Light Brings Salt

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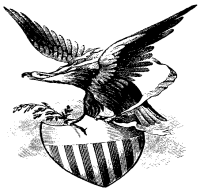

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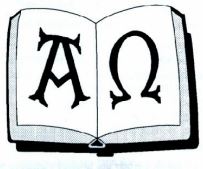

Judicial Supremacists and the Despotic Branch

Mark Alexander

"The Constitution...is a mere thing of wax in the hands of the judiciary which they may twist and shape into any form they please." --Thomas Jefferson

Our Constitution suffered some serious setbacks recently. The future of liberty and the rule of law suffered likewise.

It's bad enough that Democrat obstructionists are once again denying President George Bush's federal-bench nominees their constitutionally prescribed up-or-down vote by the full Senate. In a fine example of why we need those nominees on the bench, Leftists on the Supreme Court are, again, "interpreting" the so-called "living Constitution" as a method of altering that venerable document by judicial diktat.

Worse yet, these Left-judiciary Supremacists -- Justice Anthony Kennedy and Court Jesters Ruth Bader Ginsburg, Stephen Breyer, David Souter and John Paul Stevens -- cited "national consensus" as a factor in Tuesday's Roper v. Simmons ruling. In other words, they disregarded the Constitution's prescription for federalism and republican government in the name of unmitigated democracy. Which is to say, while riding roughshod over the Ninth and Tenth Amendments as they overturned the laws of 19 states, the Supremes blithely pushed the nation one step closer toward what everyone since Plato has described as governance in its most degenerative form.

Writing for the majority, Kennedy claimed that Americans had reached a "national consensus" against capital punishment for "children," citing as evidence that only 20 states allow a 17-year-old to be sentenced to death. Of course, Kennedy's logic is utterly at odds with decisions such as Roe v. Wade. In that 1973 decision, the Supremes serendipitously discovered a right to privacy that allowed for the aborting of children, despite the fact that all 50 states had laws at the time either prohibiting or tightly regulating abortion. So we must ask you, Justice Kennedy -- what's all this rubbish about a "national consensus?"

You recall, of course, that in a recent case, the Supremacists discovered a clause in the Constitution specifically stating that a 14-year-old is mature enough to abort the life of her child without parental consent. Now, in Roper v. Simmons, they've found a contradictory clause, which avers that a 17-year-old is not mature enough to be held accountable for capital murder.

Adding grievous insult to this "national consensus" injury, Kennedy cited "international consensus" noting "the overwhelming weight of international opinion" as a factor in the Court's decision. Kennedy referenced the UN Convention on the Rights of the Child when writing, "The United States is the only country in the world that continues to give official sanction to the juvenile death penalty." Here, his message was all too clear: The High Court is building a tradition of referring "to the laws of other countries and to international authorities as instructive for its interpretation" of the U.S. Constitution.

Sadly, noting international standards and conventions in rulings seems to be the latest fashion among the Supremacists.

In 2003, Justices Ginsburg and Breyer upheld an affirmative-action policy at the University of Michigan, noting an international treaty endorsing race-based advancement for minorities. Stevens, for his part, cited international law in overturning another capital case: "Within the world community, the...death penalty...is overwhelmingly disapproved." Furthermore, in Lawrence v. Texas, Kennedy wrote that the European Court of Human Rights has affirmed the "rights of homosexual adults to engage in intimate, consensual conduct."

Justice Sandra Day O'Connor said recently, "I suspect that over time we will rely increasingly...on international and foreign courts in examining domestic issues." Justice Breyer added, "We see all the time, Justice O'Connor and I, and the others, how the world really -- it's trite but it's true -- is growing together. The challenge [will be] whether our Constitution...fits into the governing documents of other nations."

"How our Constitution fits?"

Justice Antonin Scalia, a dependable constitutional constructionist, protested on behalf of the dissenters that capital punishment should, rightly in accordance with constitutional federalism, be determined by individual states. "Because I do not believe that the meaning of our Eighth Amendment, any more than the meaning of other provisions of our Constitution, should be determined by the subjective views of five Members of this Court and like-minded foreigners, I dissent. ... To invoke alien law when it agrees with one's own thinking, and ignore it otherwise, is not reasoned decision-making, but sophistry." Just so.

Perhaps Justice Scalia recalls this admonition from Founder George Washington: "Against the insidious wiles of foreign influence...the jealousy of a free people ought to be constantly awake; since history and experience prove that foreign influence is one of the most baneful foes of Republican Government."

Clearly, international consensus has no standing whatsoever in the constitutional rule of law in the United States. For that matter, the only relevant "national consensus" is that prescribed by our Constitution for its amendment -- a consensus of the people as represented by three-fourths of the legislatures of the several states.

But such facts are lost on Left-judicial activists who are content to legislate from the bench. Just consider this recent comment from Justice Breyer: "The extent to which the Constitution is flexible is a function of what provisions you're talking about." In other words, if he likes it the way it was written, it stands as is. If not, he interprets it, in the words of the august Sen. Sam Ervin, "to mean what it would have said if he, instead of the Founding Fathers, had written it."

Which brings us to the Senate Judiciary Democrats' filibuster of President Bush's nominees. Plainly, the Constitution intended that Executive Branch appointments be subject to confirmation by the full Senate, and that such consideration not be obstructed by a handful of wild-eyed Leftists such as Ted Kennedy.

Why are Senate Democrats so insistent on blocking the President's nominations?

Because they know the real locus of central government power resides on the federal bench. Many of President Bush's nominees are constitutional constructionists, as intended by our Founders -- those who issue rulings based on the letter of constitutional law rather than interpret it according to their constituent agenda. Yet Kennedy and his ilk are bent on denying consideration of these fine constructionist judges, for they know that the President will likely advance the names of two such nominees to the Supreme Court in this term.

As for the constitutionality of their filibuster, even liberal Georgetown law professor Susan Low Bloch argues that supermajority requirements (to overcome the filibuster) for nominations "upset the carefully crafted rules concerning appointment of both executive officials and judges and...unilaterally limit the power the Constitution gives to the President in the appointments process. This [allows] the Senate to aggrandize its own role and would unconstitutionally distort the balance of powers established by the Constitution." Clearly, then, filibuster as a method for obstruction of Senate judicial confirmations circumvents the Constitution in both letter and spirit.

That has prompted Senate Majority Leader Bill Frist to consider what he calls the "nuclear option" -- change the Senate rules on such committee obstructions in order to get the President's nominees before the full Senate for an up or down vote -- as constitutionally mandated. In fact, it is the Democrats who have exercised the "nuclear option" by circumventing the Constitution!

So what does the Constitution actually prescribe with regard to federalism and the conduct of federal judges, including the Supremes?

The Federalist Papers constitute the definitive explication of our national Constitution. In Federalist No. 81 Alexander Hamilton writes, "[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, or which gives them any greater latitude in this respect than may be claimed by the courts of every State." On the subject of federalism, he wrote in No. 81 "...the plan of the [Constitutional] convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, exclusively delegated to the United States."

In Federalist No. 45, the author of our Constitution, James Madison, notes: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce. ... The powers reserved to the several States will extend to all the objects which in the ordinary course of affairs, concern the lives and liberties, and properties of the people, and the internal order, improvement and prosperity of the State."

Madison's outline notwithstanding, the scope of activities of the legislative and judicial branches today hardly resemble the limits of our Constitution -- yet nothing in its amendments allows that scope.

Concerned for the potential tyranny of the judiciary, Thomas Jefferson warned: "The opinion which gives to the judges the right to decide what laws are constitutional and what not, not only for themselves in their own sphere of action but for the Legislature and Executive also in their spheres, would make the Judiciary a despotic branch. ... The Constitution on this hypothesis is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please. ... It has long, however, been my opinion, and I have never shrunk from its expression...that the germ of dissolution of our federal government is in the constitution of the federal Judiciary; working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped."

Jefferson continued: "At the establishment of our constitutions, the judiciary bodies were supposed to be the most helpless and harmless members of the government. Experience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a freehold and irresponsibility in office; that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large; that these decisions, nevertheless, become law by precedent, sapping, by little and little, the foundations of the constitution, and working its change by construction, before any one has perceived that that invisible and helpless worm has been busily employed in consuming its substance."

Some 200 years later, they are as dangerous as ever. Notes Justice Scalia, "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 time is long overdue for Congress to make amends for failing to check the unbalanced and growing powers being arrogated by these judicial tyrants -- and altering the Senate rules is a good start. But our current circumstances are worse than nearly all analysts are admitting. Not only should these moderate-conservative Bush judicial nominees be seated, but those judges who are in

violation of their oaths of office should be unseated by impeachment.

However, as Jefferson noted long ago, "We have...[required] a vote of two-thirds in one of the Houses for removing a judge; a vote so impossible where any defense is made before men of ordinary prejudices and passions, that our judges are effectually independent of the nation. ... For experience has already shown that the impeachment it has provided is not even a scare-crow."

And a final memo to activist judges and their congressional puppeteers: American military personnel have been wounded and killed in great numbers upholding their oath to "Support and defend the Constitution of the United States...," not your interpretation of the Constitution. You have sworn to do the same.

Perhaps it is time to remove judges who do not "faithfully discharge the duties of the office" upon which they have entered.

From Patriot Post Vol. 05 No. 09;

What Jewish ties to the Holy City?

Excerpt from an article by Daniel Pipes.

Increasingly, Muslims are being indoctrinated with bizarre history. While easily laughed-off, the calculated move diminishes the chances of resolving the Jerusalem question.

Historically, the religious standing of Jerusalem for Muslims waxed and waned with political circumstances; in a consistent and predictable cycle repeated six times through fourteen centuries, Muslims focused on the city when it served their needs and ignored it when it did not.

This contrast was especially obvious during the past century. British rule over the city, 1917-48, galvanized a passion for Jerusalem that had been absent during the four hundred years of Ottoman control. Throughout the Jordanian control of the walled city, 1948-67, however, Arabs largely ignored it. For example, Jordan's radio broadcast Friday prayers not from Al-Aqsa mosque but from a minor mosque in Amman. The PLO's founding document dating from 1964, the Palestinian National Covenant, mentioned Jerusalem not once.

Muslim interest in the city revived only with the Israeli conquest of Jerusalem in 1967. Jerusalem then became the focal point of Arab politics, serving to unify fractious elements. In 1968, the PLO amended its covenant to call Jerusalem "the seat of the Palestine Liberation Organization." The king of Saudi Arabia himself declared the city religiously "just like" Mecca -- a novel, if not a blasphemous idea.

By 1990, the Islamic focus on Jerusalem reached such surreal intensity that Palestinians evolved from celebrating Jerusalem to denying the city's sacred and historical importance to Jews. The Palestinian establishment -- scholars, clerics, and politicians -- promoted this unlikely claim by constructing a revisionist edifice made up in equal parts of fabrication, falsehood, fiction, and fraud. It erases all Jewish connections to the Land of Israel, replacing them with a specious Palestinian-Arab connection.

Palestinians now claim that Canaanites built Solomon's Temple, that the ancient Hebrews were Bedouin tribesmen, the Bible came from Arabia, the Jewish Temple "was in Nablus or perhaps Bethlehem," the Jewish presence in Palestine ended in C.E. 70, and today's Jews are descendants from the Khazar Turks. Yasir Arafat himself created a non-existent Canaanite king, Salem, out of thin air, speaking movingly about this fantasy Palestinian "forefather."

Palestinian Media Watch sums up this process: By turning Canaanites and Israelites into Arabs and the Judaism of ancient Israel into Islam, the Palestinian Authority "takes authentic Jewish history, documented by thousands of years of continuous literature, and crosses out the word 'Jewish' and replaces it with the word 'Arab'."

The political implication is clear: Jews lack any rights to Jerusalem. As a street banner puts it: "Jerusalem is Arab." Jews are unwelcome.

This is blatant making up history as you go!