**The U.S. Constitution: Living, Breathing Document or Dead Letter?**

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In the concluding paragraph of [my article](http://mensnewsdaily.com/2008/11/04/obama-fdr-the-constitution-and-rights/) about President-elect Obama’s constitutional philosophy, I opined: “Our Constitution has been terminal for a long time.” President Obama’s nomination of Sonia Sotomayor to the Supreme Court provides a timely opportunity for me to explain what I meant.

Liberals and progressives believe that the Constitution is a living, breathing document that should evolve with the times. They want Supreme Court justices to be flexible in interpreting the Constitution and adapting 18th-century language to 21st-century applications. Conservatives, on the other hand, are said to believe in “the original intent” of the Constitution. They oppose Supreme Court justices’ creative interpretations of the Constitution.

It is unfortunate that the fundamental difference in constitutional philosophy—what used to be called “loose construction” (favoring expanded government powers) vs. “strict construction” (favoring limited government powers)—has been cast in these terms. The left cleverly has employed a winning straw-man argument—a truism—in asserting that America should not be trapped by the past. Of course we shouldn’t. By contrast, paying homage to the Founding Fathers, and invoking their “original intent” of the Constitution, makes the right seem backward-looking.

If today’s Americans knew their history better, they would realize how wise the Founding Fathers were, and that we depart from their principles of governance at our peril. Nevertheless, the founders themselves would heartily agree with the left that times change, and so do constitutions. That is why they included a provision in the Constitution for amending it.

Constitutional mischief occurs when ambitious, impatient politicians appoint activist justices who willfully defy, disregard, and reinterpret the Constitution, rather than insist that it be changed lawfully, i.e., through the amendment process.

Conservatives rightly oppose such judicial activism. But the right’s focus shouldn’t be so much on trying to preserve an 18th-century worldview that—for all its wisdom—included treating women and racial minorities as less-than-full citizens. Instead, conservatives’ main argument should be to insist that Supreme Court justices uphold the principle that all laws and policies conform to the letter of the Constitution. If 1780s-vintage phraseology is ambiguous or opaque to modern usage, then amend the wording to make explicit its objective meaning; don’t let nine people (actually, five) divine implicit, subjective meanings as if the Constitution were so many tea leaves. Such judicial malfeasance over many decades has led to laws, policies, and government programs that clearly contradict the plain language of the Constitution.

Here is an example:

The Tenth Amendment plainly states, “The powers not delegated to the United States [i.e., the federal government] by the Constitution … are reserved to the States respectively, or to the people.” Article 1, Section 8 enumerates the several powers of the United States government. No authority is given there for government programs in agriculture, education, energy, health, housing, etc. The Constitution was never amended to authorize these unconstitutional federal activities.

Clearly, the plain language of the Constitution has not kept ambitious officeholders from expanding their powers. Those who have regarded the constraints of the Constitution as inexpedient have simply ignored them. This should alarm any Democrat or Republican who values liberty. If the Tenth Amendment can be bypassed today, who is to say the First Amendment (free speech, religious freedom, etc.) won’t be trampled underfoot tomorrow?

The egregious examples of constitutional mutilation cited above are the fruit of the left’s doctrine that the Constitution is a living, breathing document. There is grim irony in this. Treating the Constitution like a living, breathing document has rendered it a dead letter. A Constitution whose provisions can be selectively ignored is a weak guarantor of anyone’s rights. We are no longer governed by the impartial, objective rule of law, but by partial, subjective and capricious men and women. Justice has given way to privilege; our constitutional republic has decayed into a dangerous democracy; the primacy of individual God-given rights has been supplanted by the primacy of government power.

Going forward, we may wonder which of the three branches of government is most likely to slow the expansion of government power by honoring the letter of the United States Constitution. President Obama and the executive branch? The Pelosi/Reid Congress? Hardly. And with one more Obama appointment, neither will the Supreme Court. Sad to say, there will be no brakes left to prevent a constitutional train wreck.

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