



Written by [Michael Tennant](#) on October 18, 2010

Constitution à la Tea Party

The Tea Party clearly has the establishment in a panic. The latest evidence: “America’s Holy Writ,” a Newsweek article by Andrew Romano on the Tea Party’s supposedly confused approach to the Constitution.

Romano’s theses: (1) The Tea Party owes its very existence to the election of Barack Obama, “a black, urban, liberal Democrat with a Muslim name,” and the consequent reignition of the “culture war.” (2) “Tea Partiers engage with the Constitution in ... a selective manner.” There is some truth in both theses, though not quite what Romano has in mind.



Undoubtedly the ascension of Obama to the White House, combined with economic uncertainty, fueled the rise of the Tea Party. It is hard to imagine the movement’s having taken off had John McCain been elected President in 2008, especially with Sarah Palin, darling of at least one faction of the Tea Party, on the ticket. At the same time, the Tea Party itself had its [genesis](#) in the ‘08 presidential campaign of Ron Paul — a campaign that had ended, for all intents and purposes, before Obama secured the Democratic Party’s nomination and was a reaction more to Republicans’ failings than to Democrats’.

As to the “culture war” that Obama’s election supposedly reawakened, Romano explains:

At heart, the culture wars were really never about anything as specific as abortion or gay marriage. Instead, as James Davison Hunter wrote in *Culture Wars*, the book that popularized the term, the conflicts of the 1990s represented something bigger: “a struggle over ... who we have been ... who we are now, and ... who we, as a nation, will aspire” to be. Such conflicts, Hunter explained, pit “orthodox” Americans, who like the way things were, against their more “progressive” peers, who are comfortable with the way things are becoming.

Romano sees in the Tea Party a similar orthodox-vs.-progressive conflict. Tea Party candidates, he says, speak in moral, rather than legal, terms. Progressives, on the other hand, speak mostly in legal terms, seeing morality as relative and defined, rather than codified, by law.

Romano is horrified that many Tea Partiers adhere to an originalist view of the Constitution, under which (quoting Obama administration official Cass Sunstein) “many decisions of the Federal Communications Commission, the Environmental Protection Agency, the Occupational Safety and Health Administration, and possibly the National Labor Relations Board would be [ruled] unconstitutional,” as would Social Security, the Securities and Exchange Commission, the Federal Reserve, and the federal minimum wage. All of this, he says, is predicated on the view that “true patriots ... favor a pre-progressive vision of the United States.” Romano elaborates:

When Nevada Senate nominee Sharron Angle says we need to “phase out” Social Security and Medicare; when Alaska Senate nominee Joe Miller asserts that unemployment benefits are “unconstitutional”; when West Virginia Senate nominee John Raese declares that the minimum



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wage should “absolutely” be abolished; when Kentucky Senate nominee Rand Paul questions the legality of the Civil Rights Act of 1964; when Minnesota Rep. Michele Bachmann claims that Obama’s new health-insurance law violates the Constitution; and when various Tea Party candidates say they want to repeal the amendments that triggered the federal income tax and the direct election of senators — this is the vision they’re promoting.

To Romano and other progressives, the Constitution is a “living document,” which he describes as “a set of principles that, while admirable and enduring, must be interpreted in light of present-day social developments in order to be properly upheld.” In other words, the Constitution means whatever the government — and especially the courts — declares it to mean. In Romano’s view, the “living” Constitution “is an integrative force — the cornerstone of our civil religion,” while the “Tea Partiers belong to ... a tradition of divisive fundamentalism.”

Under the progressive approach, which we have endured for a century now, have Americans really become more united? The government programs and taxes and regulations that Romano champions pit the old against the young, the rich against the poor, the black against the white, the male against the female, the corporation against the taxpayer, the employer against the employee, and so on, *ad infinitum*.

Moreover, it is precisely the policies that progressives favor that have brought us to the current precarious position, degrading our currency, running up insurmountable public and private debts, and creating a dependent class that will likely take to the streets — as the French and Greek dependent classes have already done — before it gives up a single penny of its ill-gotten gains. Had constitutional originalism held sway for the last 100 years, the United States would still be on a very sound footing, as it was prior to the Progressive Era.

Romano is not entirely wrong to assert that Tea Partiers often stray from originalism, which he describes as “a rational, consistent philosophy,” albeit one that is not to his liking. “The real problem with the Tea Party’s brand of Constitution worship isn’t that it’s too dogmatic,” he explains. “It’s that it isn’t dogmatic enough.”

He cites a few examples of Tea Party candidates’ positions that he believes are at odds with their professed reverence for the Constitution. “Paul told a Russian television station that America ‘should stop’ automatically granting citizenship to the native-born children of illegal immigrants. Turns out his suggestion would be unconstitutional, at least according to the 14th Amendment (1868) and a pair of subsequent Supreme Court decisions.” Or would it? As *The New American*’s Joe Wolverton II recently [pointed out](#), the senators involved in drafting the 14th Amendment did not believe that the citizenship clause applied to children of illegal aliens, and one of the Supreme Court cases dealt only with the issue of citizenship as it applied to a child of legal aliens. This is hardly the open-and-shut case that Romano makes it out to be.

Romano’s other examples: (1) “Paul said he’d like to prevent federal contractors from lobbying Congress — a likely violation of their First Amendment right to redress.” Okay, maybe we can give him that one. (2) “In July, Alaska’s Miller told ABC News that unemployment benefits are not ‘constitutionally authorized.’ Reports later revealed that his wife claimed unemployment in 2002.” So Mrs. Miller accepted benefits from a program in which she had been forced to participate during the time she was employed. This hardly invalidates her husband’s claim that the program is unconstitutional in the first place. (3) “In last week’s Delaware Senate debate, O’Donnell was asked to name a recent Supreme Court case she disagreed with. ‘Oh, gosh,’ she stammered, unable to cite a



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single piece of evidence to support her ... talking points. 'I know that there are a lot, but, uh, I'll put it up on my Web site, I promise you.' " Which proves that O'Donnell may not be the sharpest knife in the drawer, not that her constitutional philosophy is wrong. (4) "Angle has said that 'government isn't what our Founding Fathers put into the Constitution' — even though establishing a federal government with the 'Power To lay and collect Taxes' to 'provide for the common Defence and general Welfare' is one of the main reasons the Founders created a Constitution to replace the weak, decentralized Articles of Confederation." Way to distort Angle's clear point — that the Constitution's purpose was to restrict, not unleash, government — there, Andrew.

What Romano has really proved is that candidates with the backing of the Tea Party (although, as Wolverton [noted](#) recently, Angle is actually not the Tea Party candidate in Nevada — Scott Ashjian is) act like politicians, not principled defenders of the Constitution. This is unfortunate but not unexpected. TNA's Jack Kenny has [expressed](#) similar sentiments about O'Donnell.

This does not, however, mean that grassroots Tea Party members are unified around a strict originalist interpretation of the Constitution. Some Tea Partiers want merely, as O'Donnell said, to crack down on "waste, fraud, and abuse" in government programs — to reform them, but not to repeal them. Others, while expressing a desire to cut back severely on domestic programs, are still fond of the American empire, favoring "belligerence toward any regime that is not a captive of U.S. political control," as [Lew Rockwell put it](#). Few would argue for major reductions in defense spending despite the fact that the Constitution imposes a two-year limit on any military appropriations, such was the Founders' fear of a standing army.

Both the progressives and the Tea Partiers take inconsistent approaches to the Constitution. Whereas the Tea Partiers' problem is, as Rockwell said, "intellectual," in that they really haven't given the document and its implications enough thought, progressives purposely ignore the clear meaning of the text in their pursuit of expansive, all-encompassing government. One group is (somewhat) ignorant; the other, invidious.

The Tea Party may "betray the party of liberty," to quote Rockwell once more, but its opponents never even give liberty a second thought. Victories for Tea Party candidates may not usher in the second coming of Thomas Jefferson, but leaders who pay attention to at least some parts of the Constitution are certainly preferable to those who willfully scorn the whole thing.

Appendum: Andrew Romano, in an email otherwise complimenting this article, expressed a "minor quibble" with its portrayal of his approach to the Constitution, to wit: "You repeatedly asserted a) that I am a progressive, b) that I share the Living Constitution view of our founding document, and even c) that I 'champion' government programs, taxes, and regulations. The truth is, again, more nuanced — I respect Scalia's version of originalism, for example, but tend more toward judicial minimalism myself and certainly don't agree with out-and-out liberal activism (*Roe v. Wade*, etc.)." So, to correct the record, Romano is, as he also said in his email, "not ... a fan of the progressive, Living Constitution legal philosophy" but not an originalist either.



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