

# JOURNAL



THE LAWYER'S MAGAZINE  
SEPTEMBER 1, 1987

*We the People*

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they had unlocked certain immutable laws of the physical universe and of human nature. (John Adams, by contrast, viewed the universe as a less ordered place; he believed that no theory yet devised could adequately explain human society.)

The "inalienable rights" in the Declaration of Independence reflect Jefferson's belief that human conduct could be structured according to principles that never change. The author suggests that the Declaration of Independence is a "shining public poem" designed to vindicate Jefferson's philosophical and political ideals.

The essays devoted to Jefferson and Marshall, however, cannot purge *American Silhouettes* of its more prosaic parts. That is a pity in light of the careful research and measured prose that mark this work.

*Howard Eastman is an associate with Wilson, Sonsini, Goodrich & Rosati in Palo Alto, Calif.*

### ARE WE TO BE A NATION?

By Richard B. Bernstein,  
with Kym S. Rice  
Harvard University Press  
Cambridge, Mass.  
342 pages; \$35 (cloth),  
\$14.95 (paper)

*Reviewed by Sheldon D. Pollack*

*Are We to Be a Nation?* is a refreshing exception to a season of coffee-table tomes and lukewarm historical chronicles. Well-written and handsomely produced, it was published as part of the New York Public Library's bicentennial project. The documents first appeared in a bicentennial exhibit drawn from the library's collection. The result is an attractive book that combines reproductions of valuable historic documents with thoughtful commentary.

Richard Bernstein correctly recognizes that to understand the Constitution, one must first understand the history and ideas of the Revolu-

tionary period. Indeed, the best scholarship on this period—from Gordon Wood, Bernard Bailyn, Perry Miller, Richard B. Morris and others—stresses the formation of an underlying political vision derived from pre-Revolutionary rhetoric.

The importance of early political thought in shaping the development of the Constitution and American institutions is acknowledged by Bernstein as well.

Colonial and Revolutionary rhetoric, along with the experience under the Articles of Confederation, provided the intellectual framework of the Constitutional Convention. Bernstein explores this context and provides scholarly references for more curious readers.

His account of the drafting of the Constitution and the subsequent battle for state ratification is the book's highlight and culmination.

Bernstein avoids the bogs of the academic debate surrounding this period, even while describing it to his

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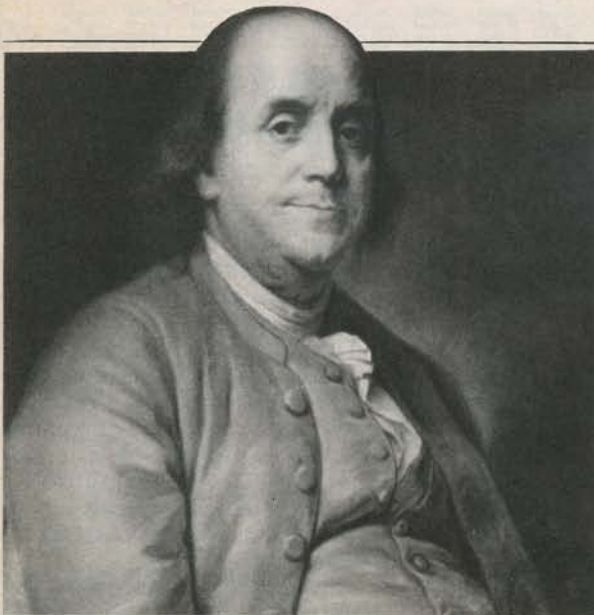
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◀ Benjamin Franklin.  
Portrait by Joseph Sifrede Duplessis.

ment extended "most of the rights guaranteed in the first 10 Amendments" to protect Americans "against government infringements at all levels. . . ."

This is arguable as a matter of history and ignores the relatively recent struggle for a majority on the Supreme Court that would read the 14th Amendment in such a manner as to justify "incorporation."

Critics of the incorporation doctrine would profit from reading this history before too boldly asserting a jurisprudence of original intent. As *Are We to Be a Nation?* shows, there was a rich and complicated diversity of opinion and intention among those who drafted the Constitution.

*Sheldon D. Pollack is an associate at Wolf, Block, Schorr & Solis-Cohen in Philadelphia, and a former instructor of political science at the University of Pennsylvania.*

readers. The only glaring exception occurs on the last page, where he blithely asserts that the 14th Amend-

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