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# Scalia: "Liberal" Justices Creating Rights, Leading U.S. to "Destruction"

Supreme Court Justice Antonin Scalia (shown) told a crowd at Santa Clara University that the "liberal" Supreme Court was causing the "destruction of our democratic system," the *SF Gate* reported on October 29. According to the outspoken associate justice, his colleagues on the high court are creating rights *ex nihilo* and claiming the Constitution protects those new rights.

Scalia identified the adoption of the concept of the "living Constitution" as the first step down a "slippery slope." At the end of that slope, Scalia said, was "the right to same-sex marriage." He even questioned whether the Constitution ever would have been ratified had the Founders known that the document they drafted would have become "whatever a majority of the Supreme Court says it is."

Rather than conforming the case to the Constitution, a majority of the justices conform the Constitution to the case, voting, Scalia says, "on the basis of what they feel."

One of the things the justices "feel" is that they have the authority to repeal the will of the people and their elected representatives. For decades, one Congress after the other and Republican and Democratic presidents alike have acceded to the assumption by the Supreme Court of the absolute and unquestionable authority to define every word written in the Constitution and to insert words and rights therein where such was never intended.



As I have observed in a previous article on the subject:

> Thomas Jefferson had something to say in the matter. In 1804, he wrote that giving the Supreme Court power to declare unconstitutional acts of the legislature or executive "would make the judiciary a despotic branch." He noted that "nothing in the Constitution" gives the Supreme Court that right.
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> In this Mexican standoff of states, Supreme Court, and federal government, the last man standing is the people acting in their collective political capacity as states.
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> Abraham Lincoln recognized the lack of constitutional authority for the Supreme Court's assumption of the role of ultimate arbiter of an act's conformity with the Constitution.
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> Lincoln said that if the Supreme Court were afforded the power to declare whether an act of the federal government was constitutional, "the people will have ceased to be their own masters, having to that extent resigned their government into the hands of that eminent tribunal."

In his 1887 book *The Constitutional Law of the United States of America*, renowned German-American constitutional scholar Hermann Von Holst explained the error in accepting the Supreme Court as the ultimate arbiter of constitutional fidelity. "Moreover, violations of the Constitution may happen and the injured cannot, whether states or individuals, obtain justice through the court. Where the wrongs

suffered are political in origin the remedies must be sought in a political way," he wrote.

He continued, regarding this "aristocracy of the robe," "That our national government, in any branch of it, is beyond the reach of the people; or has any sort of 'supremacy' except a limited measure of power granted by the supreme people is an error."

Nearly every historian recognizes the crucial role that our Founders' study of ancient Greece and Rome played in the development of a government they hoped would rival the great republics of the past. That ancient age provides the following cautionary tale of constitutional conversion.

Archimedes was a renowned mathematician, engineer, and inventor — Cicero even visited his grave to pay his respects — but his written works have not survived, so most of his work is known only through citations in the writings of other scientists and historians.

One copy of some of his remarkable work was made by an unnamed scribe living in the 10th century A.D., who transcribed several of the works onto vellum and bound them into one volume.

Sometime about two hundred years later, Christian scribes unbound the expensive and rare vellum manuscript, scraped off the text, washed away the remaining original ink, and folded the parchment pages in half, writing a liturgical book of 177 pages on the vellum that once contained the copied writings of Archimedes.

After an original parchment is subjected to this type of deliberate scraping, washing, and copying over, it is known as a "palimpsest" — from two Greek words meaning, "I scrape."

This invaluable transcription of the works of one of the ancient world's preeminent scholars and thinkers, known to history as the Archimedes Palimpsest, remained hidden for centuries until a biblical scholar named Constantine Tischendorf visiting Constantinople in the 1840s discovered the Greek mathematical notations still barely visible on some of the pages of the prayer book. In 1906, Johan Heiberg realized upon examining the book that the barely legible text was that of several otherwise undiscovered books of the great Archimedes.

Americans too have a valuable work that was written hundreds of years ago on parchment. The ink on that cherished document is now being scraped, washed, and written over, figuratively speaking, by designing jurists who consider the clauses thereof of no contemporary value and who place their own "feelings" and political preferences above those of the the noble Founding Fathers who deliberated and ordained that original charter.

Through the handing down of one after the other decision redrawing the lines of liberty and limited government, the judicial branch is erasing the Constitution and rewriting it to the point where it is unrecognizable and is nothing more than a liturgical book full of the heretical hymns of statism.

Many of these latter-day Supreme Court scribes who busy themselves scraping, washing, and writing over the Constitution insist that though the Founders did a serviceable enough job establishing a government for the America of the 18th century, they could not have anticipated these modern times and the particular challenges of governing facing their inheritors. Besides, they ridicule constitutionalists and charge them with revering the Constitution for no other reason than because it is old and they don't like change.

These usurpers are wrong on each of those points. The devotion demonstrated by constitutionalists to America's founding document is not a matter of paleolatry. That is to say, they do not honor the Constitution because it is old. They honor it because the principles of government included in it are

timeless and not subject to the changing winds of political “progress” and judicial activism and devotion to a “living Constitution.”

Furthermore, constitutionalists do not insist that justices, elected representatives, and presidents hew rigidly to the founding document because of its age. In fact, they don’t even insist upon such faithful adherence because of their rightful respect and veneration for the men who wrote and ratified the Constitution.

They uphold the principles of the Constitution and hold their representatives up to that standard because it contains the finest, most functional scheme of republican government ever devised by mankind. On that old parchment is written some of the greatest, most remarkable, and irrefutable elements of self-government ever penned.

These enduring elements of the doctrine of natural law were distilled into a workable, free government. James Madison and his fellows drank from the fountains of political wisdom — ancient and modern — and through the ink on the Constitution, that wisdom and learning was made law. And, the most convincing testimony of its timeless nature is that Americans still live under the liberty.

For now.

Scalia rightly wondered in his Santa Clara speech how much further we can go down this road before our very system is subjugated to the supreme will of the Supreme Court.