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## Energy Arena

Oct. 05, 2010

### Driving the Conversation:

Arena Ref: [David Mark](#)

## A minimum wage trap?

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### Roger Pilon

Vice President for Legal Affairs, Cato Institute :

Joe Miller is absolutely right: The federal government has no authority under the Constitution to set a minimum wage - or to do so many of the countless other things it does today. When Nancy Pelosi was asked where in the Constitution Congress was authorized to order Americans to buy health insurance, she responded, "Are you serious?" That's a mark of how little America's political elites today understand the document they take an oath to uphold.

James Madison, the principal author of the Constitution, wrote in *Federalist 45* that the powers of the new government would be "few and defined" - a far cry from today's Leviathan. How did the change happen? **In a nutshell**, the ideas of the Progressives - in particular, wide-ranging rule by elites - were incorporated in "constitutional law" (not to be confused with the Constitution), not by constitutional amendment but by a cowed Supreme Court following Franklin Roosevelt's infamous 1937 Court-packing scheme. That opened the floodgates to the modern redistributive and regulatory state that so many Americans love so much today.

Don't take my word for it. Here's Rexford Tugwell, one of the principal architects of the New Deal, reflecting on his work some 30 years later: "To the extent that these new social virtues [i.e., New Deal policies] developed, they were tortured interpretations of a document [i.e., the Constitution] intended to prevent them."

But that's changing, if the Tea Party movement is any indication. The American people are waking up to the truth: The government gives nothing that it doesn't first take. It's not Santa Claus. And whether the taking is in the form of money, property, or liberty, it comes to the same thing.

So in answer to the question whether telling constitutional truths is wise political strategy, we'll see. If the people can't take the truth, it's only a matter of time before we go the way of civilizations before us. Fortunately, we still have enough freedom to tell such truths.

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