundred thousand Americans and a number of domestic organizations, encompassing virtually every group seeking peaceful change in the United States.

Some groups that were kept under surveillance were the John Birch Society, Young Americans for Freedom, the National Organization for Women, the NAACP, and Business Executives to End the War in Vietnam.

I can honestly tell you that I found it almost incomprehensible that our intelligence and federal law enforcement agencies could have been responsible for such acts.

I mention them to you tonight to remind you that the rights and liberties which this Union was formed to secure cannot be taken for granted. And that government cannot always be trusted to respect them. Yes, we have the freedom to think and speak what we please, but we have had the FBI infiltrate Carl McIntyre's religious group. Yes, we have the freedom to associate with whom

we choose, so long as it is not for a criminal purpose, but we have had the IRS auditing the taxes of a North Carolina man who bought a raffle ticket from a right wing group. Yes, we have freedom of the press, but we also have the FBI planting stories in newspapers attacking people it didn't like. Yes, we say that people cannot be deprived of their livelihood without due process of law, but we have had the FBI write anonymous letters, resulting in people losing their jobs and job opportunities. And yes, we say that everyone is entitled to privacy in his marital and family affairs, but we have had the FBI write anonymous letters which result in homes being broken and children being alienated from their parents.

I, for one, am glad that we have learned these things. I

think their impact on the future will be healthy. Not only will people in these agencies be more conscious of the impact of their activities on people's rights, but I think the average citizen will be more inclined to question governmental actions more carefully.

In the words of Justice Brandeis:

"The makers of the Constitution undertook to secure conditions favorable to the pursuit of happiness...They conferred, as against the Government, the right to be let alone--the most comprehensible of rights and the right most valued by civilized man. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment."

Where we have such an "unjustifiable intrusion", and yet, by our silence or inaction, we condone it or allow it, our own personal liberty must necessarily be circumscribed by the possibility that at some point in the future, the same intrusion may be visited upon us.

To use the agencies of government for political ends is a terrible temptation. To open mail, use illegal wiretaps, to try to gather evidence by breaking and entering, to use the extraordinary powers of the FBI and the Internal Revenue Service to intimidate and harrass political opposition and silence it -- these temptations have been too much for many to pass up. People are right when they say Nixon was not the first to use such tactics. Even so great a man as Franklin Roosevelt used the FBI and the IRS to intimidate

opposition. A tax audit was ordered against Charles Lindberg and others who opposed the President's growing war policy. FDR's son has said that his father "practically invented wiretapping." And the same techniques were brazenly used by the Kennedy Administration against conservative organizations.

Those are right who say Nixon was not the first. But they are wrong who excuse such tactics on that basis. It was wrong when FDR did it, wrong when Kennedy did it, and wrong when Nixon did it, because it tears at the heart of the Constitutional protection of individual rights. The fact the people believed they were acting in our best interest is no excuse. As Justice Brandeis said:

"Experience should teach us to be most on our guard to

protect liberty when the Government's purposes are beneficent

...The greatest dangers to liberty lurk in insidious encroachments by men of zeal, well-meaning but without understanding."

In America, during the period immediately after the Vietnam War, we began to go through a period of lowered self-confidence. The revelations about actions by our government were part of the reason.

According to the Harris Poll, the people's confidence in their institutions went down hill to a spectacular degree. Every institution suffered -- the White House, the Congress, the military services, medicine, big business, and higher education. These and many more appeared in the polls to have lost the confidence of

the people.

In this mood, we ended our second century as a nation.

But sometime during the Bicentennial Year, America's opinion of herself began to turn around. The polls all showed it. I believe this means the crisis of self-respect is passing. We are on our way back. The two-hundredth Fourth of July probably was the turning point. We were forced to look back on our history, and see that we have had far more terrible times as a nation, and that we have come through. We may well have lived long enough as a nation to leave starry-eyed and fragil optimism behind us, and to take on a more resolute hopefulness.

I think a lot of people who had participated in our recent round of doubt and self-criticism suddenly realized they were

patriots at heart. Not the shallow, flag-waving kind of patriot, but believers in something much quieter -- and far more lasting.

I think we don't need to worry about America. We have our troubles, but our sense of values is sound. Our values are being refined by adversity. We are learning, although we are learning by making some bad mistakes.

But I believe we can accomplish much. We as a people have displayed such a genius for self-government, for solving great problems, that we are the wonder of the earth. Again and again, we have met and prevailed over the problems of mistaken direction and mistaken judgement, and we shall prevail again.

If there is anything which should be called American know-how, it is not the knack of building machines, but the knack of confronting

problems which have ruined government after government, and defeated nation after nation.

We should consider, here tonight, that the challenge of a government which thought itself above the law has been met. We had to go through great turmoil, but the Constitutional catastrophe which was Watergate is over, and the dangerous imbalance of power has been somewhat corrected. We have written a charter for the national intelligence agencies, which recongized the nature of their work, yet provides a framework of law under which its employees must operate.

We have much left to do. We need a comprehensive energy policy. We must return the federal government to fiscal responsibility, so that we no longer mortgage our children's futures to

pay for our own needs and excesses. We need an enlightened policy toward Latin America, so that the last hemisphere of the world relatively free of Communism will remain so.

I believe we shall accomplish these things. We owe ourselves a little optimism, based on our past accomplishments. Negativism leads nowhere.

During the worst of the Civil War, Abraham Lincoln was listening to the tale of woe told by a delegation to the White House. They were all wringing their hands and making long lists of the terrible crises facing the divided nation. Lincoln told them this story:

Years ago a young friend and I were out one night when a shower of meteors fell from the clear November sky. The young man was frightened, but I told him to look up in the sky past the shooting stars to the fixed stars beyond, shining

serene in the firmament, and I said, "Let us not mind the meteors, but let us keep our eyes on the stars."