

The Washington Post

Constitutionalism

Advertisement

By Charles Krauthammer
Friday, January 7, 2011;

For decades, Democrats and Republicans fought over who owns the American flag. Now they're fighting over who owns the Constitution.

The flag debates began during the Vietnam era when leftist radicals made the fatal error of burning it. For decades since, non-suicidal liberals have tried to undo the damage. Demeaningly, and somewhat unfairly, they are forever having to prove their fealty to the flag.

Amazingly, though, some still couldn't get it quite right. During the last presidential campaign, candidate Barack Obama, asked why he was not wearing a flag pin, answered that it represented "[a substitute](#)" for "[true patriotism](#)." Bad move. Months later, Obama quietly beat a retreat and began wearing the flag on his lapel. He does so still.

Today, the issue is the Constitution. It's a healthier debate because flags are pure symbolism and therefore more likely to evoke pure emotion and ad hominem argument. The Constitution, on the other hand, is a document that speaks. It defines concretely the nature of our social contract. Nothing in our public life is more substantive.

Americans are in the midst of a great national debate over the power, scope and reach of the government established by that document. The debate was sparked by the current administration's bold push for government expansion - a massive fiscal stimulus, Obamacare, financial regulation and various attempts at controlling the energy economy. This engendered a popular reaction, identified with the Tea Party but in reality far more widespread, calling for a more restrictive vision of government more consistent with the Founders' intent.

Call it constitutionalism. In essence, constitutionalism is the intellectual counterpart and spiritual progeny of the "originalism" movement in jurisprudence. Judicial "originalists" (led by Antonin Scalia and other notable conservative jurists) insist that legal interpretation be bound by the text of the Constitution as understood by those who wrote it and their contemporaries. Originalism has grown to become the major challenger to the liberal "living Constitution" school, under which high courts are channelers of the spirit of the age, free to create new constitutional principles accordingly.

What originalism is to jurisprudence, constitutionalism is to governance: a call for restraint rooted in constitutional text. Constitutionalism as a *political* philosophy represents a reformed, self-regulating conservatism that bases its call for minimalist government - for reining in the willfulness of presidents and legislatures - in the words and meaning of the Constitution.

Hence that highly symbolic moment on Thursday when the 112th House of Representatives opened with [a reading of the Constitution](#). Remarkably, this had never been done before - perhaps because it had never been so needed. The reading reflected the feeling, expressed powerfully in the last election, that we had moved far, especially the past two years, from a government constitutionally limited by its enumerated powers to a government constrained only by its perception of social need.

The most galvanizing example of this expansive shift was, of course, the Democrats' health-care reform, which will revolutionize one-sixth of the economy and impose an individual mandate that levies a fine on anyone who does *not* enter into a private contract with a health insurance company. Whatever its merits as policy, there is no doubting its seriousness as constitutional precedent: If Congress can impose such a mandate, is there anything that Congress may not impose upon the individual?

The new Republican House will henceforth require, in writing, constitutional grounding for every bill submitted. A fine idea, although I suspect 90 percent of them will simply make a ritual appeal to the "general welfare" clause. Nonetheless, anything that reminds members of Congress that they are not untethered free agents is salutary.

But still mostly symbolic. The real test of the Republicans' newfound constitutionalism will come in legislating. Will they really cut government spending? Will they really roll back regulations? Earmarks are nothing. Do the Republicans have the courage to go after entitlements as well?

In the interim, the cynics had best tread carefully. Some liberals are already disdaining the new constitutionalism, denigrating the document's relevance and sneering at its public recitation. They sneer at their political peril. In choosing to focus on a majestic document that bears both study and recitation, the reformed conservatism of the Obama era has found itself not just a symbol but an anchor.

Constitutionalism as a guiding political tendency will require careful and thoughtful development, as did jurisprudential originalism. But its wide appeal and philosophical depth make it a promising first step to a conservative future.

le_ers@charleskrauthammer.com

Post a Comment

[View all comments](#) that have been posted about this article.

Add a comment (max 5000 characters)

Submit

Comments that include profanity or personal attacks or other inappropriate comments or material will be removed from the site. Additionally,

entries that are unsigned or contain "signatures" by someone other than the actual author will be removed. Finally, we will take steps to block users who violate any of our posting standards, terms of use or privacy policies or any other policies governing this site. Please review the [full rules](#) governing commentaries and discussions. You are fully responsible for the content that you post.

Sponsored Links

Rich Dad Poor Dad Dallas

Rich Dad Poor Dad Education FREE financial workshops Jan. 18th - 21st
www.richdadeducationseminars.com

Bonati Spine Institute

Advanced Laser Spine Surgery for Neck and Back Problems- Fast Recovery
www.bonati.com

LEAKED: \$9 Car Insurance

Your Auto Insurer hates this. Car Insurance For Only \$9!
www.News9consumer.com

[Buy a link here](#)

© 2011 The Washington Post Company