

Hillary's New Constitution

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Donald Trump is no legal scholar, but at Wednesday's presidential debate he showed a superior grasp of the U.S. Constitution than did Hillary Clinton. Amid the overwrought liberal fainting about Mr. Trump's bluster over accepting the election result, Mrs. Clinton revealed a view of the Supreme Court that is far more threatening to American liberty.

Start with her answer to moderator Chris Wallace's question about the role of the courts. "The Supreme Court should represent all of us. That's how I see the Court," she said. "And the kind of people that I would be looking to nominate to the court would be in the great tradition of standing up to the powerful, standing up on our behalf of our rights as Americans."

Where to begin with that one? The Supreme Court doesn't -- or shouldn't -- "represent" anyone. In the U.S. system that's the job of the elected branches. The courts are appointed, not elected, so they can be nonpartisan adjudicators of competing legal claims.

Mrs. Clinton is suggesting that the Court should be a super-legislature that vindicates the will of what she calls "the American people," which apparently excludes "the powerful." But last we checked, the Constitution protects everyone, even the powerful. The law is supposed to protect individual rights, not an abstraction called "the people."

The Democrat went downhill from there, promising to appoint judges who would essentially rewrite the First and Second Amendments. Asked about the 2008 Heller decision that upheld an individual right to bear arms, Mrs. Clinton claimed to support "reasonable regulation." She said she criticized Heller because it overturned a District of Columbia law intended merely "to protect toddlers from guns and so they wanted people with guns to safely store them."

Toddlers had nothing to do with it. What Mrs. Clinton calls "reasonable" was an outright ban on handguns. The D.C. law allowed the city's police chief to award some temporary licenses -- but not even the police officer plaintiff in the case could persuade the District to let him register a handgun to be kept at his home.

Anyone who did lawfully possess a gun had to keep it unloaded and either disassembled or bound by a trigger lock at all times, ensuring it would be inoperable and perhaps useless for self-defense. As Antonin Scalia wrote for the Heller majority, "Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban."

If Mrs. Clinton supports such gun restrictions, then she thinks an individual's right to bear arms is meaningless. If the Justices she appoints agree with her, then they can gradually turn Heller into a shell of a right, restriction by restriction, even without overturning the precedent.

Then there's the First Amendment, which Mrs. Clinton wants to rewrite by appointing Justices she said would "stand up and say no to *Citizens United*, a decision that has undermined the election system in our country because of the way it permits dark, unaccountable money to come into our electoral system." *Citizens United* is the 2010 Supreme Court decision that found that unions and corporations can spend money on political speech -- in that specific case for a movie that was critical of Mrs. Clinton. The Democrat seems to take the different view that while atomized individuals might have the right to criticize politicians, heaven forbid if they want to band together to do it as a political interest group. As for "dark" money, she certainly knows that territory. Does money get any darker than undisclosed *Clinton Foundation* donations from foreign business magnates tied to uranium concessions in Kazakhstan?

There is at least one right that Mrs. Clinton did suggest she believes to be absolute -- to an abortion, at any time during pregnancy right up until birth. She claimed merely to oppose the repeal of *Roe v. Wade*, which allows some regulation of late-term abortions. But she somehow overlooked *Gonzales v. Carhart*, the 2007 decision that upheld a legislative ban on so-called partial-birth abortion.

Justice *Anthony Kennedy* wrote the *Carhart* opinion that ruled such restrictions are consistent with *Roe* and the **Constitution**. Mrs. Clinton kept invoking "the life and the health of the mother" to justify her opposition to any limit on abortion, but *Carhart* found the life of the mother can be sufficient.

To put all this another way, Mrs. Clinton believes there is no restriction on abortion she would ever support, and there is no restriction on gun rights she would ever oppose. *Carhart*, *Citizens United* and *Heller* were 5-4 decisions, and Mrs. Clinton wants each of them to be litmus tests for her Supreme Court appointments. She mocks Mr. Trump for saying he won't abide by the election result, but she wants to rewrite the **Constitution** to fit her own political views.