Read/Reflect #1 Quarter 2

Civics 2014

**Mark your confusion, show evidence of close reading, and write a one paragraph response.**

Liberals have made up a new insult for conservatives based on a shallow misunderstanding of constitutional principles.

An Associated Press [opinion](http://www.ajc.com/news/republicans-hot-cold-on-597484.html) piece by Ben Evans insinuated that GOP members are hypocrites when it comes to support for the Constitution. If he had named John McCain, Lindsey Graham, Lisa Murkowski, or other Progressive Republicans, Evans might have had a point. He named, however, U.S. Representatives Paul Broun, Michele Bachmann, and Pete Hoekstra. Evans' point is essentially that these Republicans who say they support the Constitution are hypocrites because they favor constitutional amendments to change the Constitution. I suspect his aim was to divide "Tea Party" support for conservative candidates and quell grassroots enthusiasm this election season.

A closer look at Evans' accusations exposes the vapidity of his arguments. First, he tries to prove that Democrats, "who typically take a more liberal view of the Constitution as an evolving document," are more "constitutionalist" than Republicans. To justify his position, Evans tries to use numbers. According to him, in the current Congress, Republicans have proposed at least 42 constitutional amendments compared to only 27 proposed by Democrats. These numbers, however, work against his point. Of course liberals would propose fewer Constitutional amendments in Congress since the preferred (and unconstitutional) way for liberals to amend the Constitution is through a judicial opinion, not through the document itself. Republicans who revere the Constitution are more likely to follow its procedures for amendments.

Evans' approach to what it means to be a "constitutionalist" demonstrates how he and the Democrats view the law. Without delving into an esoteric discussion, Evans betrays himself as a legal positivist. Legal positivism is a philosophy that believes all law is a human construct. Legal positivism is concerned with not the content of the law, but the process that enacts a law. To a legal positivist, the only immoral law is one improperly enacted. A properly enacted law is sacrosanct, no matter the content. The problem with liberal legal positivists is that they see judicial lawmaking as properly enacted.

(Most Progressives, however, do believe in a quasi-natural law. Just look at opinions like the recent same-sex marriage case in California. In that case, a properly enacted constitutional amendment defined marriage as between one man and one woman. Progressives couldn't handle the content of this law, so they appealed to a higher positive law, a misinformed judicial opinion on the U.S. Constitution. This one judge's opinion now is positive law to Progressives, and therefore sacrosanct. This quasi-natural law, however, has no connection with absolute, divine, self-evident Truth or our founding principles.)

Legal positivism is at odds with our founding principles, which recognize natural law. Our Founders believed that "the Laws of Nature and of Nature's God" grant political sovereignty to the people as a whole. Our Founders believed in the absolute, divine, self-evident Truth of the equality of all and in the unalienable rights granted by our Creator. Natural law is concerned with the content of law as well as the proper authority for its enactment. Evans fails in his article to distinguish between adherence to the Constitution on founding principles and adherence to a document and its amendments simply because it is positive law.

The second jejune argument Evans used is to chastise Republicans' "hot-and-cold take on the Constitution" for opposing provisions in the Amendments to the Constitution. He attacks Republicans' constitutional credentials simply because they have proposed amending the Constitution. In the mind of Evans, proposing an amendment to the Constitution is "trying to subvert the Constitution." If Evans had ever read the Constitution, he would have noticed that Article V provides a mechanism for amending the Constitution. It is consistent to be a "strict constructionist" and want to amend the Constitution constitutionally.

A closer examination of the types of amendments offered shows a divide between Republicans and Democrats. Republican amendments are grounded in founding principles, while Democrat amendments are mired in "social justice" dogma. Evans trots out as examples of Republican disdain for the Constitution their proposals to end birthright citizenship, federal income tax, and direct election of Senators. What Evans fails to see is that birthright citizenship, federal income taxes, and direct election of Senators were not in the original Constitution handed to us by the Framers. Birthright citizenship comes to us from the 14th Amendment. The Progressives gave us federal income taxes through the 16th Amendment and direct election of Senators through the 17th Amendment.

"Other widely supported Republican amendments would prohibit government ownership of private companies, bar same-sex marriage, [and] require a two-thirds vote in Congress to raise taxes. ... " Republicans support these amendments because government ownership of private companies violates the principles of enumerated powers and free enterprise. Barring same-sex marriage protects religious liberty and free speech since what couples who engage in homosexuality want is to coerce speech and have society to tell them they are married. A super-majority for raising tax revenue protects life, liberty, and property from an out-of-control Congress.

By contrast, the Democrat-proposed amendments would constitutionally guarantee everyone the right to quality housing and to education. The only way to meet these social justice goals is to take wealth from the rich and redistribute it to those who do not have quality houses or education. (And how do we quantify "quality" housing and education, anyway?) The Democrats want to enact Progressive collectivist redistributive change.

Natural law provides that people have the equal right to pursue life, liberty, property, and happiness. "Equal outcomes" violates natural law since it denies equal access to those who earn wealth to keep their own property. This rabid egalitarianism also violates equal protection under the law since it selects a group of people to punish for engaging in lawful activities while exempting a favored class.

The real aim of Evans' article may be to confuse the terms "strict constructionist" with "strict constitutionalist." Being a strict constructionist means you follow the plain meaning of the language, and you don't invent meanings of words they cannot bear simply to enact a policy choice. By "strict constitutionalist," Evans apparently means a strict adherence to a document regardless of its flaws. Therefore, anyone who proposes amendments to the document reveres it less than those who want to leave it alone.

I prefer our representatives be strict constructionists and not strict constitutionalists. Strict constructionists want to leave the Constitution alone if it embodies natural law and the wisdom of our founding fathers. But when Progressives change the Constitution or the document doesn't address issues our founders could not have foreseen -- such as judicial lawmaking, abortion on demand, same-sex marriage, or secular humanists establishing their religion and running all references to God out of public life -- strict constructionists, those who hold to founding, Natural Law principles, use the proper Constitutional process to amend it instead of resorting to unlawful judicial authority.

Possible reflection prompts

* + Do you think the Founding Fathers would could have anticipated the political issues of 2014?
  + Do you agree with the author concerning strict interpretation of the Constitution?
  + As new issues arise how can the Constitution change to face these new issues?