

## MICHAEL TANNER

ARCHIVE | [LOGIN](#)

SEPTEMBER 29, 2010 4:00 A.M.

### Democrats: The Constitution Is 'Weird'

But Christine O'Donnell wants to be sure our laws comport with it.

When Republican candidate Christine O'Donnell told Delaware voters that the Constitution, rather than her personal views, would guide her votes in the Senate, one might have expected a variety of responses from the Left — perhaps a huge sigh of relief that we've all been saved from a federal law banning masturbation.

But the response was actually far stranger, and tells us far more about the state of contemporary liberalism. *Slate* columnist Dahlia Lithwick summed up the reaction, writing that she found it “weird” that O'Donnell would consider the constitutionality of legislation. If we have to consider constitutionality at all, Lithwick mused, that certainly isn't the job of Congress. They should just pass whatever they want and let the courts worry about it later.

A similar reaction greeted the promise in the GOP Pledge to America that all bills include a clause specifically pointing to how the proposed law is provided for in the Constitution. “Just plain wacky,” wrote Susan Milligan for *US News & World Report*. The influential liberal blog ThinkProgress warns that the Pledge reflects “radical ‘tenthenther’” thinking, using a dismissive term for those who cite the Tenth Amendment's limits on federal power.

The Obama administration and congressional Democrats have adopted a view of virtually unlimited government power that is clearly contrary to the Founders' vision of a constitutionally limited government. In their vision, government roams the countryside fixing problems — *any* problems. Having trouble paying your mortgage? Don't worry, the federal government will help you. Your local school not doing a good job? The federal government will be there to help. Don't have health insurance? The federal government will make you buy it. As Rep. Pete Stark (D., Calif.) told constituents, “the federal government can do most anything.”

The Constitution, with all its messy checks and balances and its attempt to limit government to only certain “enumerated powers,” is little more than a nuisance. “I don't worry about the Constitution,” if it gets in the way of passing legislation, Rep. Phil Hare (D., Ill.) told a town-hall meeting. And Rep. James Clyburn (D., S.C.), the third-highest-ranking Democrat in the House, proudly told Fox News, “There's nothing in the Constitution that says that the federal government has anything to do with most of the

stuff we do.”

It makes one wonder why Congress takes that silly oath to “support and defend the Constitution” when they are sworn into office.

“Are you serious?” responded a stunned and baffled Nancy Pelosi when asked about the constitutionality of the health-care bill. But, given the Left’s view of permissible government power, Pelosi’s surprise may have been forgivable. After all, during her confirmation hearings, our newest Supreme Court justice, Elena Kagan, famously said that she sees no constitutional impediment to Congress’s passing a law that required every American to eat a minimum daily amount of fruits and vegetables.

This has been the Left’s view of government power at least since the Roosevelt administration. It was Franklin Roosevelt, after all, who wrote to a congressional committee chair, “I hope your committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation.”

But what has unrestrained federal power really done for us? How many of our problems has it fixed? The federal government has spent more than \$13 trillion fighting poverty since Lyndon Johnson declared his “war on poverty” in 1965. Have we ended — or even significantly reduced — poverty? The federal government now pays for roughly half of all health care in this country. Is our health-care system better for it? Have the Department of Education, No Child Left Behind, and growing federal involvement in education improved our schools? About all we have to show for the growth in federal power is a \$13.4 trillion national debt.

A truly constitutional view of federal power might discomfort conservatives as well. It is one thing for tea-partiers to carry around a copy of the Constitution or for candidates to call themselves “constitutional conservatives.” The test will be when their idea of a good federal program conflicts with the Constitution.

For instance, it would be hard to find the constitutional provision allowing Congress to play sheriff by federalizing every crime that catches the headlines. A strict reading of the Constitution would make it much harder for presidents to intervene militarily around the world without a congressional declaration of war. Any number of conservative pet projects from faith-based initiatives to federal drug laws would fail the constitutional test. Conservatives might have to accept the idea that the Constitution does not empower the federal government to enforce the nation’s morality.

As important as issues such as the economy and health care will be this November, the key question is the Constitution versus unchecked federal power. As Thomas Jefferson warned, “An elective despotism was not the government we fought for.”

Perhaps the American public is waking up to the dangers of government power and the need for true constitutional restraint. That’s an idea that’s anything but “wacky.”

— *Michael Tanner is a senior fellow at the Cato Institute and author of Leviathan on the Right: How Big-Government Conservatism Brought Down the Republican Revolution.*