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A 'LIVING CONSTITUTION' FOR A DYING REPUBLIC

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. ... Done...the seventeenth day of September, in the year of our LORD one thousand seven hundred and eighty seven." --George Washington and the delegates

On 17 September of each year, we observe Constitution Day, in recognition of the anniversary of that venerable document's signing by our nation's Founders. Of course, most of the federal judiciary pay no homage to that date. They are preoccupied rewriting the so-called "Living Constitution," amending it by judicial diktat rather than its prescribed method in Article V.

For its first 150 years (with the notable exception Marbury v. Madison in 1803), our Constitution stood as our Founders, and more importantly, "the people," intended -- as is -- in accordance with its original intent. In other words, it was interpreted exegetically rather than eisegetically, textually as constructed, not what could be erroneously read into it by later generations of legislators and jurists. As such, it enshrined the primacy of Essential Liberty and the Rule of Law over the rule of men.

In the early 20th Century, there was still evidence of reverence for the supreme law of the land. For example, prohibitionists acknowledged that the Constitution did not include a single word about alcohol consumption and would have to be amended before the central government would have the authority to outlaw alcohol. On 16 January 1919, the 18th Amendment was ratified by the states. Within the decade the law of unintended consequences prevailed, and even ardent prohibitionists realized that enforcing the 18th Amendment had spawned a massive and violent organized-crime culture. Thus, on 5 December 1933, the 21st Amendment was ratified, repealing the 18th.

These two amendments were the last pertaining most directly to the authority of the central government, while the remaining five address specific modifications to the plain language of our Constitution. So how is it now that the central government has become the behemoth our Constitution expressly prohibited?

Prior to the reign of Franklin D. Roosevelt, the courts were still largely populated with originalists, who properly rendered legal interpretation based on construction of the Constitution's "original intent." However, FDR grossly exceeded the Constitutional limits upon the authority of his office and that of the legislature in his folly to end The Great Depression (the latter falling victim to World War II -- not FDR's social and economic engineering). FDR's extra-constitutional exploits opened the door for the judiciary to follow the same path -- to read into the Constitution what was necessary to make it conform to the demands of the prevailing political will.

In the decades that followed, the notion of a "Living Constitution," one subject to all manner of judicial interpretation, took hold in the federal courts. Judicial activists, those who legislate from the bench by issuing rulings based on their personal interpretation of the Constitution, or at the behest of likeminded special-interest constituencies, were nominated for the federal bench and confirmed in droves.

This degradation of law was codified by the Warren Court in Trop v. Dulles (1958). In that ruling, the High Court noted that the Constitution should comport with "evolving standards...that mark the progress of a maturing society." In other words, it had now become a fully pliable document. Indeed, the Constitution has become "a mere thing of wax in the hands of the judiciary which they may twist and shape into any form they please," as Thomas Jefferson warned, and the judiciary, in Jefferson's words, "the Despotic Branch".

Consequently, we now have a Constitution in exile, it having becoming little more than a straw man as the courts have become increasingly politicized, serving the special interests of political constituencies rather than interpreting the plain language of our Constitution, as judges are, by oath, sworn to do (Article VI, Section 3).

The Federalist Papers, as the definitive explication of our Constitution's original intent, clearly define original intent in regards to Constitutional interpretation. Founders James Madison (our Constitution's principle author), Alexander Hamilton and John Jay, published the Federalist Papers in order to clearly delineate the parameters of the proposed Constitution.

In regard to the role of the judiciary, Federalist Paper No. 73, notes, "Judges...by being often associated with the Executive...might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distinct from every other avocation than that of expounding the laws. It is peculiarly dangerous to place them in a situation to be either corrupted or influenced by the Executive."

Federalist No. 78 further notes, "[The Judicial Branch] may truly be said to have neither FORCE nor WILL, but merely judgment...liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments."

And in no uncertain terms, Federalist No. 81 makes abundantly clear, "[T]here is not a syllable in the [Constitution] which directly empowers the national courts to construe the laws according to the spirit of the Constitution...."

George Washington advised, "The basis of our political systems is the right of the people to make and to alter their Constitutions of Government. But the Constitution which at any time exists, 'till changed by an explicit and authentic act of the whole People is sacredly obligatory upon all."

Today, two centuries hence, Justice Antonin Scalia says of judicial activism, "As long as judges tinker with the Constitution to 'do what the people want,' instead of what the document actually commands, politicians who pick and confirm new federal judges will naturally want only those who agree with them politically."

The most insidious line of activist interpretations concerns our Constitution's First Amendment. Invoking Jefferson's "Wall of Separation," the Despotic Branch has endeavored to remove any vestigial remnant of faith from all quarters of the public square at the federal, state and local level.

Of course, the First Amendment states only that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

The errant interpretation of the "wall" metaphor puts liberty in great peril.

Our Declaration of Independence and its subordinate guidance, our Constitution, are based on natural law, and outline the natural rights of man as being from our Creator, not manmade.

"Life, liberty and the pursuit of happiness" are natural rights "endowed by our Creator," not government. Likewise, our Constitution was written and ratified "in order secure the Blessings of Liberty to ourselves and

our Posterity." As such, it established a republic ruled by laws, not men.

Indeed, as Alexander Hamilton wrote, "The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power."

However, if the expression of faith is banished from all government forums, not the least of which being schools, then how long will "the people" continue to understand that these "inalienable rights" are, in Jefferson's words, "the gift of God"?

The late Supreme Court Chief Justice William Rehnquist concluded, "The wall of separation between church and state is a metaphor based upon bad history, a metaphor which has proved useless as a guide to judging. It should be frankly and explicitly abandoned. ... The greatest injury of the 'wall' notion is its mischievous diversion of judges from the actual intention of the drafters of the Bill of Rights."

George Washington proclaimed, "[W]here is the security for property, for reputation, for life, if the sense of religious obligation deserts the oaths...?"

That is a question we should all be asking today.

While the words "conservative" and "liberal" are ubiquitously used to describe Republicans and Democrats respectively, these words properly should describe whether one advocates for the conservation of our Constitution, as originally intended, or its liberal interpretation by judicial activists. Does one want to conserve Constitutional limits on the central government, or liberate those limits?

Our Constitution established a Republic intended to reflect the consent of the governed, a nation of laws, not men.

At the close of the Constitutional Convention in Philadelphia, Benjamin Franklin was asked if the delegates formed "a republic or a monarchy." He responded, "A republic if you can keep it."

To that end, John Adams wrote, "A Constitution of Government once changed from Freedom, can never be restored. Liberty, once lost, is lost forever."

We invite you to observe Constitution Day by visiting an excellent resource on our nation's heritage. Link to The Patriot's Historic Documents, and see our excellent selection of Constitutional items at our Patriot Shop