

# Preface

**F**OR MANY REASONS, THIS HAS BEEN THE MOST challenging book project I've ever undertaken. Nonetheless, it's been a labor of love. Writing a book about the Tea Party presents a unique set of challenges. For one reason or another, mere mention of the phrase "Tea Party" seems to incite passionate feelings from across the ideological spectrum. In many ways, Americans have come to love 'em or hate 'em; rarely does one encounter indifference. Because of this, telling someone you're writing a book "about the Tea Party" is often an awkward moment, engendering a pregnant pause during which one waits for the deluge of either effusive or suspicious comments. In an attempt to get along, I have found it generally more pleasant not to reveal my own thoughts about the Tea Party in the context of such conversations. Instead, I've learned to listen, soaking up the information conveyed and discerning the basis of the speaker's perspective.

This isn't to say that I don't have my own thoughts about the Tea Party. As the dedication to the book reveals, I've

developed admiration and respect for the movement. This isn't a politically motivated conclusion: I consider myself libertarian, not pledging any particular allegiance to either the Republican or Democrat party. I am quite conservative on some issues, quite liberal on others.

But I haven't always been a libertarian, at least not in any overtly self-aware way. My journey to libertarianism has been a steady progression since I started law school many years ago. Before law school, I considered myself an ardent liberal, working on Capitol Hill as a policy adviser to several prominent Democrats. I fought vigorously for causes such as universal health care; expansion of Medicare and Medicaid; and greater regulation of insurance companies, food, drugs, and cosmetics.

The shocking thing, looking back on it all now, is how very little I actually knew about our government, despite the fact that I was knee-deep in its bowels, charged with the awesome responsibility of keeping high-ranking members of Congress advised on critical issues of the day. Although I considered myself well educated at the time, having attended a top-tier university, I had almost zero grasp of the Constitution or its foundational architectural features, such as federalism or limited power. Indeed, like most self-identified liberal well-educated Americans, if someone had told me then that the federal government – particularly Congress – lacked the power to accomplish a goal it deemed desirable for the public welfare, I would have laughed and dismissed the statement as right-wing, politically motivated lunacy.

My early ignorance of the Constitution wasn't unusual. In fact, it was normal. Most Americans – even college graduates – know shockingly little about their own Constitution. To be honest, the vast majority of lawyers don't know much more.

They read the assigned cases in the casebook, memorize the holdings, and don't really think much more about it.

The more one knows about the Constitution, however, the more one grows concerned, unless one thinks the Constitution has (and should have) no real fixed meaning. There is an incessant drumbeat in one's brain that says, "This is really important," "You need to know this," and "This country won't survive if you don't understand this." Realizing how much the founders studied and understood the intricacies of political philosophy and the science of government – and what high hopes they had for Americans to grasp these matters as well – creates an urgency about keeping their hopes from being extinguished.

It also, to a great extent, allows one to rise above petty politics. The modern labels "conservative" and "liberal" seem almost irrelevant in this context. What matters is preserving the Constitution, its meaning, and its foundational principles. All else is petty politics.

Unfortunately, however, many people just don't get this. Too often, very intelligent people view law – particularly constitutional law – as synonymous with politics. They view the Constitution through a political lens, embracing whatever interpretation serves their own political agenda. They consider anyone who disagrees with their own interpretation as equally politically motivated. It's almost as if they say, "You don't agree with me? Oh, you must be one of *them*." They cannot fathom that constitutional disagreement could be based on principles rather than politics.

With such a high degree of political polarization in modern America, it is challenging to teach constitutional law, to teach it objectively, and to write about it without being accused of belonging to this or that political camp. When the Tea Party

burst onto the scene in 2009, I remember vividly thinking, “Wow. This could be a great opportunity.” I wasn’t thinking about a personal or political opportunity, I was thinking about an opportunity to educate people about the Constitution. It seemed to me then – and still does today – that the crises being experienced in America are creating both an angst and consequent curiosity about all things constitutional. Can Congress really make us buy health insurance? Can the president really commit troops to Libya, or try Guantánamo detainees in military tribunals? Can a state like Arizona really pass an immigration law like it did? These are all constitutional questions that, in one way or another, have been raised by the Tea Party movement.

There is admittedly no right or wrong way to interpret the Constitution. But we all form opinions about the best way to interpret it. My own preference is to interpret it with the goal of honoring its original meaning. If this proves unpalatable, there is a mechanism for change through the amendment process of Article V. In this sense, the Constitution has a stable fixed meaning, yet is subject to ultimate control and revision by each succeeding generation of We the People.

So yes, I am an originalist. But this doesn’t make me automatically conservative, radical, or right wing. It doesn’t make me a neocon. It doesn’t even have anything to do with my position on particular issues, providing zero insight into my subjective preference on issues such as the war on terror, universal health care, abortion, or physician-assisted suicide. Originalism is an interpretive methodology with a principled basis. Like it or hate it, it isn’t a Trojan horse for particular results – it’s a neutral process for interpreting a complicated and often vague document. Living constitutionalism is likewise an interpretive methodology with a

principled basis. I personally don't question this. I happen to think it's an inferior methodology for reasons I explain in the book – as does the Tea Party – but this doesn't mean I consider living constitutionalism to be an unprincipled position.

It is a commonality of principles that drives my admiration and respect for the Tea Party movement. Although most Tea Partiers never went to law school, they have a unique and intense desire to learn about, honor, and preserve the Constitution. I respect that. Although they don't always understand the finer nuances of constitutional doctrine, they know far more about the Constitution than average Americans – including college-educated Americans and a good deal of lawyers. They want to learn more about it; they seem hungry for information. I admire that. Their positions on most issues they've emphasized have a deep connection to the three constitutional principles discussed in the book. Recognizing this, as a constitutional law professor, I feel well positioned to write about the Tea Party from a perspective that focuses exclusively on these constitutional principles.

It's important to understand what this book is not about. It's not a book about policy or politics. I'm not a professor of political science or policy. I teach constitutional law, so this book has tried to maintain a laser-beam focus on the constitutional principles I see as unifying the Tea Party movement. Specifically, the book examines the Tea Party's position on various key modern issues, examining them through the lens of three core constitutional principles. It explains what those principles mean and why it may be important to preserve those principles, even when politically inexpedient.

I have assiduously tried to avoid being distracted from these principles by getting bogged down in a discussion of their impact on particular desired policy outcomes or

their political wisdom. In the discussion preserving U.S. sovereignty, for example, I haven't discussed President Obama's decision to order the assassination of Osama bin Laden for the simple reason that the Tea Party hasn't voiced any particular criticism of this decision. The movement's failure to condemn the president's decision is understandable, as it certainly isn't antithetical to the principle of U.S. sovereignty. So my failure to discuss some issues isn't an attempt to downplay good policy or political decisions made by the president. If a decision implicates one of these three principles, I have endeavored to discuss it fully and accurately.

Similarly, I don't spend time discussing the Tea Party's position on the armed conflicts in Afghanistan or Iraq, because the movement doesn't seem to have a unified position on them. When the Tea Party has expressed concern about the use of military force – for example, President Obama's decision to commit U.S. military forces to the Libyan conflict – it is motivated by its concerns about pandering to globalists and the United Nations, concerns that do implicate the principle of U.S. sovereignty.

To make this point about constitutional principles, I've found it necessary to debunk the false portrayals of the Tea Party movement. Hard as some may try, I don't think it's accurate to portray Tea Partiers as motivated by politics, hatred of President Obama, or racism. If one understands the Constitution well, it's apparent that the movement's primary motivation is grounded in these three principles. Whether one agrees with the Tea Party's embrace or interpretation of these constitutional principles, an honest and educated assessment of their statements and positions reveals an elevation of principles over politics.

It's similarly important to realize that, although I do identify three unifying constitutional principles that underlie the movement's position on various issues, I'm not suggesting that these are the only principles or issues of interest to Tea Partiers. The Tea Party is a vast, dispersed, grassroots movement. There is no central leader, organization, or even organizing committee. There are small chapters scattered throughout the country, with rough coordination via social media, the Internet, and local activist groups. Yet this apparent disorganization doesn't mean there's no identifiable or coherent Tea Party movement. As I point out in the book, it's fair to say there's no Tea *Party*, but there is a Tea Party movement. The emphasis must be on the movement rather than the party because Tea Partiers seem to have no interest in forming an independent third political party, but instead have opportunistically infiltrated existing political parties (mostly the Republican Party), pressuring them to embrace principles of importance to the movement. So although some may object that there is no unified Tea Party, I respectfully disagree; there's admittedly no party, but there is a clearly identifiable set of principles that permeate and ultimately define the movement.

Some claim that the Tea Party is essentially indistinguishable from the Republican Party and indeed is the brainchild of clever conservative and/or libertarian organizations and thus is essentially captured by them. Although there are admittedly conservative and libertarian organizations (and the two are not the same, by the way) that support and are sympathetic to the Tea Party movement, it would be unfair to characterize the Tea Party as a mere spin-off of such organizations or a puppet of them. In my opinion, it's quite the contrary: Tea Partiers have, on many occasions, not backed establishment

Republican candidates, preferring instead to support dark-horse candidates who are more closely aligned with their position on various issues. The movement has shown a ruthless ability to reject any candidate, of any party, who doesn't embrace their principles and a persistence in pursuing their agenda with any candidate who'll listen. To the extent that the Tea Party has been more successful in obtaining the ear of the Republican Party, this suggests that the Republican Party may be (or is becoming) accountable to the Tea Party, not vice versa.

With all of these prefatory explanations out of the way, I ask you to open your mind and explore three foundational principles embraced by the Tea Party: (1) limited government, (2) unapologetic U.S. sovereignty, and (3) constitutional originalism. Whether you like the Tea Party or not, I hope by the time you finish reading this book, you will agree that the primary motivation of the movement is its desire to preserve these three principles. This perspective may allow you to make a better-informed judgment about the movement, its motivations, and the need to engage in a productive dialogue about the continuing salience of these constitutional principles.