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Closing Comments

The Honorable Beryl J. Levine*

To wrap things up I want to interject a note of whimsy by posing a question, a what-if proposition, the answer to which you all know having listened to the members of our panel. What if our framers had shared, not Tom Jefferson's attitude toward women, but rather the attitude of Plato?

After all, Plato addressed the issue of gender equality more than two thousand years before the Philadelphia phenomenon. Writing on the equality of women, Plato questioned whether women should be afforded equal opportunity to become guardians, those elite Rulers of Platonic society.¹ Ironically, in that most undemocratic system of government, the Republic, women's native ability to serve as guardians was not seriously questioned. The concern was over the wrestling and exercise class in which all candidates for guardianship had to participate, for rigorous physical and mental training were prerequisites to attain the exalted status of guardian. And in accord with Greek custom, those exercise classes were conducted in the nude.² Plato concluded that their virtue would clothe the women's nakedness and that Platonic society would not thereby be deprived of the talent of qualified citizens for reasons of mere gender.³

While Plato may have been a titch optimistic, surely not about our virtue, but about its efficacy, Tom Jefferson suffered no such affliction. Jefferson's concern transcended any wrestling and exercise class when he wrote on the subject of women's participation in government. Even fully clothed, women could not pass muster in Jefferson's view. From his statement that "[t]he tender

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1. William Ebenstein, *Plato, The Republic*, in *Great Political Thinkers* 43-47 (2d ed. 1951).

2. *Id.* at 44-45.

3. *Id.* at 47.

breasts of ladies were not formed for political convulsion,"⁴ I can only conclude that it mattered not one whit to Jefferson whether our tender breasts were covered or not. Witness his comments in a letter to Samuel Kercheval: "Were our State a pure democracy . . . there would yet be excluded from . . . deliberations . . . women who, to prevent deprivation [sic] of morals and ambiguity of issue, could not mix promiscuously in the public meetings of men."⁵ Certainly, I know how old Tom would have reacted to my appointment in the state of North Dakota. In a letter written in 1807 to Albert Gallatin, Mr. Jefferson proclaimed, "[t]he appointment of a woman to office is an innovation for which the public is not prepared, nor am I."⁶

I suppose that the response of the original intentionalists among you to the panelists' concern that that philosophy of constitutional interpretation raises grave implications for the status of women in our society, would be, in the tongue of the Romans, *sic biscuitas disintegrans* — that's how the cookie crumbles. Let me say then to those who share the concern of the panel, and with apologies to Cicero, and with true *ad hominem* logic: *nolite te bastardes carborundorum* — don't let the bastards get you down.

4. Letter from Thomas Jefferson to Angelica Schuyler Church (Sept. 21, 1788), reprinted in *The Papers of Thomas Jefferson* 623 (Charles T. Cullen ed. 1983).

5. Thomas Jefferson, *His Life and Words* 41-42 (Nick Berlinson ed. 1986).

6. Letter from Thomas Jefferson to Albert Gallatin (Jan. 13, 1807), reprinted in *1 The Writings of Albert Gallatin* 328 (Henry Adams ed. 1960).