Honest Debate at Core of Constitution

Alan E Garfield
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Have you noticed how people with starkly different political orientations - from Barack Obama to Christine O’Donnell - all revere the Constitution? Each thinks the Constitution provides support for his or her vision of how the country should be, even though their visions can be diametrically opposed (think about abortion rights or Congress’ power to make people buy health insurance).

What’s going on? How does everyone see in the Constitution just what they want to see?

The short answer is that the Constitution expresses its core values in general terms that virtually everyone can agree with. Really, is there anyone who is not in favor of due process or equal protection, who objects to freedom of speech or religion, or who thinks the government should conduct unreasonable searches? Are there many Americans who think the federal government should usurp all state power or who find cruel and unusual punishments acceptable?

The rub comes only when we start talking about how these values should be implemented. Does free speech apply to flag burning? Does equal protection mean gays can marry? Is capital punishment cruel and unusual? Can the fed stop states from regulating immigration?

The sparse language of the Constitution almost never answers these questions. And even when it does - such as the command that Congress shall make “no law” abridging freedom of speech - no one really wants to apply it that way (surely Congress can abridge the free-speech rights of perjurers and false advertisers).

Since the text provides little guidance for how it should be implemented, it’s left to us to fill in the blanks. So, for one person, the Establishment Clause means that we can’t have a national religion, but we can have teacher-led school prayers. For another, it means school prayers are forbidden, but studying religion objectively is fine.

The result is the free-for-all we’ve got. Each side says it has the correct interpretation of the Constitution. Each searches for quotes from the Framers to support its argument (easy to do, since there were plenty of Framers with lots of opinions). Each explains why its position is the most logical, the most ethical, or the most in keeping with the nation’s history and traditions.

That the Supreme Court itself fills constitutional gaps has done little to quell this debate. Sure, we gladly accept the court’s rulings when we agree with them. But when we don’t, we just say the court got it wrong, and we’ll wait for new appointees to overturn the ruling.

So, is this madcap “everyone loves-the-Constitution-but-disagrees-about-what-it-means” state of affairs bad? Does it make the Constitution a travesty because it can be interpreted in so many different and even conflicting ways?

Not at all – just the opposite. The Constitution is not a rulebook but a framework for discussion. It doesn’t give us answers for every problem we encounter. But that’s a virtue. Our country would not be the successful country it is if it had been straitjacketed by an expansively detailed 200-year-old playbook.

What the Constitution exhorts is that it’s our job to fill in the gaps with the correct interpretation of the Constitution. And politicians who claim that the Constitution’s text is all you need to know are simply revealing their ignorance.

Let’s commit to an honest debate about how to stay true to our values. Sure, we’ll often disagree – sometimes fiercely. But the cacophony we create from an honest debate is the music the Framers meant us to play.

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Certainly, we’ll get lost along the way and sometimes even head in the wrong direction. But any country that repeatedly avows its commitment to liberty, equality and justice is bound to get a lot of things right in the long run.

A nation committed to equality is destined to find segregation intolerable. True, it took us an embarrassingly long time to do so. But almost no one today questions that Brown v. Board of Education got it right.

And no nation committed to liberty could forever imprison gay people for engaging in private, consensual relations. Astonishingly, the Supreme Court realized this only in 2003. But most states figured it out long before.

So don’t be fooled. No political party has a monopoly on the “correct” interpretation of the Constitution. And politicians who claim that the Constitution’s text is all you need to know are simply revealing their ignorance.