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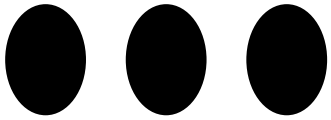
# 112th Congress: Who Will Adhere to the Constitution?

In ancient times, on the well-traveled road from Athens to Eleusis, there was a small town called Erineus. Erineus was legendary for an inn there run by an innkeeper of some renown. Procrustes proclaimed his unmatched hospitality. He promised a comfortable bed and protection from the elements. And, somehow, there was always a vacancy.



Weary from their journey, many travelers would take Procrustes up on his offer and unload their packs and choose a bed in the inn. Here's where the trouble started. If upon lying down in the bed the guest didn't quite fit, then Procrustes would either stretch the person or lop off his extremities until the traveler's dimensions matched those of the bed he thought would provide him rest and recuperation.

Sadly, many a fatigued fellow found out that in spite of his welcoming offer of a comfortable cot and heated coals, Procrustes was more interested in piling up the limbs of the foolish than fulfilling his promises of hospitality.

The story of Procrustes is fascinating, but what does it have to do with the politics of 2011? For years, at least since the days of the "Reagan Revolution," constitutionalists have believed the campaign speeches of candidates promising to fit themselves and their votes within the mold of limited government as formed by our Founding Fathers and expressed in the Constitution.

These erstwhile friends of the Constitution biannually draw near unto the Constitution with their lips, but their hearts, sadly, remain far from it. Too often, once the candidate becomes the lawmaker, he transforms into a modern-day Procrustes and stretches or slashes the Constitution in order to make it more closely conform to (or to justify) his legislative or executive behavior. There seems to be an amnesia that afflicts elected officials once they cross the Potomac into the halls of the national government. The fidelity they swore to the Constitution is abandoned, and the Constitution is forced, like the weary pilgrim on his way to Eleusis, to endure painful tailoring according to the whims of the one who promised such comfort.

As the results of the elections of last November were tallied, it became apparent that the body politic was to receive another transfusion. This "new blood" would bring with it systemic changes and a revitalization of the heart of our Republic — the Constitution. To a man (and woman), these freshmen legislators proclaimed their commitment to changing the status quo, to restoring the checks and balances of the Constitution, and to reducing the size of government. Will they fulfill these pledges? Will the ruddy color return to the cheeks of our Republic, or will the lifeblood of our nation continue to be sapped by half measures and the leeches of earmarks?

Of course, were every earmark eliminated as promised by the newly elected Representatives, our nation would yet remain on its sickbed. An examination of the vital statistics of the budget of the United States reveals that earmarks are less than two percent of discretionary spending and less than one percent of total spending. This is a crucial point in the debate. As *The New American*'s Gary Benoit explained in an article published in 2009:

> The presence or absence of earmarks in legislation does not determine whether the money is spent; but the presence or absence of earmarks does determine how much control the Congress exercises over the spending compared to that of the executive branch. However, in a political atmosphere where earmarks are equated with wasteful and hidden spending, few are making this point.

Even Congressman Ron Paul, whom some have identified as the patriarch of the Tea Party movement, regards the threat of earmarks as over-hyped. Benoit cites a relevant quote from Paul that the Congressman spoke from the floor of the House:

> Congress is reneging on our responsibilities [when it does not earmark] because it is the responsibility of the Congress to earmark. That's our job. We're supposed to tell the people how we're spending the money not to just deliver it in a lump sum to the executive branch and let them deal with it. And then it's dealt with behind the scenes. Actually, if you voted against all the earmarks, there would be less transparency. Earmarks really allow transparency and we know exactly where the money is being spent.

Given the foregoing analysis, why is the prognosis for the recovery of the vigor and vitality of our Republic so gloomy? It is primarily because our nation's strength is being enervated by the innumerable and unconstitutional agencies and programs that grow larger with the passing of every Congress and presidential administration.

How many of the self-described "revolutionaries" now holding office in Congress have committed themselves to tireless striving to abolish, absolutely abolish, every agency, department, program, and "entitlement" that is not specifically authorized according to the enumerated powers granted Congress in the Constitution? It is easy to join in the fray and display grand gestures swatting at the gnat of "earmarks" while simultaneously swallowing whole the multi-humped camel that is the perpetuation of an unconstitutional bureaucracy.

It is evident then that the elimination of earmarks is not the goal of the friends of our Constitution. The money spent on earmarks is pocket change when compared to the vault that is emptied every day just to keep the Leviathan up, running, and ruining our country's economic health. Procrustes, one assumes, would have been content to permit one of his guests cum victims to keep his ears intact while Procrustes slowly and deliberately stretched the body beyond its breaking point and to its death. The body politic of the United States continues to endure such torture on the rack of runaway government growth.

Many of these self-proclaimed conservatives gathered themselves under the banner of the Tea Party. Several of them garnered the attention of the national mainstream media for their "revolutionary" guarantees of government overhaul. Rand Paul (R-Ky.), the scion of the godfather of the Tea Party movement, reassured supporters on victory night that he would go to Washington to "take our government back." Paul's posse was comprised a several other hard talkers, deputized by the people to rescue our Republic from the clutches of the notorious Progressive Gang that had kidnapped it and was carrying it toward their hideout in the Statist Mountains. The biggest names in Paul's camp were Mark

Rubio (R-Fla.) and Mike Lee (R-Utah). These young guns set their sights on the bloated government and mounted up with shouts of acclamation from townspeople.

Three goals were set by the majority of these Tea Partiers and their cohorts in Congress. First, they would cut spending. Second, they would eliminate earmarks. Third, they would pay off the exorbitant national debt. Accomplishment of these three goals, the thinking goes, will be a first, critical step toward wresting the reins of the government away from the tax-and-spenders that have ridden us right to the precipice of destruction.

**Spending Cuts**

Despite all the parsimonious rhetoric of Tea Party lawmakers and their affiliates, there is little chance that the entrenched Republican leadership will threaten their own political livelihood by allowing these rookies to pull out the blade and sacrifice the sacred entitlement cows. The political will to re-enshrine the limits of the Constitution will run headlong into the realpolitik survival instincts of GOP headliners, and Medicare, defense, and Social Security will remain safe and sound enclosed behind fences erected to protect these programs from the constitutionalist cadre of cutters.

To their credit, many of these new office holders have pledged to place their own political ambitions on the altar of constitutional legitimacy. They would, they claim, rather go home bruised and bloodied, defeated in the battle to cut the unconstitutional spending on so many unconstitutional federal programs, rather than give in and join the majority. Each of them promises to be the last man in the last foxhole. They will neither compromise nor capitulate with those who deem certain outlays as untouchable. They will come home with the Constitution or on it, so to speak.

When it comes to cutting spending, however, one must understand that there is cutting and then there is eliminating. The Constitution does not authorize some entitlement spending. To the contrary, the clearly enumerated powers granted to Congress expressly forbid the raising and spending of money for any purpose other than those specifically provided for in the roster of powers with which the central government is endowed.

In this spirit, last month Speaker of the House John Boehner proclaimed:

> Beginning in January, the House is going to become the outpost in Washington for the American people and their desire for a smaller, less costly, and more accountable government. The President's agenda may be the agenda of Washington, but beginning January 5th, the agenda of this House will be the agenda of the American people. The people's priorities will be our priorities. We've laid the groundwork for action in the 45 days since the election, under the leadership of our transition committee, including Greg Walden and others. We've banned earmarks. We've arranged to have cameras installed in the Rules Committee. We've reduced the sizes of committees so that they can work more effectively and do a better job of oversight. And we've instituted reforms, like cut-as-you-go, that make it harder to increase spending here in Washington.

Speaker Boehner's promises are encouraging. There is much more to be said and done, however, if government is to be truly and permanently restrained within its constitutional bounds. All of this retrenchment rhetoric would be more believable were Speaker Boehner and his cohorts to boldly declare the targets of their cost-cutting agenda. Will, for example, these "representatives of the people" commit to eliminating the Department of Education or the Department of Energy? Will they immediately cease the funding of foreign governments and projects? Will they discontinue the unconstitutional "entitlement" apparatus? Will these mavericks, whose every speech is filled with the

ardor of revolt, dismantle the mandatory spending policies that have this nation on a path toward absolute economic obliteration? Or, as has historically been the case, will they merely fiddle with discretionary spending while our nation is consumed by the fires of fiscal malfeasance?

Think of it this way: If a man is spending $1,000 a month on illicit drugs, his promise to "cut spending" won't comfort his concerned wife and family. This man must absolutely abandon such behavior and commit unconditionally to spending not a single penny more on such harmful habits.

Historically speaking, there is very little hope that the trenches dug around congressional power will be uncovered. The tidal wave of "conservatives" that flooded Washington in the '80s (the Reagan Revolution) or the '90s (the Gingrich Revolution famous for the Contract with America) did little to permanently wash away the filth of unconstitutional spending and when the tide subsided, the silt of "same old, same old" persisted in the marbled halls of our national government and the size and scope of government continued growing.

**Earmarks**

Earmarks are those pet projects that are tucked away within the thousand-page budgets that are annually passed by Congress and signed by complicit Presidents. To many of the new brand of conservatives that are now settling into their new offices, these earmarks are the most egregious and unforgivable betrayal of traditional and constitutional principles by the Republican incumbents in Congress. While these *soi-disant* friends of the Constitution stood at the podium and proclaimed their intent to put the government on a diet, they were stepping out of the spotlight and immediately strapping on the federal feedbag.

In the days following the November 2010 mid-term elections, millions of trusting Americans were left disconsolate as news broke that "members of the Tea Party Caucus … added more than $1 billion to the federal budget" through the seeking and accepting of 764 earmarks in Fiscal Year 2010. So many promises, so much hypocrisy. There go these champions of smaller government doing their best Procrustes imitation by promising relief, but delivering dismemberment.

In 2011, the question for the American voting public is whether we will be able to overcome the battle fatigue and hold these Tea Party Congressmen and other self-styled constitutionalists to their oaths and accept no retreat in the face of the lure of lucrative federal dollars in the form of earmarks.

**The National Debt**

According to published figures, the national debt will reach $14.3 trillion in 2011. This is the ceiling set by law. Robbing Peter to pay Paul has left Peter broke, while Paul knows that he can keep loaning the United States money because when push comes to shove, the Federal Reserve can just fire up the printing press and let the trillions trickle out to the economy, knowing full well that this infusion of new money into the economy will devalue already-existing dollars, taxing all of us (with very few realizing it) through inflation.

In the end of the analysis, it is the perpetuation of this monster known as the Federal Reserve that permits the debt to persist, funds the destruction of the Constitution, and does so from an impregnable fortress protected by the money and means of the establishment. As so elegantly expressed by *The New American*'s own William F. Jasper, the Federal Reserve ("the Fed") "is unique among all the agencies of the federal leviathan, exercising an incredible independence completely free from accountability to the legislative or executive branches." Neither the silver spoons of Wall Street nor the pitchforks of Main Street inspire fear in this secretive body.

A bright light may soon be shone on the shadowy dealings of this furtive organization. Congressman Ron Paul (R-Texas) has been named the Chairman of the House Financial Services Subcommittee on Domestic Monetary Policy and Technology, the subcommittee that monitors the Fed. And Paul has promised to pound the gavel convening the hearings that will force the villains of the Fed out of the protection of their legal penumbras and into the light of investigation and oversight.

As quoted by World Net Daily, Congressman Paul said, "First and foremost, I want the subcommittee to actually begin talking about monetary policy. The Federal Reserve has insisted that Congress has no role in monetary policy. But that's not what the Constitution says." Given his rec-ord of reliably advocating Constitutional adherence, there is every hope that Paul will keep his word and fight the smothering debt at the source — despite all the pressures he will face.

**Constitutional Contraventions**

But unlike Ron Paul, most Congressmen — Republicans as well as Democrats — find ways to rationalize their support of unconstitutional legislation while claiming to support the Constitution. How do these Procrustes on the Potomac accomplish this feat? Through the manipulation of the terms of three constitutional clauses.

**Commerce Clause:** The first pretext relied upon by the national government in defense of its enactment of the lengthy roster of unconstitutional schemes is the power granted to it by the Constitution to regulate commerce among the states.

Article I, Section 8 of the Constitution grants Congress the authority to "regulate commerce with foreign nations, and among the several states." The fact that Congress passed and President Obama signed the Patient Protection and Affordable Care Act into law demonstrates that neither the legislative nor executive branch of the national government is bothered by constitutional restrictions on their power. As a matter of fact, it is imprecise to say that the Constitution restricts the power of the national government. The truth is that the Constitution empowers the national government with very specific, limited, and enumerated powers, leaving all others to the "states, respectively, or to the people."

For nearly 80 years, the federal government has used the Commerce Clause as a cloak of constitutionality with which to shroud its unlawful expansionism.

One of the latest expressions of the legislative madness, ObamaCare, denigrates the very principle of personal liberty that is at the core of our constitutional Republic. If Congress is permitted to envelop the iron fist of absolutism within the velvet glove of the Commerce Clause, then there is nothing that will not fall within that purview.

**Supremacy Clause:** Several states have filed a federal lawsuit challenging the constitutionality of ObamaCare. The states in the suit charge the federal government with attempting to impose a top-down form of federalism that is inimical to the structure established by the Constitution wherein the sovereignty of the several states is protected and held inviolable. In writing in defense of the proposed Constitution, James Madison expressed his opinion of the relationship between national and state governments intended by the Constitution he helped write: "Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act. In this relation, then, the new Constitution will, if established, be a federal, and not a national constitution." Madison and the Founders adamantly denied the claim that the Constitution in any way reduced the scope of state authority or the sovereignty of the people.

The so-called Supremacy Clause of Article VI reads, "This Constitution, and the Laws of the United

States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

While at first blush the Supremacy Clause argument may seem persuasive, there is a significant flaw in it. Consideration of the application of the Supremacy Clause in the debate is only appropriate where there is a legitimate federal statute contending with an equally legitimate state law. This is not the situation with regard to the Patient Protection and Affordable Care Act.

That is to say, a constitutionally sound act of Congress is one that comports in every way with the scope of enumerated powers set forth in the Constitution, specifically in Article I. If an act of Congress exceeds its constitutional mandate, then it is per se unconstitutional and cannot be defended by reference to the Supremacy Clause. The key to the conundrum is the phrase "made in pursuance thereof." If the law is not made in pursuance of constitutional authority, then the very language of the Supremacy Clause expels the law from its protection.

**General Welfare Clause:** Madison spoke often about the General Welfare Clause. It was a "source of congressional mischief from the start." How does it make sense that men such as the framers of our Constitution that were so wary of granting any powers to a national authority would agree to grant them unbounded power by including a phrase, which if interpreted according to some, would make all enumeration pointless as this one clause would authorize Congress to do anything it wanted so long as it was doing it for the general welfare? Would ratification have had a chance had such an interpretation been the correct one?

Madison to E. Pendleton in 1792: "If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the Government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions."

Madison in his Report of 1800: "Money cannot be applied to the General Welfare, otherwise than by an application of it to some particular measure conducive to the General Welfare. Whenever, therefore, money has been raised by the general Authority, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it; if it be not, no such application can be made."

When read with the correct interpretation of the metes and bounds of this clause, one realizes that it is in proper application a further limit on the power of Congress. In light of the General Welfare Clause, Congress can spend money only on enumerated ends.

### The Road Ahead

As the foregoing demonstrates so clearly, saving our Republic from ruin will be a Herculean task. It will take sincere and steadfast attention to each and every bill proposed in Congress. We must not give quarter to the compromisers and the capitulators. We must not abide the sunshine patriot and the excuses of those willing to lay their integrity at the feet of influence.

The reformation advocated for the American people wearied from the biennial cycle of promises of constitutional fidelity followed within three months by the discovery of many of those in whom we placed our trust in the cozy and familiar arms of the mistress of money and power, will cost us greatly. We cannot expect to redeem our noble Republic unless we are willing, as were our faithful forebears, to pledge "our lives, our fortunes, and our sacred honor" to the cause.

If we are honest with ourselves, using the lamp of history as our guide, we know that many of these lawmakers will betray us. They will contract Potomac Fever, which typically robs the afflicted of their memory, particularly the recollection of affirmations of affinity to restoring constitutional limitations on power. What, then, is the proper remedy for this malady?

A vital distinction must be made by Americans between elected officials who improperly exercise constitutionally delegated powers and those office holders who usurp powers not within the narrow scope of the limited powers granted by the Constitution.

In the former situation, the offender(s) may and should be removed from office at the next election. In the latter example, however, the states as signatories to the Constitution (on the fourth page of the Constitution, the delegates' endorsements are divided according to the states they represented) must exercise the "rightful remedy" of nullification: nullifying the unconstitutional measure.

As Madison said in the Virginia Resolution, "The states have the right, and are duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights, liberties appertaining to them."

So, what happened to that old scoundrel Procrustes? After years of successfully tricking the trusting traveler, Procrustes offered a bed to one guest too many.

Theseus, a hero famous for meting out poetic justice to the rogues of the ancient world, treated Procrustes to a bit of his own brand of hospitality. He made the deceiving innkeeper lie in his own bed and forced him to fit or face the music.

Likewise, regardless of their enticing and convincing promises of hospitality to the Constitution, we constitutionalists must play the role of modern-day Theseuses to the Procrustes in Congress. We must demand that they confine themselves and their proposals to the four corners of the Constitution, and not the other way around. We must hold them to their commitments, and if they are found to have broken their word, then we must exercise one of our available options and defend our Constitution, lest too many such cycles pass and the true form of the Constitution is left unrecognizable through the stretching of clauses and the lopping off of limits.

*— Photo: AP Image*