

Rotunda

February 13, 2013

Sometimes it's important to recall where we came from in order to discern where we want to go. With that in mind, you'll forgive me I hope, for sharing just a brief recollection of our mutual history.

For over two millennia of human history our predecessors endured, by today's standards, unspeakable hardship, oppression, war, famine and suffering while trying to figure out how to live with each other in peace and freedom. From the law of the jungle to a variety of other tyrannies, the search for liberty and prosperity was slow, brutal and likely unsuccessful.

In 1607, a hundred and four migrants from England, seeking religious emancipation and political liberty, landed on the shores of Virginia with the intention of establishing the permanent settlement of Jamestown on the North American continent. For the next 180 years, until 1787, when the Constitutional Convention was called, the American colonies were without a national government, a constitution or a bill of rights.

Remembering the sacrifices of our forebears and ancestors who gave their lives to the cause of liberty and prosperity, I could not help but think: how blessed we are to have the freedom to be assembled here, peacefully, together, in this magnificent structure we all jointly own, freely speaking to one another without fear of regulation or tribulation. All of that and much, much more, created, protected and guaranteed by our constitutions.

A democracy is a dynamic institution, always changing. But it's fragile and can dynamically deteriorate and rot just as quickly as it can dynamically improve. It's not imposed upon us. We choose it, by the mutual promise we

make to each other, to faithfully support and defend the terms we've agreed to as defined and memorialized in our constitutions.

Before entering upon the duties of his or her office, a legislator, and every other elected official, "shall," according to Article III of the Montana Constitution, solemnly swear to faithfully support, protect and defend the constitutions of Montana and the United States of America.

Taking that oath is infinitely more than a ceremonial ritual. It's a mandatory precondition to assuming office. It's also, simultaneously, the making of a public promise and an affirmation of a sacred vow, to be bound, above all else, to the preservation of the public good and the faithful execution of the duties assigned by the Constitution.

It is plain, then, as our legislators perform their duties, the imperatives of our constitutions and the public good must transcend and prevail, at every turn, over the stratagems or slight of hand of political parties. So says the Constitution and the oath of office to which our elected leaders have pledged their allegiance.

There is, by design, a dynamic tension built into our constitutions whereby the powers of government are purposely allocated to different branches. The functional division of powers between the legislative, executive and judicial branches provided for in the Constitution is the mechanism intentionally infused into our constitutions to prevent the concentration of power in any single institution, political party or branch of government.

The Montana Constitution provides very clear parameters and prohibitions concerning the separation of powers: "The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly

belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.”

Yet, in spite of those very clear constitutional prohibitions, some legislators have charged ahead with unbridled enthusiasm and proposed 27 different encroachment bills that aim to strip, mutate or diminish the powers allocated to the judicial branch. And why? Because the decisions of our judges don't match up on every occasion with what those legislators want or demand.

Just the sheer number of those judicial encroachment bills reveals an air of intimidation and a desire to punish the judicial branch wherever and however the sponsors can as retribution for the members of the judiciary daring to do their duty in accordance with the Constitution and their oath of office.

Clearly, legislators who cast their vote to remove or interfere with the authority assigned by the Constitution to the judicial branch, do thereby betray their own oath of office as well as their pledge to serve the public good.

Likewise, if legislators set about to create an entirely new and arcane layer of courts in order to precipitate the verdicts they want instead of the ones they get; or they attempt to tarnish and limit the independence of the judiciary by transforming the nonpartisan election of justices and judges into partisan political affairs, they once again repudiate and abandon the virtues and commands of the Constitution they've given their word to faithfully defend.

Encroachment by the Legislature is underwritten by an almost insatiable lust for power, control and authority, the securement of which, history reveals, leads inescapably to factions, autocracy and the disappearance of the constitutional order.

For a democratic republic it's a dangerous game to be played. We can fall apart much more quickly than we came together.