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## **Phony-Baloney Constitutionalists**

**by Sheldon Richman**

Conservatives favor strict construction of the U.S. Constitution. How do we know? They never stop telling us so.

But judging by what they say about the late Iraq war, we may conclude that most conservatives are just phony-baloney constitutionalists. These politicians, such as Rep. J.D. Hayworth (R-Ariz.), and pundits such as Sean Hannity and Rush Limbaugh are as committed to the pernicious idea of the “living Constitution” as the so-called liberals they despise.

The “living Constitution” is the doctrine that the principles in the Constitution, which was supposed to limit government power and thereby protect individual liberty, must change with the times — without resort to the onerous amendment procedure specified in the same document. Thus when the Supreme Court during the New Deal upheld legislation that previous generations of Americans would have condemned as unconstitutional, big-government advocates invoked the “living Constitution” doctrine to explain why amendment was unnecessary.

It should be obvious why this is such a dangerous practice: it effectively repeals the Constitution. As Thomas Sowell put it: to say the Constitution is living is to say that it’s dead. Or as Walter Williams suggests, those who like a “living Constitution” should think about what it would mean to play poker with a “living” rule book.

For these reasons, conservatives have led the charge against this pernicious doctrine. They have often been effective in pointing out its horrendous consequences. After all, it turns the Constitution upside down. The Framers made the amendment process difficult because a constitution that is easily amended is more likely to be changed casually. As the Constitution was written, the central government is permitted to exercise only those powers expressly delegated, which, as James Madison noted, were “few and defined.” If a power is not listed, the government may not exercise it. If someone wants that power exercised, he has to undertake the burdensome task of amending the Constitution.

But under the “living Constitution” doctrine, the government can do anything as long as it is not expressly forbidden. Thus the burden of amendment is shifted from those who wish to

expand government power, to those who wish to maintain liberty and keep government constrained. That directly subverts the system established by the Framers. It came about as a result of decisions by judges and so-called lawmakers.

How are conservatives guilty of embracing the very doctrine they claim to abhor? Look at what they say about President Bush's war in Iraq. Bush said he had to go to war to protect us from Saddam Hussein's weapons of mass destruction. He also justified the war on grounds that Hussein was brutal to the Iraqi people (which he was). As the war proceeded and no threatening weapons were found, Bush changed the emphasis to the liberation of the Iraqis, as foreshadowed by the name Operation Iraqi Freedom. Now that the war has been over for weeks and still no weapons have been found, just about all we hear is how wonderful it is that "we" freed Iraq. Conservatives are at the front of the chorus singing George Bush's praises as the great liberator.

There's only one problem. There is no warrant in the U.S. Constitution for the president of the United States to launch a war in order to liberate people from a brutal government. You can look it up. Americans used to know that. In 1821, then-Secretary of State John Quincy Adams famously said, America "goes not abroad in search of monsters to destroy. She is the well-wisher to the freedom and independence of all. She is the champion and vindicator only of her own."

This is not the only example of conservatives' embracing their adversaries' doctrine. The Constitution clearly says that only Congress can declare war. But Bush never asked Congress to declare war, and it did not do so. Instead, it illegally delegated the war-declaring power to the president.

But most conservatives wanted war, so they did not care. For them, the Constitution has to keep pace with the times. It has to "live." So they did their part to kill it.

Such is the bankruptcy of what goes by the name conservatism today.

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**This article was originally published in May of 2003.**