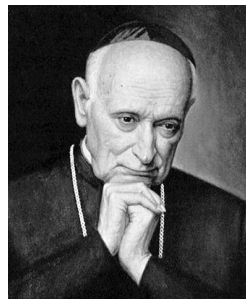


Mindszenty Report



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The U.S. Constitution: Battleground for Politicians, Social Engineers and Other Scoundrels

During the course of the Vice-Presidential debate between Senator Joseph Biden and Governor Sarah Palin, moderator Gwen Ifill asked Senator Biden if he had ever changed his opinion on any vital issue while in the Senate. In reference to his service on the Judiciary Committee, he answered that it took *about five years for me to realize that the ideology of that judge makes a big difference*. It was this new mindset that led him to oppose Judge Robert Bork so that the Senator could protect the Roe v. Wade decision.

ANGELS AND MEN

Senator Biden's debate response underscored the fact that the U. S. Constitution and the nine Supreme Court Justices, who interpret it, have become a cultural battleground between those who struggle to preserve the essential national values instilled by the founding fathers in 1787 and those who would take America in a more statist direction. It also highlights the fact that the main purpose of a constitution is the limitation on the power the people give to their government.

The Constitution was not meant to be a tool for the social engineers and their political allies to use to unglue the building blocks of the United States. While the Constitution does not have the fiery rhetoric of the Declaration of Independence, for over 200 years it has been the metaphysical glue that has kept the nation's body politic united.

Constitutions are not immortal. The U. S. Constitution emanated from the wreckage of its predecessor, the Articles of Confederation, whose untimely demise was attributed to its inability to enforce or pay for any of its laws or proceedings. For a constitution to have any longevity it must have the ability of enforcement. Many of the 55 men who assembled in Philadelphia in 1787 were beaming with their success against Great Britain, yet still humbled by their knowledge of human nature. As the *Father of the Constitution*, James Madison wrote *if angels were to govern men, neither external nor internal controls on government would be necessary*. They devised a brilliant document that was swathed in the ennobling and unwritten principles of the English Enlightenment and supported by natural law, establishing a morally elevating ideal for generations to come.

Knowing full well the bloody excesses of the French

Revolution, the founding fathers feared the tyranny of the mob. They did not want to exchange the tyranny of London for the tyranny of Paris. Washington, Adams and Jefferson eschewed that kind of bloody revolution could easily have evolved into a similar Napoleonic tyranny. To prevent this, they devised a sophisticated *separation of powers*, which divided the various powers and responsibilities of the emerging government among the tripartite government of a legislative, executive and judicial branches.

In theory, this guaranteed that no one branch would have absolute power. What they could not insure was that succeeding generations of American leaders would be of their high caliber and had concerns that the affairs of state would degenerate into the petty partisan politics that put individual gain ahead of the common good.

A PHANTOM UNITY

Despite their innate wisdom and unflinching patriotism, the founding fathers made a catastrophic compromise that would plague the American people well into the 21st century. Slavery, sometimes called America's *original sin*, was granted the protection of the United States Constitution to ensure the passage of the governing document in 1787. In hindsight it has proven to be an enormous mistake that some would argue had sown the seeds of the Constitution's self-destruction.

In the south slavery had become emblematic of a different culture that would gradually drift apart from its fragile roots of unity into a separate and unequal civilization that tore at the very social fibers that held the country together in a phantom unity. As the Constitution's major flaw, it caused some of the worst decisions in the court's history, including the Dred Scott decision in 1857 that accelerated the march toward a civil war.

Even the 1954 decision Brown v. the Board of Education Topeka Kansas, which overturned 100 years of segregation, tore at the ligatures of constitutional integrity. While Brown was correct on segregation and the equal rights of all American students, it nearly negated the Constitution's provisions on states' rights in the 10th Amendment which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States

respectively, or to the people.”

Brown became one of many cases that tried to engineer good and proper ends by abusing the original intent of constitutional language. It gave rise to books, such as Thomas E. Woods Jr. and Kevin R.C. Gutzman's *Who Killed The Constitution: The Fate of American Liberty from World War I to George Bush*. The authors contend that the Brown decision *demonstrated a breathtaking lack of concern, even disdain, for the structure of the federal system and the principle of republicanism*.

Woods and Gutzman believe the assaults on the Constitution are not the work of one branch of government, or of one party. They affirm that throughout American history all three branches of government have strangled the *child of liberty and freedom* with an umbilical cord of power and corruption. They believe that today's constitutional crisis is the result of decades of offenses against the Constitution by partisan politicians, justices and presidents, who have rejected the idea that the Constitution's main function is to limit the power of the federal government.

THE GREAT DEBATE

Who Killed has revived a debate that dates back to the early 19th century. The framers knew they could not anticipate every power that Congress would need in future years. Sensing that the Articles had failed because of a lack of flexibility, the framers of the Constitution ended the list of enumerated powers with a special power to address its flexibility problem. Article I, Section 8, Clause 17 of the Constitution is often called the *necessary and proper clause*, or the *elastic clause*.

Secretary of the Treasury Alexander Hamilton based many of his economic programs on an expansion of the elastic clause. Both Hamilton and James Madison, *the Father of the Constitution*, concurred that without this clause, *the constitution would be a dead letter*. It must be able to adapt to the unpredictable times ahead. Others, such as Virginia patriot Patrick Henry, who sided with Thomas Jefferson, thought the clause *would inevitably turn to tyranny*.

The *elastic clause* and later the commerce clause have always been the favorite tool of big government advocates. They have turned the Constitution into a *living constitution*. While the term derives from the title of a 1937 book by Professor Howard McBain, the earliest efforts at developing the concept in modern form have been credited to progressive luminaries, such as Oliver Wendell Holmes, Louis D. Brandeis and Woodrow Wilson. The advocates of a *living constitution* believe it has been the document's innate flexibility that has allowed it to grow and flourish throughout its long history.

Many modern politicians follow the constitutional philosophy of Hamilton and Madison but provide it with a socialistic twist. Such *loose constructionists* echo the thinking of liberal Supreme Court Justice Stephen Breyer, who believes that judicial decisions should emanate from *context, history and the practical outcomes of a decision*. Court decisions then become the providence of feelings, emotions and empathies.

Their progressive thinking has led to a *judicial activism*, a subjective approach, that created much more opportunity for abuses of raw judicial power. The Constitution then becomes a haven for politicians, social engineers and other scoundrels who could so mold the *living document* in such a way that it always results in their desired outcome. Thus the country is run, not by law but by judicial preference and sociological edict.

12 ANGRY WOUNDS

Who Killed also begs the question: *When did the Constitution Die?* The authors place the crime scene in 1954 when President Dwight D. Eisenhower and Congress agreed to establish a national highway system that was reminiscent of the *internal improvements* that were at the heart of Henry Clay's *American System* in the 1840s. What had changed since Clay's failed system was the belief that all that federal officials needed to justify a particular program was the desire to undertake it.

Who Killed cites a list of *murder weapons* that have created *12 angry wounds* in the Constitution's body that have endangered its survival. Woods and Gutzman chronicle the most egregious examples of the federal government's abuse of the Constitution since 1917. Their *dirty dozen* aptly documents how presidents, congressmen, and judges have enacted the policies and captured the power they wanted by flouting the Constitution.

One *murder weapon* cited is the assault on individual liberties, starting with President John Adams' Alien and Sedition Acts during the *Quasi War* with France in 1798. A consistent breach of personal liberties continued to fester through the Espionage Act of 1917 and more recently, President George W. Bush's Patriot Acts. Even the nation's most revered president, Abraham Lincoln, breached some forms of personal freedoms, such as his suspension of *habeas corpus*, (the right of a prisoner to be brought to court for the legality of his imprisonment to be examined) during the trying times of the Civil War.

The authors devote a good deal of time on the *power to declare war*, which according to the strict constructionists belongs to the legal purview of the Congress. The Constitution explicitly requires the Congress to *declare war*. They recognize the president's need to promptly respond in an emergency in defense of the nation's borders, but add that the Constitution limited his war-making authority. They aptly point out that the last official congressional declaration of war was December 8, 1941 and yet the U. S. has fought wars all around the world.

In truth the president is the commander-in-chief, but only within the legal framework established by the Constitution and Congress. Congress must authorize the forces and approve the funds. It is also up to Congress to set the rules of engagement and organize the militia. The president can negotiate a treaty ending a conflict, but the Senate must ratify it. If the president can unilaterally order an attack on a nation halfway around the globe which has not attacked the U.S., posed an imminent threat, or provided a traditional *casus belli*, (justification of war) the Constitution is dead.

The other branches have also been at fault. Congress was dominant after Watergate in 1973. It relentlessly curtailed the powers of the presidency. The Supreme Court chipped away at the separation of powers by creating legislation and using an unconstitutional usurpation of powers with decisions such as the infamous Roe v. Wade decision, with its evil twin-sister Doe v. Bolton in 1973, which abrogated the laws of 50 states and created a fictitious right to abortion on demand.

THE OTHER SIDE OF THE COIN

The other side of the judicial coin is called *strict constructionism* based on the country's original democratic, religious and moral traditions. The elastic clause is viewed as a two-edged sword that had gradually cut against the very freedoms that it was designed to protect. Succeeding generations have allowed the petty partisan politics of the times militate against the common good. As a result the elastic clause has been stretched to the snapping point. One could easily see this at work during the credit and stock collapse of 2008.

Strict constructionists see a *living constitution* as an invitation to tyranny and chaos. Justices, such as Antonin Scalia, reflect the view that the Constitution is not a living organism, and the only approach to jurisprudence is *to follow what the text meant when it was written*. Over the years the *original intent* of the Constitution's language has been gradually deconstructed so that its words are easily twisted from its traditional meaning to favor the new approach or changes in the law. Justice Scalia believes the Constitution's meaning cannot change over time. It was meant, he says, *to impose rigid rules that cannot be altered, except by the difficult process of constitutional amendment*.

Justice Scalia believes that proponents of the living constitution *want matters to be decided] not by the people, but by the justices of the Supreme Court . . . They are not looking for legal flexibility, they are looking for rigidity, whether it's the right to abortion or the right to homosexual activity, and want that right to be embedded from coast to coast and to be unchangeable*.

A CONSTITUTION MATTERS

It is obvious that America still has a Constitution with the same seven articles and 28 amendments. Yet today's Constitution bears little resemblance to that of 1787. What has dramatically changed over the last century is the people's respect for their laws as the nation has become overwhelmed with constant economic, social and political pressures.

The debate will continue as to whether the Constitution is a living, breathing document that bends with the storms and breezes of the future without breaking. Others will argue that the current Constitution is an imposter with the real one buried in some crypt. Some would argue that the country is slowly evolving into a socialist state that would have a strong resemblance to what author Jonah Goldberg called *Liberal Fascism*. He contends that progressives have been waiting for another economic crash so that they can launch a *Second New Deal*. If that is the case, the progressive forces in American history will have abrogated the best legal document in the history of the world.

Many Americans, especially younger Americans, wonder if the Constitution is necessary or even relevant today. They sense that like a revered Christmas ornament, it is dragged out periodically for patriotic homage. They worry about specific clauses like the Electoral College, which does not suit the public mood and has thrown a legal monkey wrench into more than one prior election.

But the Constitution does and must matter because it contains the very rules which federal officials swear to obey. If America is going to survive, it needs a workable constitution that can, not only guide, but also protect its citizens from their elected officials. *In questions of power*, as Thomas Jefferson warned, *let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution*.

And what does the future hold? A realistic guess is that the Constitution, as America once knew it, has been lost in a watershed of progressive reform that promises to get worse as larger spending deficits, universal health care and foreign entanglements accelerate toward a global union. U.S. Judges are even using *foreign law or cases* to decide *American* law and cases, in violation of their oath to support the U. S. Constitution. Grassroots Americans are asserting themselves forcefully and effectively against governmental impudence, and most Americans are resilient. They adapt to the changing times, echoing the Serenity Prayer that asks God for acceptance of things they can't change, the courage to change the things they can, and the wisdom to know the difference.

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Just a Reminder

World War I ended on the 11th hour of the 11th day, the 11th month of the year 1918. In 1921 President Warren Harding had the remains of an unknown soldier killed in France buried in the tomb of the Unknown in Arlington National Cemetery. Inscribed on the tomb are the words: "Here lies in honored glory an American soldier known but to God". In subsequent years, soldiers from World War II and the Korean War were placed in the tomb.

americanminute.com



Thanksgiving

Our most beloved holiday prompts us once again to be thankful to Almighty God for the blessings He has bestowed upon our country. We at CMF are thankful to you who have supported us always. We are very grateful.

Unbelievable!

While babies are being aborted and killed outside the womb in "partial birth abortions," countries in some parts of the world are granting legal rights to animals and plants!

Spain is making it a penal violation to keep apes for experimentation, circuses, TV commercials and films. This effort was initiated by the infamous Prof. Peter Singer of Princeton University, who claims that "the higher primates should be given human rights." Switzerland issued a report calling it morally impermissible to cause arbitrary harm to plant life. Austria activists want a 26 year old chimpanzee declared a person. Ecuador has enshrined fundamental rights for nature in its Constitution. Bioethicist Wesley Smith says that "human beings have unique moral value and moral worth...with a concept of rights."

Excerpted from Our Sunday Visitor
10/19/08

PROVERBS 29:2

"When the righteous increase the people shall rejoice. But when the wicked rule, people shall mourn."

Did You Know...

...the U.S. Naval Academy's long-standing tradition of prayer before meals, offered by a military chaplain, has been threatened with an ACLU federal lawsuit. ACLU says the practice is unconstitutional and a violation of the First Amendment. The prayer tradition has been part of the daily life at the Academy, and Congress long ago approved of the voluntary prayer.

...One of the most important First Amendment cases in the past 20 years is Pleasant Grove City Utah vs. Summum. A group known as "Summum" had challenged Pleasant Grove's right to erect a donated monument of the 10 Commandments in the city park, and compelled the city to accept and display their "Aphorisms of Summum" monument as well. After a long series of rulings and appeals, the Supreme Court has agreed to hear oral arguments in the case.

Excerpted from jsekulow@aclj.org

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