

Adherence to the Constitution, or Not?

U.S. conservatives generally make a fetish of, among other things, strict federal immigration policy and strong support of the Constitution. It never seems to occur to them that these two positions are inconsistent, given that the Constitution gives no power whatsoever to Congress in regard to immigration controls (the subject is mentioned only in the restriction that Congress could not prevent the importation of slaves before 1808). So, federal immigration policy of any kind is unconstitutional. Do conservatives believe in adherence to the Constitution or not?

Of course, the standard reply to this objection is either to assert that such authority is somehow inherent in the very nature of government, which flies in the face of everything we know about this oft-touted “government of enumerated powers,” or to note that the Supreme Court has in many of its decisions over the years refused to strike down federal immigration policies as unconstitutional. But this kind of Supreme Court usurpation is precisely what conservatives condemn in many other areas. It therefore appears that conservatives want to have their constitutional cake and eat it, too.