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Constitution: Fetish or Fact?

by Michael Sean Winters

Distinctly Catholic

I was not at first opposed to the idea that the start of the new Congress should start with a reading of the Constitution. After all, the British parliament begins its sessions with the pageantry of the Queen's Speech from the Throne, with heraldic trumpets, and the State Crown, and lots of bowing and scraping to?...to what? Not to this woman, the Queen, because she happened to have been born to the right couple at the right time. But, because the Queen represents the historical roots of the nation's sovereignty. The Queen is no longer a sovereign ruler; the powers of the monarch have been yanked or whittled away for centuries, but still she is referred to as "the Sovereign."

In our system, the people are sovereign. The compact by which they exercise that sovereignty is the Constitution and the method for the exercise of that sovereignty is the franchise. How fitting I thought that those newly sworn in as a result of the exercise of the franchise should be reminded of the compact that details how the government shall govern the governed. Just as importantly, I had hoped that the reading of the document, and its many amendments, would remind the new Congress not only of the Founder's achievements but of their human frailties. Not only is the document filled with compromises, a useful example for the current Congress, but there is that moral enormity, the "three-fifths" clause, in the text, a reminder that the Founders were not gods, but mortals, who could not see their way clear to treat blacks as more than three-fifths of a human being, and that only for census purposes. Blacks were to remain property.

Some enterprising GOP communications director, however, recognized that it might not look good on television to have one of the new members of Congress reading the three-fifths clause for the cameras. So, they left it out. So, then the Constitution read yesterday in the well of the House was not the actual Constitution, but a fancified version, in which the bits we find repulsive and inconvenient are left out. Of course, in real history, those parts that came to be seen as repulsive were *amended* but pointing that out

might make the point that the Constitution is not stuck in the weltanschauung of the late 18th century but changes with the times. Appearances and Scalia's claims to the contrary, there is nothing easier in the world to manipulate than a text that is frozen in time.

I hate, detest, loathe, such cavalier editing of history, and it is a bipartisan phenomenon. I recall that at Bill Clinton's 1997 Inauguration, the words of the "Battle Hymn of the Republic," which should be our national anthem, were altered. The choir did not express the wish that "As He died to make men holy, let us die to make them free." Instead they sang, "As He died to make men holy, let us *live* to make them free." Huh? Of course, 1997 was in the middle of the dot.com boom so who could think about anything like a final sacrifice, or any sacrifice, while we had our year-end dividends to worry about!

Charles Krauthammer does his best to rescue yesterday's comic opera reading of the Constitution by suggesting the Tea Party which demanded it was really was enamored of a principled "constitutionalism," the governing equivalent of Scalia's jurisprudential "originalism." Krauthammer writes: "Constitutionalism as a political philosophy represents a reformed, self-regulating conservatism that bases its call for minimalist government for reining in the willfulness of presidents and legislatures - in the words and meaning of the Constitution." If so, what a strange place to base it. The Constitution was, after all, an effort to strengthen the power and authority of the federal government after the failed experiment of the Articles of Confederation, an experiment that gave states' rights their due to be sure, but which failed nonetheless.

But, Krauthammer, too, likes the Constitution mostly for window-dressing. He notes the new requirement that all legislation will have to cite the constitutional authority for its enactment and calls that requirement symbolic. He continues, "The real test of the Republicans' newfound constitutionalism will come in legislating. Will they really cut government spending? Will they roll back regulations? Earmarks are nothing. Do the Republicans have the courage to go after entitlements as well?" Of course, "government spending" and "regulations" and "earmarks" and "entitlements" are not constitutional terms, are they? They entail constitutional principles, but there is nothing self-evident. In short, while the Tea Party types and sadly, Mr. Krauthammer invoke the Constitution to end a political discussion, in fact, the Constitution always begins such a conversation.

Krauthammer is right to warn liberals not to sneer at the Constitution, or those who reverence it, as once they sneered at flag pins, only to realize that people actually like flag pins and disdain those who disdain such patriotic practices. Instead, however, liberals must simply point out that Constitutional fundamentalism is as confining and unsatisfying as other types of fundamentalism, that appeals to the Founders must specify which Founder is being appealed to, because they disagreed about many, many things, and that the complexity of the late eighteenth century, like the complexity of the early twenty-first century, is embodied in the text, not eliminated by it.

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