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## Introduction to The American Constitutional Tradition of Shared and Separated Powers

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## THE AMERICAN CONSTITUTIONAL TRADITION OF SHARED AND SEPARATED POWERS

### INTRODUCTION

GENE R. NICHOL, JR.\*

In April, 1988, the Institute of Bill of Rights Law at the College of William and Mary Law School organized a two-day conference entitled "The American Constitutional System of Shared and Separated Powers." This Fifth Annual Bill of Rights Symposium assembled scholars and practitioners from a variety of disciplines. Following the United States Supreme Court's recent focus on separation of powers analysis,<sup>1</sup> lawyers, historians and political scientists explored, with substantial heat and light, the appropriate allocations of authority in our complex system of government. Edited versions of the formal presentations given at the symposium are printed here in full.

Penetrating and creative principal papers delivered by Gerhard Casper, the William B. Graham Professor and former Dean of the University of Chicago School of Law, Paul R. Verkuil, Professor and President of the College of William and Mary, and Lloyd N. Cutler, counsellor to presidents and partner in Wilmer, Cutler &

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1. See, e.g., *Morrison v. Olson*, 108 S. Ct. 2597 (1988); *Bowsher v. Synar*, 478 U.S. 714 (1986); *INS v. Chadha*, 462 U.S. 919 (1983); *Buckley v. Valeo*, 424 U.S. 1 (1976).

Pickering, provided the central bases for discussions. The work of the distinguished panel of commentators is equally insightful and provocative. William Gwyn, Maeva Marcus, Suzanna Sherry and Russell Osgood, pushed and applied Professor Casper's vision of early separation of powers principles. Paul Gewirtz, Robert Nagel, Richard Pierce and Peter Shane tested, with some vigor, President Verkuil's separation of powers as conflict of interest thesis. And Phillip Bobbitt, Erwin Chemerinsky and James Sundquist brought three diverse perspectives to bear on Lloyd Cutler's suggestions concerning American political parties and constitutional reform. With so talented an array of participants, it is hardly surprising that the conference proved such a success. This volume will, in my judgment, make a permanent contribution to the vital field of separation of powers.

Finally, if I am permitted, a couple of personal notes. First, I offer my thanks to the panelists listed above. Many were friends even before the conference and all helped to lift our intellectual spirits at William and Mary. Second, a special thanks to President Verkuil. The idea for this symposium, at least at the outset, was Paul's and he gave generously of his time both as contributor and organizer. Given my present position, I am even more amazed that he could find time to participate at all.

This is the third, and last, Bill of Rights Symposium that I have organized. Due to the hard work of a lot of people—but most particularly that of Millie Arthur—the conferences have provided unique opportunities for real exchanges of ideas. Many of the faculty at William and Mary have been enthusiastic participants, and the strong support of Tim Sullivan, as is the case with so much of the life of the law school, has proven invaluable. We all, of course, move on to other things. I am delighted, however, that the Institute of Bill of Rights Law will pass on to very capable hands. In July, 1988, Rod Smolla became the Cutler Professor and Director of the Institute. Anyone familiar with Rod's first-rate writings in constitutional law and his dynamic personal presence knows that the future of the study of civil liberties at the College of William and Mary is exceedingly bright. The generous gifts to the law school from the Lee Trust, at the initiation of Tim Hansen and through the efforts of Bill Spong, have served, and will serve, the College well.