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## 201018 OBITER DICTA: FIREWORKS IN JULY 2010

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**201018 OBITER DICTA: FIREWORKS IN JULY 2010**  
**Steven Alan Samson**

**Thursday, July 1**

[http://townhall.com/columnists/VictorDavisHanson/2010/07/01/even\\_a\\_few\\_words\\_matter/page/full](http://townhall.com/columnists/VictorDavisHanson/2010/07/01/even_a_few_words_matter/page/full)

Victor Davis Hanson summarizes the stated sensibilities of our serial apologizer-in-chief.

Note to a former student: I enjoyed "What Made Europe Great?" It appears that you are still making good use of some of the class readings. I may add the millennial issue of *The Economist* to the list when I offer the Political and Economic Development class (no longer Politics of the Third World) again in the Spring. Attached are notes to a Roepke piece from the late 1950s. It summarizes the problems you are addressing. So do the excerpts from Christopher Dawson's *Religion and the Modern State* (1935) that I am passing along.

The original meeting of what came to be the Mont Pelerin Society was scheduled for 1937, I believe, but was canceled due to deteriorating political conditions in Europe. Hayek wanted to bring Walter Lippmann to discuss his book, *The Good Society*. Roepke and Kuehnelt-Leddihn both became involved with the Society for a time after it was launched following the war. I was invited to attend the meeting in Salt Lake City a few years ago.

A second note: The summer is going well except for one problem: that I can never make as much headway on the reading and class preparations as I would like. But at least I have an opportunity to catch my breath and run some errands.

I have started reading Robert Reilly's *The Closing of the Muslim Mind*. I watched a videotaped lecture on the subject he gave in May. Reilly is a fellow Philadelphia Society member who gave me his earlier book on modern music, *Surprised by Beauty*, a couple of years ago. He was at one time the director of Voice of America and later helped with the Iraqi transition. He teaches a course on terrorism at the National Defense University. I am about to read an on-line paper he did for the Heritage Foundation: "Ideas Matter: Restoring the Content of Public Diplomacy."

<http://globalguerrillas.typepad.com/globalguerrillas/2010/07/journal-the-decline-of-the-middle-class.html>

John Robb summarizes what is rapidly becoming the default measure of America's future unless we seriously begin to reverse course. Long before the late 1980s with the Savings and Loan fiasco, we began to develop a financial system that has been divorcing wealth from productivity: a sure recipe for decline that may be cited as more evidence of the regnant politics of cultural suicide.

**Saturday 3**

[http://www.americanthinker.com/2010/07/why\\_kagan\\_is\\_unqualified\\_and\\_d.html](http://www.americanthinker.com/2010/07/why_kagan_is_unqualified_and_d.html)

Selwyn Duke explains why Elena Kagan is unqualified to serve on the United State Supreme Court - not to mention most of the justices today. The reason why is simple: Her evasive testimony during her confirmation hearings demonstrates beyond all doubt that she would join the ranks of those "Nullification Jurists" who consult international laws and opinions along with the social sciences (cf. Holmes: "The fourteenth amendment does not enact Mr. Herbert Spencer's Social Statics") and their own personal proclivities in establishing precedents. For a Solicitor General and former dean of Harvard Law to dissemble ignorance about Progressivism - the "progressive caucus" in Congress is one of the largest - should be taken as a hint of what is in store. Perhaps David Kupelian should modify the subtitle of the first chapter of his recent book, *How Evil Works*, "In Government We Trust: Why We Elect Liars as Leaders," to include appointees.

Referees do not make the rules of the game. Similarly, the vocation of the judge is not to make or amend the laws or to sit in judgment upon them. Neither is it to nullify the Constitution according to the "spirit of the times." For jurists "to abide by the 'times,'" as Duke puts it, "would be to render the Constitution unnecessary, for the very purpose of a constitution is to temper the times with the timeless." Jurists must, instead, be bound by the Constitution they are supposed to apply. As Thomas Jefferson wrote in the Kentucky Resolutions of 1798: "In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution." In fact, before the Supreme Court arrogated to itself an exclusive power of judicial review, Thomas Jefferson contended that bad federal laws should be constitutionally nullified by the interposition of states, much in the manner the checks and balances system was intended to work.

Duke concludes ironically: "The fact that an Elena Kagan could even make it to hearings is already a confirmation. It confirms that most of our leaders haven't a clue as to how a constitutional republic is supposed to work or, worse still, are content to create an oligarchy of like-minded judicial statist. It is unlawful and renders the government illegitimate, but they do it because they can. And unless we Americans wish to be subject to those who are 'subject to no authority except themselves,' governors and citizens should remember this: Nullification works both ways."

Even as amended, the Constitution still provides more than one remedy for such misrule. It is better for a Supreme Court seat to remain vacant than to have a Nullification Jurist seated during "good Behaviour," which effectively means a lifetime appointment. In the interim, the most immediate remedy is to start by voting out the party-in-power in November. With bankruptcy overtaking us, it is long past time to remind the government that it is the servant and not the master. But nothing will avail unless we become more knowledgeable, vigilant, and protective of our constitutional liberties. As Francis Lieber noted in 1849: "In the Middle Ages, governments chartered liberty; in our times, the people, or popular liberty, charters governments."

[http://www.americanthinker.com/2010/07/is\\_elena\\_kagan\\_morally\\_blind.html](http://www.americanthinker.com/2010/07/is_elena_kagan_morally_blind.html)

James Lewis asks the most appropriate question: "Is Elena Kagan Morally Blind?" He answers it by delving into her record with the Clinton Administration and at Harvard Law.

## Sunday 4

[http://townhall.com/columnists/AustinHill/2010/07/04/our\\_independence\\_or\\_obamas\\_control/page/full](http://townhall.com/columnists/AustinHill/2010/07/04/our_independence_or_obamas_control/page/full)

In a column published in Arizona in March 2009, Austin Hill wrote: "President Barack Obama has no intention of growing the U.S. economy; he simply wants to control it." Now, as opposition to and dissatisfaction with the political agenda in Washington continues to mount, Hill asks the American people to look intently in the mirror if they wish to know who to blame. The actions this president has been taking are consistent with keeping the very promises that got him elected in the first place.

"Many Americans are today lamenting that President Obama hasn't devoted more effort towards 'job creation.' But what part of Barack Obama's presidential campaign spelled out 'job creation' in the first place?"

"For two years, Senator Obama traveled the country, ta[l]king about, in no particular order: A) raising taxes on oil companies to get even with them for their so-called 'windfall profits;' B) using the power of government to 'reign-in' [sic] executive salaries; C) raising the capital gains tax rate; D) using the power of government to 'crack-down' (whatever that means) on both the insurance, and pharmaceutical industries; E) raising income tax rates on high-income earners (his definition of 'high-income earner' has been raised and lowered repeatedly); and [F]) using the power of government to fulfill that elusive promise of making both healthcare, and a college education, 'universal.' None of these ideas spell out 'prosperity' for the American people, but they do entail handing-over more control of our private affairs to Barack Obama."

The shell game, snake-oil merchant, and the flim-flam artist are old American institutions. As we collectively lose our liberties, we must remind ourselves that, when it comes to bad government, we have done it to ourselves. P. T. Barnum knew how to spot a sucker and make him pay through the nose. So do today's merchants of decadence. It may be cold comfort to throw this back in people's faces but a splash of cold water may at least help wake them up. Then we have to stop playing the sap before we can start reclaiming our birthright. By the way, for another splash of cold water, read the preface to Robert Weissberg's *Bad Students, Not Bad Schools*.

[http://townhall.com/columnists/PeterLillback/2010/07/04/this\\_fourth\\_of\\_july\\_remember\\_the\\_importance\\_of\\_christianity](http://townhall.com/columnists/PeterLillback/2010/07/04/this_fourth_of_july_remember_the_importance_of_christianity)

Peter Lillback, the president of Westminster Theological Seminary, has written a book on the subject of George Washington's spiritual life. The American public has forgotten the importance of Christianity to our founding and our life as a nation. Peter Marshall encapsulated that historical connection in the following prayer that he offered as chaplain before the U.S. Senate on July 3, 1947:

"God of our fathers, whose Almighty hand hath made and preserved our nation, grant that our people may understand what it is they celebrate.

"May they remember how bitterly our freedom was won, the down payment that was made for it, the installments that have been made since this Republic was born, and the price that must be paid for our liberty.

"May freedom be seen not as the right to do as we please but as the opportunity to please to do what is right.

"May it ever be understood that our liberty is under God and can be found nowhere else.

"May our faith be something that is not merely stamped on our coins, but expressed in our lives.

"Let us, as a nation, not be afraid of standing alone for the rights of men, since we were born that way, as the only nation on earth that came into being 'for the Glory of God and the advancement of the Christian faith' [Mayflower Compact, 1620].

"We know that we shall be true to the pilgrim dream when we are true to the God they worshiped.

"To the extent that America honors Thee, wilt Thou bless America, and keep her true as Thou has kept her free, and make her good as Thou has made her rich. Amen."

What Marshall expresses here is the spiritual basis, the only real basis, for the idea of American exceptionalism. I wish to add my exhortation to Peter Marshall's and conclude with a favorite of my late friend Bill Hosmer: the seldom-sung second stanza of Katherine Lee Bates's "America the Beautiful."

"O beautiful for pilgrim feet  
Whose stern impassioned stress  
A thoroughfare of freedom beat  
Across the wilderness!  
America! America!  
God mend thine every flaw,  
Confirm thy soul in self-control,  
Thy liberty in law!"

## Monday 5

<http://www.theliteratecitizen.com/moyarreadinglist.html>

To a colleague: Book list by a Marine Corps University professor who has written books on Vietnam and counter-insurgency. Like Mary Grabar, who maintains this site, he emphasizes the classics.

<http://americanvision.org/3063/a-new-twist-on-an-old-classic-ant-and-the-grasshopper/>

The ant and the grasshopper: Aesop's version and the modern version.

## Wednesday 7

<http://www.hillsdale.edu/news/imprimis/archive/issue.asp?year=2009&month=07>

Jeremy Rabkin, a constitutional scholar, discusses the hazards posed by the erosion of national sovereignty. I have added this piece to my Political Theory syllabus. I am adding two other readings to similar effect: John R. Bolton's *How Barack Obama Is Endangering Our National Sovereignty*, which I added to my International Relations syllabus, and Roy W. Spencer's *The Bad Science and Bad Policy of Obama's Global Warming Agenda*, which I plan to use in Political Geography.

Our ruling political class has become enamored of the political advantages of using treaties to accomplish what it cannot get through ordinary constitutional means. The politically-correct avenue of submitting the American citizenry to transnational legislative and judicial bodies is, as Rabkin notes, contrary to the U.S. Constitution. But he also notes that traditional safeguards against such intervention are being weakened. As they crumble, so does our first line of defense.

We Americans are now threatened with the sort of foreign tyranny that once led to our Declaration of Independence: "The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States."

In the wake of the recent Supreme Court decision that upholds the Second Amendment liberty of citizens to possess firearms, I would expect to see a concerted effort by gun control advocates to turn to extra-constitutional means to accomplish their hearts' desire. This post-sovereignty mindset is clearly shown by Pierre Manent in "Current Problems of European Democracy," which I use in my Politics of Europe class.

[http://findarticles.com/p/articles/mi\\_m0354/is\\_1\\_45/ai\\_99699586/](http://findarticles.com/p/articles/mi_m0354/is_1_45/ai_99699586/)

This hollowing-out of political sovereignty is contributing its share to the demoralization of the American public. More people recognize, almost instinctively, that political mismanagement has become the rule. What they may not realize is the role played by what John Fonte calls "the transnational legal process."

Rabkin concludes his discussion of "The Constitution and American Sovereignty" by summarizing his case.

"At the end of The Federalist Papers, Alexander Hamilton writes: 'A nation, without a national government, is, in my view, an awful spectacle.' His point was that if you do not have a national government, you can't expect to remain a nation. If we are really open to the idea of allowing more and more of our policy to be made for us at international gatherings, the U.S. government not only has less capacity, it has less moral authority. And if it has less moral authority, it has more difficulty saying to immigrants and the children of

immigrants that we're all Americans. What is left, really, to being an American if we are all simply part of some abstract humanity? People who expect to retain the benefits of sovereignty -- benefits like defense and protection of rights -- without constitutional discipline, or without retaining responsibility for their own legal system, are really putting all their faith in words or in the idea that as long as we say nice things about humanity, everyone will feel better and we'll all be safe."

[http://townhall.com/columnists/TerryJeffrey/2010/07/07/one business filed 37,375 bad w-2 forms -- and is getting away with it/page/full](http://townhall.com/columnists/TerryJeffrey/2010/07/07/one_business_filed_37,375_bad_w-2_forms_--_and_is_getting_away_with_it/page/full)

Here is some of the statistical evidence of massive fraud involving the employment of illegal immigrants during the past more than a decade. To date, nothing is being done about it.

Note to a friend: Earlier today I reviewed a grant application on the impact of the sexual revolution and how it has fostered dependency, the growth of the welfare state, and greater intervention by international agencies - in the pursuit of what John Fonte has called "transnational progressivism." We are about to have a denizen of that particular swamp confirmed to the Supreme Court. Her great accomplishment seems to have been raising over \$400 million for Harvard Law School while she was dean. Who knew at the time that she was being groomed for a seat on the high bench?

On the other hand, Justice Clarence Thomas is not given the sufficient credit for his natural law jurisprudence.

[http://www.washingtonexaminer.com/politics/Thomas\\_-\\_principled-jurisprudence-in-arms-case-97896314.html](http://www.washingtonexaminer.com/politics/Thomas_-_principled-jurisprudence-in-arms-case-97896314.html)

In my *Obiter Dicta* entitled *Pomp and Circumstance* for May 26, I cited some Supreme Court missteps that restricted the Fourteenth Amendment and, for a long time, derailed the enforcement of civil rights protections. Among those missteps was *The Slaughterhouse Cases* decision of 1873, which upheld the sort of monopoly that had been abolished in France while the state in question, Louisiana, was part of its empire. The Court refused to entertain either a due process or equal protection argument against the monopoly.

In his dissenting opinion, joined by the Chief Justice and two others, Justice Stephen Fields argued that a fundamental right was at stake.

". . . The decree of Louis XVI, in 1776, abolished all monopolies of trades and all special privileges of corporations, guilds, and trading companies, and authorized every person to exercise, without restraint, his art, trade, or profession, and such has been the law of France and of her colonies ever since, and that law prevailed in Louisiana at the time of her cession to the United States. Since then, notwithstanding the existence in that State of the civil law as the basis of her jurisprudence, freedom of pursuit has been always recognized as the common right of her citizens. But were this otherwise, the fourteenth amendment secures the like protection to all citizens in that State against any abridgment of their common rights, as in other States. That amendment was intended to give practical effect to the declaration of 1776 of inalienable

rights, rights which are the gift of the Creator, which the law does not confer, but only recognizes."

Unlike the other four justices in the majority in *McDonald v. Chicago* (2010), Justice Clarence Thomas wishes to include gun ownership among the common rights, as Justice Field put it, that are protected against any abridgement.

## Friday 9

[http://www.americanthinker.com/2010/07/arizonas\\_constitutional\\_war\\_po.html](http://www.americanthinker.com/2010/07/arizonas_constitutional_war_po.html)

In "Arizona's Constitutional War Powers," former Texas prosecutor James Carender clearly delineates the malfeasance of recent Administrations and recent Congresses in the matter of securing our borders against invasion. Carender summarizes the constitutional case (Art. I, sec. 10, clause 3) for a defensive military response on the part of the State of Arizona in order to repulse invading narco-terrorists and smugglers.

Article IV, sec. 4 outlines the obligations of the federal government: "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and, on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

Americans should remember that Gen. "Black Jack" Pershing led a unit of the United States Army into Mexico in hot pursuit of the Mexican bandit/revolutionary Gen. Francisco "Pancho" Villa after his forces invaded and nearly destroyed the town of Columbus, New Mexico, in the early hours of March 9, 1916. The only difference in the current situation is the absence of a rallying incident. The cumulative death toll is far greater in the present case when you throw in the deaths of illegal aliens due to the venality, neglect, and incompetence of the "coyotes," not to mention the toll from narco-gang violence and the larger toll due to the narcotics trade. More than a decade ago, Robert D. Kaplan wrote *The Coming Anarchy* and soon afterward applied his thesis in *Empire Wilderness* to an examination of the American West in a time of diminishing national sovereignty and increasingly porous borders.

History also records that, nearly a century before Villa's attack on Columbus, New Mexico, General Andrew Jackson led an invasion of Spanish Florida during the First Seminole War on March 10, 1818 in order to deal with similar threats. Today, almost a century after the raid on Columbus, New Mexico, a rancher has been murdered and an Arizona sheriff has been publicly targeted for assassination. Now that the USDOJ has sued the State over its rather mild law requiring proof of legal residence, it may be about time for Arizona to raise the constitutional stakes and force the issue.

Note to Pastor: I plan to use your Naboth's Vineyard sermon again in the Spring for Economic and Political Development. I wish I could force the denizens of the DC Tidal Basin to read it, but it perhaps it is time to flush them away into Davy Jones's Locker anyway. One of the most influential speeches in the history of the Senate was Charles Sumner's "Naboth's

Vineyard,” which attacked the Grant Administration’s plan to annex Santo Domingo.

BTW, I’ve also added a chapter from Francis Nigel Lee’s *God’s Ten Commandments* for Political Theory.

## **Saturday 10**

<http://www.debka.com/article/8904/>

DEBKA takes a skeptical look at the back story for the spy swap that has been peddled in the Main Street Media.

<http://corner.nationalreview.com/post/?q=NjkzMmNmMjIxMjIxYWNmODAwODGI3ZTU5MmIyZGUyMjg=>

Andrew McCarthy, who led the prosecution of the 1993 World Trade Center bombers, identifies some of the precedents that have enabled Rhode Island to do without federal intervention what the DOJ is suing Arizona to stop.

## **Monday 12**

[http://www.rferl.org/content/Why\\_The\\_Russia\\_Spy\\_Story\\_Really\\_Matters/2095515.html](http://www.rferl.org/content/Why_The_Russia_Spy_Story_Really_Matters/2095515.html)

A friend sent the attached report from Radio Free Europe/Radio Liberty which details Russia’s growing sway over European energy markets. It appears that Gazprom has been following a century-old marketing plan: John D. Rockefeller’s strategy of controlling the petroleum market by making Standard Oil the indispensable middleman. The role played by Gerhard Schroeder and Angela Merkel in this intricate dance is described in dialectical fashion as befits European social democracy. The scenario for developing a “Common European Home” described in *EUSSR* by Vladimir Bukovsky and Pavel Stroiilov seems to be proceeding apace through front organizations disguised as business corporations. Karl Marx and Vladimir Lenin are alive and well and living the life of “capitalists.”

## **Tuesday 13**

<http://www.telegraph.co.uk/news/worldnews/europe/eu/7883915/EU-to-spend-1bn-on-pensions-for-retired-eurocrats-in-2010.html>

According to the *Telegraph* of London, Eurocrats retire at close to 10 times the annual pension income of the average worker. It appears that they will also be retiring at a younger age.

<http://www.washingtonexaminer.com/opinion/columns/OpEd-Contributor/About-those-decapitations-in-the-Arizona-desert-98346009.html>

A *Washington Post* columnist, Dana Milbank, has ridiculed Arizona Gov. Jan Brewer for calling attention to reports of decapitated bodies in the Arizona desert. The drug gangs commonly use decapitation to terrorize law officers, rivals, and ordinary citizens south of the border. The author of this piece expects it to become more common in Arizona. Attached is rebuttal to Milbank's column.  
<http://faustasblog.com/?p=21552>

## Wednesday 14

[http://www.americanthinker.com/2010/07/the\\_lefts\\_psychological\\_assaul.html](http://www.americanthinker.com/2010/07/the_lefts_psychological_assaul.html)

Andrew Foy, MD, injects Martin Seligman's concept of "learned helplessness" into the discussion as he diagnoses the political implications of the state of dependency fostered by our social service state. Half a century ago, Barry Goldwater stated what should have been obvious even then: "The effect of welfarism on freedom will be felt later on - after its beneficiaries have become its victims, after dependence on government has turned into bondage and it is too late to unlock the jail."

Foy also draws on a psychological model (cited in Lee Harris's *The Next American Civil War*) which was developed in 1954 by an American psychologist, Julian Rotter, and which provides a basis for understanding learned helplessness. The sort of people Rotter called "internals," and David Riesman had earlier called the "inner-directed" character type, "believe that their locus of control is within themselves." By contrast, "externals believe that they are under the control of outside forces."

But even before David Riesman's *The Lonely Crowd*, and the psychological experiments of Rotter and Seligman, Friedrich Hayek understood the danger of placing people into a state of dependency (as they are placed in a Rousseau's "general will"): "F.A. Hayek, the famous Austrian-born economist and political philosopher, warned of the dangers of excessive government. In *The Road to Serfdom* (1944), Hayek wrote: 'The most important change which extensive government control produces is a psychological change, an alteration in the character of the people.'"

An unfavorable 2005 blog entry by the economist Brad DeLong charges Hayek with being a right-wing ideologue. Years after a Labour government was installed at the end of the Second World War, Hayek made the following observation in 1956: "This is necessarily a slow affair. . . . The most serious development is the growth of a measure of arbitrary administrative coercion and the progressive destruction of the cherished foundation of British liberty, the Rule of Law. . . . [E]conomic planning under the Labour government [has] carried it to a point which makes it doubtful whether it can be said that the Rule of Law still prevails in Britain. . . ."

But let us, like Hayek, take a longer view: "This is necessarily a slow affair." Sixty-five years and several political generations have now passed since Clement Attlee took over as prime minister. When we consider Britain's diminished ability to govern its own affairs as more powers are turned over to the "arbitrary administrative coercion" of the EU bureaucracy, do Hayek's words seem so far-fetched today?

Dr. Foy prescribes the following near his conclusion: "The most important question, then, is, 'How to change the direction of the cycle?' The answer: Individuals with a strong internal locus must preach the value of independence."

## Thursday 15

[http://townhall.com/columnists/CalThomas/2010/07/15/we can do it!/page/full](http://townhall.com/columnists/CalThomas/2010/07/15/we_can_do_it!/page/full)

Cal Thomas describes a sensible game plan for cutting costs, reducing taxes, and achieving budgetary surpluses at the state level. The real challenge will be to start trimming the federal bureaucracy by eliminating or privatizing many, if not most, of its programs.

<http://pajamasmedia.com/blog/will-obama-save-north-korea-from-collapse/?singlepage=true>

Gordon S. Chang warns that the United States should not bail out North Korea's failing regime again as it did during the Clinton Administration.

## Friday 16

<http://article.nationalreview.com/print/?q=ZmM0MGRmNDczYzYyZmFmNGJlZmU3MGM5ZThhZGZyMTA=>

As usual, Charles Krauthammer gets to the very heart of the challenge this administration poses for our constitutional tradition. It may be his best summary to date of "The Shape of Things to Come." In fact, the picture he paints seems closer to some of the German Expressionist films associated with Fritz Lang than the shape of things H. G. Wells envisioned in the 1930s.

Like Franklin Roosevelt before him, Obama has taken gigantic steps away from what Edward Corwin called our Constitution of Limitations to a Constitution of Powers that was once chiefly a wartime phenomenon. Unless the latest Progressive view of "progress" is reversed, we may expect the spillover effects of this gigantic power grab to begin clogging our commercial arteries with new layers of taxes and choking off the coastal marshes of our economy with the sludge of more invasive regulations.

Garet Garrett recognized the danger more than 70 years ago in his essay "The Revolution Was." Hilaire Belloc's *The Servile State*, written a century ago, C. S. Lewis's *The Abolition of Man* (1943), and Friedrich von Hayek's *The Road to Serfdom* (1944), are all major mile-markers in the growing literature of resistance to modern forms of tyranny: to what Alexis de Tocqueville called soft despotism and Francis Lieber called Rousseauism and democratic absolutism. The Tocqueville, Belloc, Lewis, and Hayek books are among those featured in Benjamin Wiker's *10 Books Every Conservative Must Read*. These, along with Lieber, Garrett, and Wells, are among the writers my students read in the GOVT 490 Political Theory course. The syllabus is posted on the Digital Commons.