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## The Constitution protects us

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The incoming Republican House majority intends to require that all legislation cite specific constitutional authority. Tea party activists are calling themselves constitutional conservatives. A federal judge ruled Obamacare to be unconstitutional.

Many in Washington are worried. The idea that the Constitution is relevant to the operation of the federal government is a frightening concept to those constantly seeking to expand Leviathan.

The document creates a national government with only limited and enumerated powers.

The post-Civil War amendments expanded national power to protect individual liberty in the states, not Washington's authority to infringe the liberty of the same individuals.

However, judicial "interpretation" changed over the years. Although the Founders provided a method to amend the nation's governing document, activists preferred to take a judicial short-cut. They turned the Supreme Court into a sort of continuing constitutional convention, with new amendments routinely enacted with just five votes.

Yet if the people's intentions are not controlling, then what is the purpose of the Constitution?

The document should simply authorize the executive and legislative branches to do whatever they feel like, subject to judicial review, based on whatever the judges feel like. Why bother with the pretense that constitutional interpretation is occurring?

Not every constitutional question has a clear answer, of course, but that doesn't mean honest interpretation allows any answer.

The nation's founding document envisioned a national government of enumerated powers.

Lincoln Caplan of the Legal Times recently sneered at the "nostalgia for an inadequate version of the nation's past." Yet the problem of government abusing power and violating liberty is eternal.

Has time passed the Founders' handiwork by?

Then the people can implement Article V and amend the Constitution. It isn't easy, but that is no argument against following the law.

In contrast, advocates of a "living" Constitution prefer lawmaking by zeitgeist. If it feels good, interpret it, sums up this philosophy. Most non-"originalist" jurisprudential theories offer no standard for anything, let alone for protecting people's fundamental liberties.

The basic problem is lack of fidelity to the Constitution, not "judicial activism." The Founders sought to limit the powers of government. To be true to that objective judges have an obligation to act to enforce the Constitution.

Thus the court challenge to Obamacare. Even the modern Supreme Court has recognized limits to the Commerce Clause, explicitly refusing to accord the national government unlimited "police power" akin to that of states.

The Constitution empowers Congress to regulate commerce "among the several states," and no court has ever held that merely living in one of those states qualifies as commerce "among the several states." If the federal government can force Americans to engage in commerce by buying health insurance, it can insist that they buy automobiles from bankrupt manufacturers, become farmers by growing food in their yards, and exercise three times a week.

That is, upholding this power would obliterate the constitutional scheme of limited government. There would be no need for Article 1, Section 8, other than one clause allowing Congress to regulate commerce.

If the American people want a national government of unlimited power, they can have one. But to do so they should amend the Constitution. And if they don't want one, it should not be imposed on them by judges acting on personal whim.

The Constitution must mean something to have any effect. We could amend it by sprinkling the phrase "and we really mean it" after the many provisions gutted by aggressively statist judges. Better would be to insist that jurists enforce the document as written.

If constitutional protections are but formless inkblots, then no American is truly safe from his or her government.

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