

INTRODUCTION

CRUZ REYNOSO†

After the emotion of an election the reflections of academic observers help us understand the results and, importantly, the basis for the result. What is the meaning of the passage of Proposition 187? A democracy is well served by the thoughtful exchange which this volume affords the reader.

We Americans, it seems to me, have engaged in a series of defining struggles in an effort to make the reality of America approximate the ideals of America. Those ideals are found in the very basic notions of the Constitution — fairness, equality, and respect for one another. Two realities faced the drafters of the Constitution — slavery and religion. The reality of ethnicity was to be faced later.

Religious precepts are the source of strength for any civilization. But to America came Europeans of various, mostly Protestant, religious groups. How could that diversity be accommodated within the ideals of fairness and respect? A resolution was vital. Religious wars in earlier Europe had destroyed lives, ethnic groups and countries. We needed to do better. And we did. The Constitution, in essence, neutralized government. The right of each to practice her or his religion was paramount.

Yet discrimination on the basis of religion persisted. It seems to me that the election of John F. Kennedy as president at long last demonstrated a national acceptance of religious differences. Today, the religion of presidential candidates is barely noted.

Slavery was a more difficult issue for the writers of the Constitution. Though slaves were counted for purposes of Congressional representation, they were otherwise excluded from the family of Americans. There was no protection, no equality, no fairness. The provisions respecting slavery were in conflict with those overriding constitutional ideals of fairness and equality. In pre-civil war debates, Abraham Lincoln argued that the writers of the Constitution simply recognized the reality of slavery. That in no way detracted from the ideals found in the Constitution.

† Professor of Law, UCLA School of Law; Commissioner, United States Commission on Civil Rights.

Accordingly, he argued, it was the duty of all citizens to work toward those ideals. This conflict between reality and those ideals led to the great Civil War. The constitutional changes after the Civil War confirmed a new reality closer to the ideal.

Yet discrimination on the basis of race continued. After the Reconstruction era, the nation retrogressed by allowing a Jim Crow system of segregation to deny the new members of the American family — the ex-slaves and their families — the enjoyment of fairness, equality and respect. Progress was painstaking — wars in which African-Americans died for the ideals denied them, a civil rights movement, and daily struggles. In my view the period of the Vietnam War, over one hundred years after the Civil War, marked acceptance of African-Americans as an integral part of the American family. Despite continuing inequalities, the Vietnam War Memorial statue symbolizes one nation.

California has struggled with the reality of religion and slavery, but its history has brought other equally pressing tensions. In the mid-19th century, California became part of the American union through a war of conquest. How to treat those who were conquered? While the Treaty of Guadalupe Hidalgo, like the Constitution, called for fairness, equality and respect, those ideals soon lost vigor and the conquered, the *Californios*, became strangers in their own land. The conquered spoke a different language and came from varying racial stock — though predominantly *mestizo* (European and Indian), European and some African blood was present. The conquered, in short, were a distinct ethnic group.

By the late 19th century, before America could digest this new ethnic reality, the Eastern borders were teeming with European ethnic groups — Irish, Italians, Poles, Germans, Jews, and others. Those new Americans, sometimes referred to as “the other Americans” were predominantly Catholic and Jewish and spoke languages other than English. The “old” Americans, who controlled the country, were predominantly Protestant and English speaking.

Others came to California — the Chinese in the mid-19th century, then the Japanese, Filipinos, and in the early 20th century a new influx of Mexicans. In recent years Asians and Latinos have joined the American family. The new Americans were welcomed for their labor, but were not welcomed as members of the American family. Today, California enjoys even greater diversity among its extended family. Recently, I took part in the swearing in ceremony for over 2,000 immigrants. Ninety-eight countries were represented.

America is confused and struggling with the reality of ethnicity. The major ethnic groups in California speak languages other than English. Many Latin Americans, particularly Mexicans, will not follow the ways of those who came from Europe who forgot their language — the physical proximity will provide a continuing reinforcement.

In my view, the family we call America is an extended family which has room for those of different colors, ethnicities and languages. Native Americans, though they may speak a native tongue, are true Americans. In like manner, members of ethnic groups are true Americans who retain the attributes of their parents and grandparents — their work ethic, their attachment to family, and their sense of community.

This ethnic reality appears to have frightened some in California. A number of public officials have taken advantage of that concern. Proposition 187 is the result. Sadly, Proposition 187 was the vehicle for raising fears within the Latino and Asian communities that the American family was excluding them. In context, Proposition 187 is but a chapter in America's long path which will end with the acceptance of all ethnic groups as part of the American family.

The Constitution teaches us what the relationship should be among American ethnic groups. Every child born in the United States must feel a part of the American family. It should not matter that the child speaks Navajo and has been raised within the Navajo Nation; nor that the child learned English on his mother's knee; nor that she spoke Spanish in the Chicano culture of the Rio Grande. Each child should learn English, a vibrant and exciting language. Economic success, better communication, and enjoyment of life demands it. But what unites us as a family and as a nation is the shared faith that our country, consonant with the ideals of the Constitution, treats all Americans, including members of ethnic and linguistic groups with fairness, equality, and respect.

America is on its way to fulfillment of its ideals. Proposition 187 challenges that progress. This volume examines that challenge from perspectives which help us understand.

