

KeyOpinion



The Living Constitution's Double Standard

Jonah Goldberg
Contributing Columnist

"We do not insist that our medicine, our technology, or even our entertainment, all remain in an obsolete state; why would we demand that the law be given such treatment? It seems absurd to suggest that we can change the speed limit to reflect improved technology but we cannot interpret the Constitution to reflect improvements in society."

A year ago, Slate magazine's legal correspondent, Dahlia Lithwick, recounted this observation — from one of her bounteously sophisticated liberal readers — as a neat summary of the "doctrine" of a "living Constitution." And a neat summary it is. How droll and obtuse that conservatives think the Constitution should remain anchored against the tides of change while those currents bring with them torrents of newfangled iPods and ever-changing gusts of news; one day about Brittany Spears, the next day Paris Hilton. How very horse-and-buggy to suggest that the Commerce Clause wouldn't change with the latest in slattern chic and personal electronics.

Anyway, that bit stayed in my mind ever since, and I think of it whenever the Constitution comes up in the war on terror. Just last week was a case in point. Judge Anna Diggs Taylor issued a ruling that even legal scholars who like the outcome consider to be laughable in its reasoning. She held that the government's Terrorist Surveillance Program is not only illegal but also unconstitutional. The program, if you recall, monitors phone calls and Internet activity among al-Qaida members and affiliates without a warrant. The executive branch holds that it has the right to do this under its authority to collect intelligence for national security purposes. These calls aren't being monitored for criminal prosecutions

but to "connect the dots" and prevent another 9/11.

It may turn out that the TSP is illegal, technically violating the Foreign Intelligence Surveillance Act of 1978, but we wouldn't know that from Taylor's decision. She cited almost none of the most relevant cases on the matter, and the upshot of her ruling is that even if Congress wanted to codify in law what the president has been doing under his own authority, it couldn't because the founders never had any such thing in mind.

"There are no hereditary Kings in America and no powers not created by the Constitution," Taylor wrote, invoking the founders' intent and betraying her own intent to issue as quotable an opinion as possible for the press.

You do see the irony here, don't you? A coalition of pressure groups — Greenpeace, the ACLU and a bunch of left-wing professors — are arguing that the Constitution must be immutably inflexible, adamant in the face of changing times. The fact that al-Qaida is using new technologies the founders could never have imagined is irrelevant, say the absolutists. If the government can listen in on bin Laden's phone calls without a warrant, what's to keep them from listening to a phone call between me and my Aunt Sally?

Isn't this just a bit hard to take with a straight face from the ACLU, which finds powers not created by the Constitution every day and periodically declares such inanities as the idea that the Constitution forbids teachers from reading "The Chronicles of Narnia" in class lest

the tykes' young minds be corrupted by hidden messages about Christianity? Such concerns would have left the founders dumbfounded before the opening prayers of the Constitutional Convention.

Then there's Greenpeace. Not noted for its abiding concern for constitutional niceties one way or the other, the environmentalist outfit claims that its constitutional rights were violated because the TSP had a chilling effect on its international communications. Had they been in negotiations with bin Laden to keep him from blowing up baby seals?

But, you might ask, aren't traditional opponents of the living Constitution hypocrites? Liberals normally like their penumbras emanating and their Commerce Clause written in Silly Putty while we conservatives like our Constitution like our beef jerky — cold, dead, tough to chew through. So aren't conservatives using a double standard, too?

It may depend whom you're talking about, but I think not. Long before the concept of a living Constitution was hatched, the authors of the original version — as well as the courts interpreting it — understood that the executive branch has the authority and flexibility to conduct foreign policy and wage war. Terrorists may be criminals, but they aren't merely criminals. They're waging war against us and doing so in ways never imagined by the founders. They don't want territory or treaties, and they don't use armies and cannons. They want to make our own technology and freedoms into weapons they can use against us.

And so here is the real absurdity of the "living Constitution" school. Where the Constitution is supposed to be inert, they want it alive and mutating. But where the Constitution was intended to be flexible, intellectual rigor mortis has set in.



Goldberg

Longboat Key News

5370 Gulf of Mexico Drive, Suite 210
Longboat Key, FL 34228
Phone: 941-387-2200
Fax: 941-387-8288
www.lbknews.com

Steve Reid, Editor and Publisher
sreid@lbknews.com

Melissa Reid, Associate Publisher
Associate Editor
Lia Martin

Vice President Sales/Marketing
Christopher Berloni

Production/Distribution Manager
Caron Cooper

Office Manager
Mary Cohen

Advertising Executives
Linda Browning • Nan Kirk

Staff Writers
Melissa Donley • Melissa Reid

Contributing Columnists
Dick Hershatter • Tom Burgum
Rusty Chinnis • Christine Killeen
Peter Holliday • Al Green
Karen O'Dowd • The Chaser
Glenn & Carole Swope

Graphic Design
Jerry Maguire • Caron Cooper

Newsroom
news@lbknews.com

Letters to the Editor
letters@lbknews.com

Advertising Department
ads@lbknews.com
941-749-0400

For stop deliveries and distribution requests,
please email circulation@lbknews.com
or call 941-749-0400.

Off to the Races

The following is an observation on the current political races prior to the upcoming primary elections.

As a fairly recent citizen and the equivalent of a County Commissioner for six years in England, I find the current local election battles most fascinating.

First, in the race for District 69 State Representative you have Dave Mills spreading rumors that his opponent, Laura Benson, has been married five times and worked as a pole dancer in a strip club. Personally I did not find Ms. Benson's response that she has only been married three times and does not know how to pole dance particularly defensive, but since her legs are infinitely better than Dave Mills legs she will certainly get my vote. Besides she is a Realtor, so I am biased.

Then there is the great big battle between Vern and Tramm! This is worthy of a spot on Showtime TV's Fight of the Week. Hudson accuses Buchanan of being a fraud, even starting a Web site called "The Real Vern" and then Hudson makes a speech in which he said that blacks can't swim.

Actually I think both of these candidates are somewhat mixed up because their TV ads tell us how much change they will make in Washington and clear up the mess the government has got us into. I think someone should tell them that their own party has been in power for the last several years! Meanwhile, their two Democratic opponents stay rather quiet. I wish Christine Jennings would

change her TV ad just once; I am sick and tired of hearing that she "is the daughter of a steelworker."

As for Jan Schneider, you neither read anything about her nor see her anywhere. I am convinced her name got left on the ballot paper by mistake from the last election and that in reality she moved back to New York.

How about the guy with the great personality who has a beautiful wife? Does Doug Holder really think as his TV ads imply that exiling all the illegal Latinos will improve the standard of life of our citizens? I think his personality is zilch, but I agree his wife is beautiful. Maybe she should be standing for the seat in Tallahassee not him.

Now for Longboat Key's most famous resident, Katherine Harris. I was simply amazed how Katherine seems to be everywhere at the same time. However, I discovered how she does this: she employs four look-alikes to do all her personal appearances while she herself sits all day sipping coffee in Starbucks on St. Armands occasionally looking into the window of Soma wondering which lingerie Anders will favor.

Michael Granston has lived in Longboat Key for 18 years becoming a citizen three years ago. He is a Realtor with Prudential Palms Realty although having written the article above maybe he should keep that fact a secret!



What Do You Think?

Should the U.S. withdraw from Iraq, or stay until the "job is done?"

Tell us what you think.

Fax us at 387-2200

or send an email to ithink@lbknews.com.