

THE TEA PARTY'S CONSTITUTION

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INTRODUCTION

Since its rather sudden emergence in March 2009, the Tea Party movement has garnered considerable attention as a rowdy group of anti-tax, anti-health reform, anti-stimulus, anti-bailout, anti-Obama activists. Tea Party supporters characterize the movement's central goal to be reclaiming the Constitution and returning the government to constitutional principles.¹ Tea Party groups express devotion to the Founding Fathers and declare their commitment to "stand[] up for what our Founding Fathers believed in"² and to "revive the spirit of the Founders"³ At their rallies, Tea Party groups pass out pocket copies of the Constitution, men dress in colonial costumes, and speakers routinely demand the restoration of foundational constitutional principles.⁴ The name "Tea Party" itself seeks to cast the movement as a modern day incarnation of the nation's founders.⁵

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1. A typical mission statement of a Tea Party group declares: "Our demands are simple: Return the role of the Federal government to the original design laid out in the U.S. Constitution[.]" TRUSSVILLE TEA PARTY (Mar. 19, 2010), <http://www.trussvilleteaparty.com/>; *see also, e.g.*, FORT WALTON BEACH TEA PARTY, <http://fwbteaparty.com/> (last visited Apr. 1, 2011) ("Our core principles: 1. Support and defend the U.S. Constitution as the Supreme Law of the Land."); *North Alabama Patriots Tea Party*, TEA PARTY PATRIOTS, http://www.teapartypatriots.org/GroupNew/5cab6674-ae56-4477-8418-2258a6cd1936/North_Alabama_Patriots_Tea_Party (last visited Apr. 1, 2011) ("Mission Statement[:] Promote the return of our Government based on principles set forth in the US Constitution"); RAINY DAY PATRIOTS, <http://www.rainydaypatriots.org/> (last visited Apr. 1, 2011) ("We the People Fighting to Restore our Constitutional Republic[.]").

2. ST. AUGUSTINE TEA PARTY, <http://unitedamericanteaparty.ning.com/> (last visited Apr. 1, 2011).

3. *About the Brevard Tea Party*, BREVARD TEA PARTY, <http://brevardteaparty.com/about.html> (last visited Apr. 1, 2011); *see also About*, SHOALS2DC, <http://shoals2dc.webs.com/about.htm> (last visited Apr. 1, 2011) ("We want our country restored to the ideals of the Republic that our founding fathers created for us."); FIRST COAST TEA PARTY, <http://firstcoastteaparty.org/> (last visited Apr. 1, 2011) ("The First Coast Tea Party's mission is to promote the principles of our founding fathers – individual liberty and responsibility, limited government and moral leadership."); FLORIDA TEA PARTY, <http://floridateaparty.weebly.com/> (last visited Apr. 1, 2011) ("Our founding fathers wanted our government to be a limited government."); RAINY DAY PATRIOTS, *supra* note 1 ("We the People Fighting to Restore our Constitutional Republic.").

4. *See, e.g.*, Kate Zernike, *With Tax Day as Theme, Tea Party Groups Demonstrate*, N.Y. TIMES, Apr. 16, 2010, at A17; Mara Liasson, *Tea Party: It's Not Just Taxes, It's The Constitution*, NATIONAL PUBLIC RADIO (July 14, 2010), <http://www.npr.org/templates/story/story.php?storyId=128517427>.

5. Jill Lepore, *Tea and Sympathy: Who Owns the American Revolution?*, THE NEW YORKER (May 3, 2010), http://www.newyorker.com/reporting/2010/05/03/100503fa_fact_lepore?currentPage=all. Tea Party supporters characterize the historical Boston Tea

The sudden prominence and power of the Tea Party call for an examination of its constitutional vision. In a very short time, the Tea Party movement has succeeded in nominating and electing many of its preferred candidates to Congress and to state offices, and it now exercises considerable influence—by some accounts dominant influence—within the Republican Party.⁶ Its power to implement its constitutional goals is growing rapidly. The constitutional principles advanced by the Tea Party also bear examination as an example of popular constitutionalism, the theory that ultimate authority over the meaning of the Constitution resides (or should reside) in the people themselves.⁷ The central descriptive insight developed by scholars of popular constitutionalism is that political movements have frequently succeeded in changing constitutional law without amending the Constitution, transforming constitutional interpretations that appeared kooky or implausible yesterday into the settled doctrines of today.⁸ Larry Kramer, proponent of a normative version of popular constitutionalism, has claimed that popular constitutionalism once was the norm, and he has lamented what he believes to be its death at the hands of judicial supremacy.⁹ If nothing else, the Tea Party movement suggests that popular engagement with the Constitution is alive and well.

Although the Tea Party movement loudly proclaims its goal of restoring the government to constitutional principles, commentators have struggled to describe the movement's understanding of the Constitution.¹⁰ That difficulty is understandable because the Tea Party movement

Party as a protest against excessive taxation, rather than a protest against taxation without representation. As one writer put it, the Tea Party's depiction of the American history "is to history what astrology is to astronomy, what alchemy is to chemistry, what creationism is to evolution." *Id.*

6. See, e.g., Kate Zernike, *For G.O.P., Tea Party Wields a Double-Edged Sword*, N.Y. TIMES, Sept. 6, 2010, at A1.

7. See, e.g., Larry D. Kramer, *Undercover Anti-Populism*, 73 FORDHAM L. REV. 1343, 1344 (2005) ("The basic principle of popular constitutionalism can be briefly stated. It is, in a nutshell, the idea that ordinary citizens are our most authoritative interpreters of the Constitution . . ."); see also MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* 183 (1999) ("Populist constitutional law . . . treats constitutional law not as something in the hands of lawyers and judges but in the hands of the people themselves.").

8. See, e.g., STEPHEN M. GRIFFIN, *AMERICAN CONSTITUTIONALISM: FROM THEORY TO POLITICS* 45 (1996) (arguing that "the meaning of most of the Constitution is determined through ordinary politics"); William E. Forbath, *Popular Constitutionalism in the Twentieth Century: Reflections on the Dark Side, the Progressive Constitutional Imagination, and the Enduring Role of Judicial Finality in Popular Understandings of Popular Self-Rule*, 81 CHI.-KENT L. REV. 967, 969–70 (2006) ("From the New Deal right down to the present, party politics and social movements . . . have been lively sites of popular involvement in—and popular influence over—the nation's constitutional development.").

9. LARRY D. KRAMER, *THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW* 228 (2004) ("Apart from a few academic dissidents, everyone nowadays seems willing to accept the Court's word as final—and to do so, moreover, regardless of the issue, regardless of what the Justices say, and regardless of the Court's political complexion.").

10. See Adam Liptak, *Tea-ing Up the Constitution*, N.Y. TIMES, Mar. 14, 2010, at WK1 ("The content of the movement's understanding of the Constitution is not always easy to nail down . . ."); Liasson, *supra* note 4 ("Tea Party members are often vague about exactly how their constitutional rights are being denied. But they all believe the federal government has expanded far beyond what the Constitution intended.").

is comprised of hundreds of local groups with no coordinated leadership or official platforms.¹¹ Moreover, Tea Party supporters usually invoke the Constitution in rather vague terms without providing what lawyers would recognize as legal arguments. As a rule, Tea Party supporters do not invoke the Constitution as a text in need of interpretation but instead as a repository of what they consider the fundamental and unchallengeable values upon which the nation was founded.¹²

Perhaps the best sources for exploring the Tea Party's vision of the Constitution are two books written in the 1980s by W. Cleon Skousen that have been enthusiastically embraced by the Tea Party movement. *The Five Thousand Year Leap* is frequently characterized as the "bible" of the Tea Party movement.¹³ Released in 1981, the book remained virtually unknown until conservative commentator Glenn Beck began touting it as offering "answers to the questions plaguing America."¹⁴ Since its 2009 re-issuance, with a new introduction by Beck, the book has sold more than 300,000 copies.¹⁵ It has been the nation's best-selling book on law and, for a few months, the best-selling book, period, according to sales on Amazon.com.¹⁶ *The Making of America: The Substance and Meaning of the Constitution*, published by Skousen in 1985, purports to explain the Constitution clause-by-clause.¹⁷ Hundreds of Tea Party groups have used the book as the basis for seminars devoted to educating their members and the public on the principles of the Constitution and to

11. See Jonathan Kay, *Black Helicopters Over Nashville*, NEWSWEEK (Feb. 9, 2010), <http://www.newsweek.com/2010/02/08/black-helicopters-over-nashville.html>.

12. See, e.g., *About Us*, THE SOUTHERN COLORADO TEA PARTY, http://www.socoteaparty.com/index.php?option=com_content&view=article&id=97&Itemid=73 (last updated Dec. 18, 2010) ("We believe that not only are 'We the People' not being listened to but that many of the actions taken by the government are unconstitutional."); Pony Soprano, Comment to *Why are the Tea Parties Being Called Astroturf Events and Not Grassroots?*, NON-VIOLENT ACTIVISM (Aug. 31, 2009, 10:36 PM), <http://www.nonviolentactivism.info/grassroots/why-are-the-tea-parties-being-called-astroturf-events-and-not-grassroots> ("We are citizens who want our government to return to its roots as a republic as our founding fathers intended."); *What is the Wetumpka Tea Party?*, WETUMPKA TEA PARTY, <http://www.wetumpkateaparty.com/AboutUs.aspx> (last visited June 14, 2011) ("We believe in the principles that our country was founded upon: Faith, Honesty, Reverence, Hope, Thrift, Humility, Charity, Sincerity, Moderation, Hard Work, Courage, Personal Responsibility, Gratitude.").

13. W. CLEON SKOUSEN, *THE FIVE THOUSAND YEAR LEAP: 28 GREAT IDEAS THAT CHANGED THE WORLD* (2009); see, e.g., David Von Drehle *Why the Tea Party Movement Matters*, TIME (Feb. 18, 2010), <http://www.time.com/time/politics/article/0,8599,1964903,00.html> ("Perhaps the most talked-about book of the [National Tea Party Convention] was *The 5,000 Year Leap* Speaker after speaker commended the volume . . .").

14. Book jacket, SKOUSEN, *supra* note 13.

15. Lee Benson, *Glenn Beck Gives Skousen Book's Sales a 'Leap'*, DESERET NEWS (Mar. 21, 2010, 1:15 AM), <http://www.deseretnews.com/article/700018281/Glenn-Beck-gives-Skousen-books-sales-a-Leap.html>.

16. Sharon Haddock, *Beck's Backing Bumps Skousen Book to Top*, DESERET NEWS, at B01 (Mar. 21, 2009, 12:00 AM); David Weigel, *Glenn Beck's Book Club: What the Far Right is Reading*, WASHINGTON MONTHLY (Nov. 1, 2009), <http://www.washingtonmonthly.com/features/2009/0911.tms.html>.

17. W. CLEON SKOUSEN, *THE MAKING OF AMERICA: THE SUBSTANCE AND MEANING OF THE CONSTITUTION* vi-vii (1985).

show that the answers to America's problems can be found in the wisdom of the Founding Fathers.¹⁸

This Essay examines the Tea Party's vision of the Constitution in light of *The Five Thousand Year Leap* and *The Making of America*. As Part I discusses, Skousen's books are decidedly strange sources to inspire a contemporary political movement. They are the products of the paranoid edges of the radical right wing of the Cold War era, and their main thrust is that the principles embodied in the Constitution provide the only hope to save the United States from international Communism. Skousen presents the Constitution as a divinely ordained blueprint for government, which implements biblical principles. Skousen asserts that these principles made the United States the most free and prosperous nation in history, but international socialists and wealthy bankers duped the United States into abandoning its foundational principles. Today, nearly everything the federal government does is unconstitutional, including the issuance of paper money, the establishment of administrative agencies, the adoption of federal welfare programs like Social Security, the creation of national parks, and the enactment of environmental and labor laws.¹⁹

With the end of the Cold War, one might have expected Skousen's books to lose whatever appeal they once had, but the emergence of the Tea Party movement has given them a much larger and more enthusiastic audience. As Part II discusses, Skousen's books find widespread support among Tea Party supporters because they share with Skousen what can best be characterized as a fundamentalist vision of the Constitution. Like religious fundamentalist movements, the Tea Party movement arises out of opposition to modern developments that they believe conflict with foundational principles. Like fundamentalist movements, the Tea Party movement reaches back to a mythic past, the foundation of the nation, to find what the movement's supporters believe to be the nation's fundamental principles, principles that believers perceive to be under attack—belief in God, individualism, limited government, the free market, and the sanctity of private property. To Tea Party supporters, uncompromising adherence to the fundamental principles embodied in the Constitution serves to divide true believers in the constitutional faith from “anti-Americans” like President Obama and his supporters who would seek to undermine the nation's fundamental principles.

18. Stephanie Mencimer, *One Nation Under Beck: In Which Our Reporter Learns About the Divine Origins of the Constitution at a Tea Party Seminar* MOTHER JONES, May/June 2010, at 21; Krissah Thompson, *Conservative Class on Founding Fathers' Answers to Current Woes Gains Popularity*, WASH. POST, June 5, 2010, at A04. As of August 2009, NCCS has been presenting several seminars each week based on Skousen's work to Tea Party groups around the country. See *Upcoming NCCS Seminars*, NATIONAL CENTER FOR CONSTITUTIONAL STUDIES, <http://www.nccs.net/seminars/calendar.html> (last visited Apr. 9, 2011); see also Thompson, *supra*.

19. See *infra* notes 71–75 and accompanying text.

I. SKOUSEN'S COMMIE-FIGHTING CONSTITUTION

Before describing the constitutional principles found in *The Five Thousand Year Leap* and *The Making of America*, it is worth discussing W. Cleon Skousen, who made a career of espousing religiously-themed communist conspiracy theories. Those theories are elaborated in *The Five Thousand Year Leap* and *The Making of America*, in which Skousen presented the Founding Fathers as devout Christians who discovered ancient principles for national success based on the Anglo-Saxons and the biblical Israelites.²⁰ A return to the Founders' principles, Skousen, advised, is the only way to save America.²¹

A. Cleon Skousen's Long Career in the Radical Right

After working for the FBI in the 1940s and as the Salt Lake City police chief in the 1950s, Skousen received national attention in 1958 with the publication of *The Naked Communist*, in which he claimed to reveal the secret truth of the international communist conspiracy.²² The communists, Skousen warned, sought to lay the groundwork for collective government by discrediting the Constitution and the Founding Fathers, by prohibiting prayer in public schools, by encouraging public acceptance of homosexuality and masturbation, and by destroying the traditional family structure.²³ Although the FBI disavowed Skousen and declared that he had no expertise on Communism,²⁴ the success of *The Naked Communist*—it sold over one and a half million copies²⁵—allowed Skousen to become a fixture on the anti-communist speaking circuit.²⁶

20. See SKOUSEN, *supra* note 13, at 73–77; SKOUSEN, *supra* note 17, at 41–62.

21. SKOUSEN, *supra* note 17, at 257.

22. See W. CLEON SKOUSEN, *THE NAKED COMMUNIST*, at Preface (3d ed. 1960).

23. Mr. Harley, 45 *Goals of Communism in "The Naked Communist"—Replace "Communism" with "Dictatorship" and Things are Eerily Prescient with Regard to Today*, THE COMING CRISIS (Apr. 11, 2011, 6:00 PM), <http://thecomingcrisis.blogspot.com/2011/04/45-goals-of-communism-in-naked.html>. Mark Hemingway, a columnist for the conservative National Review, recently characterized *The Naked Communist* as “so irrational in its paranoia that it would have made Whittaker Chambers blush.” Mark Hemingway, *Romney's Radical Roots: No Moderate*, NATIONAL REVIEW ONLINE (Aug. 6, 2007, 6:30 AM), <http://article.nationalreview.com/323634/romneys-radical-roots/mark-hemingway>.

24. See Memorandum from FBI Chief Inspector William Sullivan to A.H. Belmont (Jan. 2, 1963), <http://sites.google.com/site/ernie124102/skousen> (declaring that Skousen “was not regarded as any authority on communism while employed with the FBI”).

25. Benson, *supra* note 15; Kevin Drum, *Recycled: The Tea Party Is a Revolutionary Force. Just Not in the Way You've Been Led to Believe*, MOTHER JONES, Sept/Oct. 2010, at 50 (“One of the most popular tracts among Birchers in the '60s was W. Cleon Skousen's *The Naked Communist*.”).

26. See, e.g., Jack Gould, *TV: Christian Anti-Communism Crusade Here*, N.Y. TIMES, Nov. 3, 1961, at 71 (discussing Skousen's appearance in anti-communist TV special); Bill Becker, *Right-Wing Groups Multiplying Appeals in Southern California*, N.Y. TIMES, Oct. 29, 1961, at 43 (discussing the Christian Anti-Communist Crusade run by Fred Schwarz and characterizing Skousen as a “regular on Dr. Schwarz's team of crusaders”); Roy Reed, *Birch Society Is Growing in the South*, N.Y. TIMES, Nov. 8, 1965, at 1 (discussing Skousen speech in Birmingham, Alabama, against the civil rights movement).

Skousen was an ardent defender of the John Birch Society and often spoke at events it sponsored.²⁷ In 1963, Birch founder Robert Welch declared that President Eisenhower was a “conscious, dedicated agent of the communist conspiracy,” and Barry Goldwater and like-minded conservatives such as William F. Buckley broke with the Birchers, concluding that they were not fit members of the conservative movement.²⁸ Skousen, however, remained a vocal defender of Welch, asserting that attacks on the John Birch Society were themselves orchestrated by the international communist conspiracy.²⁹

In 1970, Skousen published *The Naked Capitalist*, which declares that the international communist movement exposed in *The Naked Communist* was actually the product of an even larger conspiracy directed by the “dynastic families of the super-rich.”³⁰ These families created and manipulated both Communism and fascism to carry out their plan to create a globalized New World Order.³¹ The conspirators included a cabal of international bankers, the Council on Foreign Relations, the Rothschilds, Rockefellers, Kennedys, J.P. Morgan, Henry Kissinger, John Dewey, and Albert Einstein, among countless others.³² *The Naked Capitalist* continues to be cited as a leading authority by New World Order, Illuminati, and anti-Semitic conspiracy theorists.³³

In addition to these political books, Skousen also wrote several overtly religious books, which purport to explain human history from a distinctly conservative Mormon point of view. Beginning with *The First 2000 Years* (1953), Skousen sought to explain the entirety of human history since the world’s creation, which he believed occurred 6,000 years ago, continuing in *The Third Thousand Years* (1965), and *The Fourth Thousand Years* (1966). Skousen’s religious beliefs informed his political views. Skousen believed

27. See Alexander Zaitchik, *Meet the Man Who Changed Glenn Beck’s Life*, SALON (Sept. 16, 2009, 6:18 AM) http://www.salon.com/news/feature/2009/09/16/beck_skousen.

28. Buckley recounted this episode in William F. Buckley, Jr., *Goldwater, the John Birch Society, and Me*, COMMENTARY MAGAZINE (Mar. 2008) <http://www.commentarymagazine.com/article/goldwater-the-john-birch-society-and-me/>.

29. See W. Cleon Skousen, *The Communist Attack on the John Birch Society* (1963), available at <http://www.ourrepubliconline.com/OurRepublic/Article/27> (asserting that the John Birch Society had been “dishonestly ridiculed and smeared at the instigation of the international Communist conspiracy”).

30. W. CLEON SKOUSEN, *THE NAKED CAPITALIST* (1970). Skousen presented *The Naked Capitalist* as a review of Carroll Quigley’s *Tragedy and Hope: The History of the World in Our Time*, and claimed that Quigley’s book supported his thesis. Quigley, however, disavowed Skousen, saying “[Skousen’s] personal position seems to me perilously close to the ‘exclusive uniformity’ which I see in Nazism and in the Radical Right in this country. In fact, his position has echoes of the original Nazi 25 point plan.” Carroll Quigley, *Roundtable Review*, DIALOGUE: THE JOURNAL OF MORMON THOUGHT, Autumn/Winter 1971, at 109, 110.

31. SKOUSEN, *supra* note 30, at Preface.

32. *Id.* at 17, 21, 33, 109–11.

33. See Simon Maloy, *Glenn Beck and the Paranoid Style*, MEDIA MATTERS, (Dec. 18, 2009, 9:16 AM), <http://mediamatters.org/columns/200912180003>.

that God himself had inspired and directed the adoption of the United States Constitution, and that the “Founders were merely instruments in the hands of the Lord.”³⁴

B. “*The Founding Fathers’ Phenomenal Success Formula*”

The Making of America and *The Five Thousand Year Leap* share a singular goal: to save America from Communism by explaining the foundational principles of American government.³⁵ These principles are not based in any significant degree on the constitutional text, which the books largely ignore. Skousen instead finds the fundamental principles of American government in the writings of the Founding Fathers, which the books provide in hundreds of block quotes, along with many other sources, including the Bible, Cicero, Blackstone, de Tocqueville, and an assortment of Mormon and oddball theorists.³⁶

1. The Creation Myth of the Constitution

The constitutional mythology found in Skousen’s books is centrally focused on veneration for the Founders and what may be characterized as the creation myth of the Constitution. In this narrative, the “Founders”—a term Skousen uses to refer to both the leaders of the American independence movement of 1776 and the framers of the Constitution of 1789—were a group of God’s chosen disciples who overcame great adversity and discovered God’s secret formula for government, a formula based on what Skousen pronounces to be “ancient principles.”³⁷

In presenting the Founders as devout Christians who established the nation based on divinely ordained principles,³⁸ Skousen scoffs at conventional versions of American history that depict the Founders as relatively non-religious deists, stating that the Founders “continually petitioned God in fervent prayers, both public and private, and looked upon his divine intervention in their daily lives as a singular blessing.”³⁹ Skousen likewise scoffs at conventional historical accounts that the constitutional framers were principally influenced by European philosophers of the

34. W. Cleon Skousen, *The Book of Mormon and the Constitution* (Jan. 14, 1990), <http://www.latterdayconservative.com/articles/w-cleon-skousen/the-book-of-mormon-and-the-constitution-notes>.

35. SKOUSEN, *supra* note 17, at ix.

36. Many of the quotations are taken quite far out of context. For instance, in support of the principle that the “core unit which determines the strength of any society is the family,” Skousen quotes a letter from Benjamin Franklin attempting to persuade a friend not to take a mistress but to marry instead. SKOUSEN, *supra* note 13, at 202. Skousen omits the crucial and most famous passage of the letter in which Franklin advised that if his friend were to decide to take a mistress “then I repeat my former advice, that in all your amours you should prefer old women to young ones.” *Id.* Franklin then listed eight reasons why older women made better mistresses, including that they have more experience, are more discrete, will not get pregnant, and are more grateful. *Id.* Traditional family values it is not.

37. SKOUSEN, *supra* note 13, at 17, 15, 225.

38. *Id.* at 75.

39. *Id.* at 76.

Enlightenment era, including Hobbes, Locke, and Rousseau.⁴⁰ On the contrary, Skousen asserts that the Founders rejected all “European” theories.⁴¹ Although socialism was unknown at the time of the Founders, Skousen equates eighteenth century European philosophies with socialism and declares that “the Founders [m]ade European [t]heories [u]nconstitutional.”⁴²

Rather than basing the new government on the “European fads” of Enlightenment philosophers, the Founders rediscovered certain “ancient principles” from the Bible and the Anglo-Saxons, which formed the basis for their political philosophy.⁴³ The Founders also made the surprising discovery that before the Norman invasion the Anglo-Saxons employed a system of government almost identical to the biblical Israelites.⁴⁴ Skousen repeatedly exhibits supremacist devotion to the Anglo-Saxons as a chosen people of God who may have descended from one of the lost tribes of Israel.⁴⁵

Skousen’s belief in Anglo-Saxon superiority is mirrored by his apologist history of slavery. Quoting historian Fred Albert Shannon, *The Making of America* asserts that slaves were “usually a cheerful lot, though the presence of a number of the more vicious type sometimes made it necessary for them all to go in chains.”⁴⁶ In Skousen’s history of slavery, brutality toward slaves was almost unheard of, and white schoolchildren envied “the freedom” of the slaves: “If pickaninnies ran naked it was generally from choice, and when the white boys had to put on shoes and go away to school they were likely to envy the freedom of their colored playmates.”⁴⁷ Although the slaves were well-treated, ate well, and lived happily, white southerners lived in constant fear of slave rebellions instigated by abolitionists, making their lives “a nightmare.”⁴⁸ In fact, Skousen suggests, “the slave owners were the worst victims of the system.”⁴⁹ In 1987, these passages aroused controversy after a California state commission celebrating the bicentennial of the Constitution

40. *Id.* at 63, 80.

41. *Id.* at 63.

42. *Id.* at 86, 88–89, 118.

43. *Id.* at 17. (“When the time came for the United States of America to adopt a constitution, our forefathers modeled it after the perfect Israelite system of administration.”) (quoting HOWARD B. RAND, *DIGEST OF THE DIVINE LAW* 130–31 (1943); see also SKOUSEN, *supra* note 17, at 3–4, 41–62.

44. SKOUSEN, *supra* note 13, at 14–18.

45. *Id.* at 225–31. Skousen relies on Howard B. Rand, who was the American leader of the Anglo-Israelite movement, which asserts that the Anglo-Saxons are the descendants of the biblical Israelites and are therefore God’s chosen people. *Id.* at 17; see generally HOWARD B. RAND, *PRIMOGENESIS: THE STORY THE BIBLE TELLS* (1948). Anglo-Israelitism, in turn, provided the foundation for the white separatist Christian Identity movement espoused by Randy Weaver, who died in 1992 in a shootout with federal agents, who he believed were agents of a Zionist Occupational Government. See Leonard Zeskind, *BLOOD AND POLITICS: THE HISTORY OF THE WHITE NATIONALIST MOVEMENT FROM THE MARGINS TO THE MAINSTREAM* (2009).

46. SKOUSEN, *supra* note 17, at 731–32.

47. *Id.* at 733.

48. *Id.* at 735.

49. *Id.* at 734.

recommended *The Making of America* to the public, and the commission later apologized.⁵⁰ The latest edition of *The Making of America*, published in 2007, maintains these passages, although the word “pickaninies” quoted above has been replaced with “[negro children].”⁵¹

2. The Founders’ Principles Provide Protection Against Communism

The central thrust of Skousen’s books is that the Constitution establishes eternal principles that can protect the nation against the spread of world Communism. The first and most important of these “ancient principles” is that natural law provides the only reliable basis for government.⁵² For Skousen, natural law means God’s laws and encompasses the necessity for “limited government,” the right to bear arms, protections for the family and the institution of marriage, the sanctity of private property, and the avoidance of debt.⁵³ Such natural law principles, Skousen claims, are instituted eternally and are not subject to change by mortal legislators.⁵⁴ Legislation contrary to God’s laws is a “scourge to humanity” and is therefore unconstitutional.⁵⁵

Not only did the Founders believe that human laws must be consistent with God’s laws, they also believed that republican government could only survive if the people and their leaders were virtuous, which requires religious training.⁵⁶ As a result, the Founders sought to inculcate religious values in American society, supported government-funded religious education, and broadly encouraged government support of religion.⁵⁷ The Founders, in their wisdom, thus gave the American people the means to resist atheism that would one day be advocated by Communists.

Natural law principles also prevent any programs that provide welfare benefits or redistribute wealth.⁵⁸ Skousen cites a debunked story that, when Davy Crockett was a congressman, he voted against a bill that would have provided financial support to a navy widow because of his conviction that the government has no right to take money from some taxpayers to give to others no matter how worthy the cause and how

50. Katherine Bishop, *Bicentennial Panel in California Assailed Over ‘Racist’ Textbook*, N.Y. TIMES, Feb. 16, 1987, at 9.

51. See generally SKOUSEN, *supra* note 17. Additional evidence that Skousen held white supremacist views is his vehement defense of the Mormon Church’s refusal to allow African Americans to serve as church leaders, in which he claims that criticism of the Church’s discriminatory policies was directed by international Communism. See Hemingway, *supra* note 23.

52. SKOUSEN, *supra* note 13, at 33–40; SKOUSEN, *supra* note 17, at 195.

53. SKOUSEN, *supra* note 13, at 40, 208.

54. *Id.* at 40, 103–04.

55. *Id.* at 38.

56. *Id.* at 41–46, 47–57, 59–71, 73–77.

57. *Id.* at 60, 70.

58. *Id.* at 87–91.

needy the recipients.⁵⁹ According to Skousen, Congress cannot provide support for military widows or any citizens who need it because natural law establishes the inviolability of property rights. Without property rights, mankind could not carry out God's command to have dominion over the earth.⁶⁰ Indeed by protecting property, the Founders sought to refute European philosophers who believed "that the role of government was to take from the 'haves' and give to the 'have nots.'"⁶¹ The Founders disagreed and did "everything possible to make these collectivist policies 'unconstitutional.'"⁶²

3. The Fall from Grace

According to Skousen, the Founders' establishment of the ancient principles of the Anglo-Saxons and Israelites ushered in a golden age that was nothing short of miraculous. It allowed humanity to make more progress in a short time than had been made in the previous 5,000 years of human history—hence the title, *The Five Thousand Year Leap*.⁶³ This miracle allowed the United States to become the most prosperous nation the world has ever known and made its people the most free.⁶⁴ Sadly, however, America has turned its back on the Founders' principles.⁶⁵ The result of the abandonment of the foundational principles has been disastrous and has wreaked havoc on American culture.⁶⁶

For Skousen, the fall from grace began in the first decades of the twentieth century when socialists attacked the Constitution, attempting to debunk the Founding Fathers and foment revolution by arguing that the Constitution is out of step with an industrialized society.⁶⁷ In fact, Skousen asserts, the socialists were acting as agents of certain wealthy bankers and other members of the "dynastic rich," who sought to gain control of the government and grant themselves monopolies.⁶⁸ The capitalist-communist conspirators largely succeeded in duping the American people to abandon many of the ancient principles upon which the nation was

59. SKOUSEN, *supra* note 17, at 391–92. The story is widely quoted among conservatives but has no basis in fact. *See, e.g.*, 149 Cong. Rec. H465-08, H495 (2003) (statement of Cong. Ron Paul) ("In the words of the famous essay by former Congressman Davy Crockett, this money is 'Not Yours to Give.'"); Jim Boylston, *Crockett and Bunce: A Fable Examined*, THE CROCKETT CHRONICLE, Nov. 2004.

60. SKOUSEN, *supra* note 13, at 124, 126.

61. *Id.* at 86.

62. *Id.* at 341.

63. SKOUSEN, *supra* note 17, at 5.

64. Indeed, the Constitution paved the way for the industrial revolution, the machine revolution, the transportation revolution, the communications revolution, the energy resource revolution, and the computer revolution. *Id.* at 2–3.

65. *Id.* at ix.

66. *Id.*; SKOUSEN, *supra* note 13, at 4.

67. *Id.* at 114–18, 134.

68. SKOUSEN, *supra* note 17, at 216.

founded.⁶⁹ As a result, America lost its national identity, producing a “[g]eneration of lost Americans,” and a nation of “un-Americans.”⁷⁰

The United States soon began to adopt one policy after another that conflicted with its foundational principles, and today, almost everything the federal government does is unconstitutional.⁷¹ The primary transgression was the establishment of federal welfare programs like Social Security and Medicare, which violate the fundamental prohibition against redistribution of wealth.⁷² The entirety of the monetary system likewise operates contrary to the Founders’ formula because it is based on paper money not backed by gold.⁷³ The entire administrative state is also unconstitutional because Congress cannot create agencies with regulatory powers, and the President cannot issue executive orders or promulgate regulations.⁷⁴ In addition, it was unconstitutional for Congress to establish national parks, national monuments, national forests, and wilderness areas, to enact federal environmental and labor laws, and to provide foreign aid.⁷⁵

Skousen remained an unapologetic isolationist who believed that American foreign policies, like its domestic policies, conflicts with the Founders’ plan, which was founded upon America’s pursuit of “manifest destiny” and “separatism” from international conflicts.⁷⁶ Skousen cites isolationist figures Charles Lindberg, Sr., and J. Reuben Clark, who opposed entry into World Wars I and II, positions that Skousen says “reflected the views of the Founders.”⁷⁷ Discussing World War II, Skousen ponders “how much happier, more peaceful, and more prosperous the world would be if the United States had been following a policy of ‘separatism’ as the world’s great peacemaker instead of ‘internationalism’ as the world’s great policeman.”⁷⁸

Because the United States forgot, rejected, and abandoned the Founders’ principles, the United States stands on the verge of succumbing to a collectivist world government. Yet “there is still time, but not much” to return to the Founders’ eternal principles before “total disaster” overtakes America.⁷⁹ Again and again, he exhorts his readers to rediscover the Founders’ principles, to reverse the tide, and restore the American government to its foundational roots.⁸⁰ Indeed, America owes

69. *Id.*

70. *Id.* at iii, 135, 217; SKOUSEN, *supra* note 13, at vi.

71. SKOUSEN, *supra* note 17, at 407.

72. *Id.* at 255, 387–92.

73. *Id.* at 423–26.

74. *Id.* at 252–54; SKOUSEN, *supra* note 13, at 343–44.

75. SKOUSEN, *supra* note 17, at 388, 458–59; SKOUSEN, *supra* note 13, at 352–53.

76. SKOUSEN, *supra* note 13, at 189–97, 215–19.

77. *Id.* at 195–97.

78. *Id.* at 197.

79. *Id.* at 337.

80. SKOUSEN, *supra* note 17, at 11–12; SKOUSEN, *supra* note 13, at 214.

it to humanity to restore its foundational principles because, if they were followed, these principles may provide “the key for the survival of the human family on the planet earth” and bring peace, freedom, and prosperity to all mankind.⁸¹

II. THE TEA PARTY’S FUNDAMENTALIST CONSTITUTIONAL VISION

Considering that Skousen’s avowed purpose in writing *The Five Thousand Year Leap* and *The Making of America* was to protect the nation against international Communism by educating his readers about the “ancient principles” adopted by the Founding Fathers, one might have predicted at the end of the Cold War that his books would become merely curious relics of the paranoia of a bygone era. Yet the books have found a much larger and more receptive audience in the Tea Party movement than when they were first published.⁸² What can explain the current enthusiasm for Skousen, the hundreds of thousands of new readers his books have attracted, who enthusiastically organize and attend seminars around the country to study and advance his vision of the Constitution? The vocal support of TV and radio personality Glenn Beck has obviously contributed, but such advertising would not have generated the current enthusiasm for Skousen if his books did not resonate with his new readers.

Skousen appeals to supporters of the Tea Party movement because they share what may be characterized as a fundamentalist vision of the Constitution. They both explain contemporary history through a common narrative in which the Founding Fathers adopted a Constitution that embodies a set of sacred and eternal principles for American government.⁸³ The principles adopted at the time of national creation encompass what Skousen and the Tea Party understand to be the central values and characteristics of American national culture—devotion to God, limited government, free markets, personal property, and individualism.⁸⁴ In recent

81. *Id.* at 2, 12.

82. Benson, *supra* note 14 (estimating that *The Five Thousand Year Leap* sold 60,000 copies in the first 25 years after its publication but has sold more than 300,000 copies since the emergence of the Tea Party movement).

83. See, e.g., *9/12 Project Mission Statement*, DEL NORTE TEA PARTY PATRIOTS, http://delnorteteapartypatriots.com/nco10095/?page_id=92 (last visited Apr. 12, 2011) (“At the origin of America, our Founding Fathers built this country on 28 powerful principles.”).

84. A typical Tea Party describes its mission “to promote the principles of our founding fathers—individual liberty and responsibility, limited government and moral leadership.” FIRST COAST TEA PARTY, *supra* note 3; see also *Founding Principles*, LIBERTY CENTRAL, <http://www.libertycentral.org/five-founding-principles> (last visited Apr. 12, 2011) (“From its earliest stages, Liberty Central identified limited government, individual liberty, free enterprise, national security, and personal responsibility as the five principles that best capture the foundations we, as a nation, need to preserve.”); *About*, SILICON VALLEY TEA PARTY PATRIOTS, <http://siliconvalleyteaparty.com/about> (last visited April 12, 2011) (“Silicon Valley Tea Party Patriots is a non-partisan movement aimed at bringing limited government, fiscal responsibility, and the

years, so the Skousen-Tea Party narrative goes, these fundamental principles have come under attack by forces deeply antagonistic to American values, and the nation has lost sight of its foundational principles.⁸⁵ Skousen and the Tea Party movement offer the same solution to this perceived crisis—a return to the wisdom of the Founding Fathers.⁸⁶

The narrative that lies at the heart of Skousen's books and the Tea Party movement bears a strong resemblance to the narratives propounded by religious fundamentalists. Although use of the term "fundamentalist" can be controversial because it is sometimes used pejoratively or dismissively, sociologists of religion have generally embraced the term to describe religious movements that arise in opposition to elements of modernity that believers perceive threaten their core identities.⁸⁷ Notwithstanding the many differences that exist among movements characterized as fundamentalist—Sunni fundamentalists, the Haredim, Shiite fundamentalists, and Protestant fundamentalists—they bear common traits, including: (1) the identification of a set of fundamental values that adherents believe are under attack or have been abandoned,⁸⁸ (2) the

free-market principles that our country was founded on back to government."); *Values*, VIDALIA TEA PARTY PATRIOTS, <http://www.vidaliatpp.com/Values.html> (last visited Apr. 12, 2011) ("The core values of the Tea Party are the same values upon which the United States of America was founded and are rooted in our belief in Natural Law. They derive from a belief in free will, the primacy of individual and personal responsibility.");

85. See, e.g., BRUCE BEXLEY, *THE TEA PARTY MOVEMENT: WHY IT STARTED, WHAT IT'S ABOUT, AND HOW YOU CAN GET INVOLVED* (2009) (explaining that the Tea Party movement arose because government spending threatened to "destroy the country" and deprive the people of their freedoms); *Mission Statement*, BOONE TEA PARTY, <http://booneteparty.org/mission.htm> (last visited Apr. 12, 2011) ("Our government has strayed drastically from our nation's foundation We are now in grave danger of losing our fundamental rights and liberties as American citizens."); ELBERT COUNTY TEA PARTY, <http://www.elberteparty.com> (last visited April 12, 2011) ("We are . . . deeply concerned about the direction our government and our President are taking us as they continue to push policy and changes that are contrary to the will of the people and of our founding documents."); FIRST COAST TEA PARTY, *supra* note 3, ("[T]his just might be our and our Country's finest hour as we reclaim it from the Obama's, Pelosi's and Reid's and all the other politicians who have either forgotten or chosen to ignore our Constitution.");

86. As Glenn Beck declares in his introduction to *The Five Thousand Year Leap*, "The questions that we face were foreseen by the greatest group of Americans to ever live; our Founding Fathers. They knew we would be grappling with issues like the ones we face today at some point, so they designed a ship that could withstand even the mightiest storm. They also knew that we would eventually lose our way and that we would need a beacon to lead our way back." SKOUSEN, *supra* note 13, at 6.

87. The Fundamentalism Project is a five-volume study sponsored by the American Academy of Arts and Sciences, with contributions from historians, cultural anthropologists, and sociologists of religion. See *generally* FUNDAMENTALISMS OBSERVED (Martin E. Marty & R. Scott Appleby eds., 1991). In the introduction to first volume, the editors write that, notwithstanding misuse of the term "fundamentalism," the term captures a set of movements that fight back against challenges that they see as threats to their core identity. Martin E. Marty & R. Scott Appleby, *Introduction*, in FUNDAMENTALISMS OBSERVED, *supra*, at ix.

88. Martin E. Marty & R. Scott Appleby, *Conclusion: An Interim Report on a Hypothetical Family*, in FUNDAMENTALISMS OBSERVED, *supra* note 87, at 822 ("[I]n reviewing 'family traits' that

belief that these fundamental values originated in a mythic era and are embodied in a sacred text or tradition;⁸⁹ (3) the perception that the current attack on the group's fundamental values represents an existential crisis for the community of believers;⁹⁰ (4) a commitment to restoring the fundamental values as the movement's central goal;⁹¹ and (5) a Manichean world view that pits supporters of the fundamental principles against demonized enemies.⁹² These elements can readily be seen in Skousen's work and in the Tea Party movement.

Like religious fundamentalists, Skousen and Tea Party supporters believe that their fundamental values are under attack. Tea Party groups have declared that "the world is watching as the United States crumbles from within, enemies maneuver beyond our borders and the cornerstone of the country—the Constitution—is subverted in a political quagmire."⁹³ To Tea Party supporters, advocates of foreign, anti-American ideas have taken over the federal government, threatening to displace true American values, and the fate of the nation hangs in the balance.⁹⁴ Again and again, Tea Party supporters argue that the Obama Administration is "attacking" America, that he is "anti-American," and that he is seeking to undermine basic American values.⁹⁵ The vehemence which Tea Party members characterize the Obama Administration's agenda as "un-American," "socialist," or "communist"—or, perhaps even worse, "European"—easily matches Skousen's own anti-communism.⁹⁶

recur frequently [among various fundamentalist groups], we have observed the fundamentalist quest for an irreducible basis for personal and communal identity."

89. Marty & Appleby, *supra* note 86, at vii, ix ("Fundamentalists" movements are so named because "they reached back to real or presumed pasts, to actual or imagined ideal original conditions and concepts, and selected what they regarded as fundamental."); GABRIEL A. ALMOND ET AL., *STRONG RELIGION: THE RISE OF FUNDAMENTALISMS AROUND THE WORLD* 96 (2003) (describing a belief in the "absolutism and inerrancy" of sacred texts to be characteristics of fundamentalist movements).

90. Marty & Appleby, *supra* note 88, at 814, 822–23 ("Fundamentalisms arise or come to prominence in times of crisis, actual or perceived," which fundamentalist adherents construe as a "crisis of identity[.]").

91. *Id.* at 821–22 (discussing "missionary zeal" of fundamentalists to eradicate the "contamination of the unbeliever" and return the community to a state of purity).

92. *Id.* at 820 ("Fundamentalists name, dramatize, and even mythologize their enemies."); ALMOND ET AL., *supra* note 89, at 95–96 (characterizing "moral Manichaeism" as characteristic of fundamentalist movements).

93. FIRST COAST TEA PARTY, *supra* note 3.

94. Make no mistake, Glenn Beck warns in the introduction to *The Five Thousand Year Leap*, "our Republic is at stake." SKOUSEN, *supra* note 13, at 7.

95. See, e.g., CHARLY GULLETT, *OFFICIAL TEA PARTY HANDBOOK: A TACTICAL PLAYBOOK* 12 (2009) ("In response to . . . all the Socialist intellectual and financial atrocities that have been implemented by the Federal Government since Obama took office, clear-thinking Americans (what remains of us) have taken to the streets . . .").

96. See, e.g., Drum, *supra* note 25 ("'Obama isn't a US socialist,' thundered Fox News commentator, Steven Milloy at a tea party convention earlier this year, 'he's an international socialist!'""); *Mission Statement*, NORTH ALABAMA PATRIOTS TEA PARTY, <http://northalabamapatriotsteaparty.com/Home.php> ("Stop Socialism Before It Destroys Our Coun-

Skousen, the Tea Party movement, and religious fundamentalists offer the same solution to the perceived crisis—a return to the fundamental principles that adherents claim have been attacked, abandoned, or compromised.⁹⁷ *The Five Thousand Year Leap* contains a ready set of the twenty eight fundamental principles that Skousen believes constitute foundational American principles—the centrality of natural (i.e., God's) law and devotion to God, the necessity for limited government, and the virtue of isolationist foreign policy, among others.⁹⁸ In his introduction *The Five Thousand Year Leap*, Glenn Beck begs readers to “learn these 28 ideas, make them your own” and “teach them to your children, your neighbors, your friends.”⁹⁹ Throughout the writings of the Tea Party movement, one finds the same goal of learning the Founders' principles and spreading the word.¹⁰⁰

Like religious fundamentalists, Skousen and the Tea Party movement reach back to a mythic past, the time of the founding of the nation and the adoption of the Constitution, as the source of the fundamental principles they preach.¹⁰¹ Just as fundamentalist Christians have asserted the inerrancy of the Bible, Skousen and Tea Party supporters profess to believe in the eternal wisdom of the Founding Fathers. In words that echo Skousen, Tea Party Patriots, a leading national Tea Party group, proclaims as its mission to “stand with our founders, as heirs to the republic, to claim our

try. Simply Put: Big Government IS Socialism, a Step towards Marxism, Then You Have Totalitarianism. Socialism is NOT compatible with our Constitution.”). Indeed, the view that Obama espouses foreign, anti-American ideas (or that he himself is foreign) is widely proclaimed among conservatives. Rush Limbaugh proclaimed that Obama is the “first anti-American President.” See *The Rush Limbaugh Show* (Premiere Radio Networks broadcast Aug. 18, 2010), available at <http://mediamatters.org/mmtv/201008180035>. And even normally levelheaded commentators like Steven Calabresi say that Obama is a “socialist” who “at some level does not really know America very well nor does he thoroughly identify with it.” Steven G. Calabresi, *Steven G. Calabresi Bio*, POLITICO, http://www.politico.com/arena/bio/steven_g_calabresi.html (last visited June 16, 2011).

97. See SKOUSEN, *supra* note 17, at 257.

98. *Id.* at ix; see also SKOUSEN, *supra* note 13, at vi.

99. SKOUSEN, *supra* note 13, at 7.

100. See, e.g., *Our Mission*, HARTFORD TEA PARTY PATRIOTS (Jan. 28, 2010 11:08 AM), <http://www.thehartfordteapartypatriots.com> (follow “Our Mission” hyperlink) (“We are dedicated to educating, motivating, and activating our fellow citizens, using the power of the values, ideals, and tenets of our Founding Fathers.”); see also *Take Action*, GEORGIA TEA PARTY <http://www.thegeorgiateaparty.org/index.php/take-action/> (last visited June 16, 2011) (“Our purpose is to empower you with knowledge about the Constitution and to provide education about each American’s civic obligation to be engaged in the political process.”).

101. As sociologists of religion have explained, fundamentalist typically seek to support an identify they perceive to be at risk by “a selective retrieval of doctrines, beliefs, and practices from a sacred past.” Marty & Appleby, *supra* note 90, at 835; see also ALMOND ET AL., *supra* note 89, at 96 (fundamentalist believe that sacred texts like the Torah, the Qu’ran, and the Bible “are of divine (inspired) origin and true and accurate in all particulars”).

rights and duties which preserve their legacy and our own.”¹⁰² Tea Party groups uniformly seek to advance what they claim to be the Founders’ principles, principles that they assert represent the true vision for America.¹⁰³

Skousen and the Tea Party movement, like religious fundamentalists, see the world in Manichean terms, a world in which believers in the constitutional faith stand on one side and all others are demonized as enemies who seek to undermine American values. Skousen wrote in the 1950s and 1960s that international Communism sought to undermine American values by promoting civil rights for African Americans, by promoting acceptance of homosexuals, and by persuading Congress to adopt welfare programs.¹⁰⁴ Proponents of such measures were not merely wrong on government policies; to Skousen, they were America’s enemies. Tea Party supporters likewise believe that people who disagree with them on health care reform, tax policies, and immigration are not merely political adversaries with whom they disagree on the issues. Tea Party supporters view proponents of health care reform and other such measures to be deeply un-American.¹⁰⁵ Tea Party members believe that, at best, their opponents are ignorant of the fundamental principles upon which the country was founded or, at worst, they seek to undermine these principles.

Indeed, the vehemence with which Tea Party activists demonize their enemies is one of the movement’s most remarkable traits. They characterize their opponents as socialists and communists; compare President Obama to Hitler, Stalin, and Saddam Hussein; and have a large percentage of members who believe that President Obama is a foreigner or a Muslim or at least someone who adheres to foreign views.¹⁰⁶ The Tea Party movement believes that Obama is radically anti-American.¹⁰⁷ The demonization of enemies follows from the fundamentalist nature of

102. *Mission Statement*, TEA PARTY PATRIOTS, <http://teapartypatriots.org/Mission.aspx> (last visited June 16, 2011).

103. See Liptak, *supra* note 10 (“But if there is a central theme to [Tea Party supporters’] understanding of the Constitution, it is that the nation’s founders knew what they were doing and that their work must be protected.”); Matthew Continetti, *The Two Faces of the Tea Party: Rick Santelli, Glenn Beck, and the Future of the Populist Insurgency*, THE WEEKLY STANDARD (June 28, 2010) (describing one of the few unifying elements of the Tea Party movement that “draws its strength from the American founding [and] celebrates the Founders and their ideas”).

104. See SKOUSEN, *supra* note 22, at 261–62.

105. See, e.g., Matt Bai, *G.O.P. Uses Obama ‘Otherness’ as Campaign Tactic*, N.Y. TIMES, Sept. 15, 2010, at A23; Bookworm, *Is Barack Obama Anti-American?*, AMERICAN THINKER (Nov. 1, 2009), http://www.americanthinker.com/2009/11/is_barack_obama_antiamerican.html (“[B]ecause the overwhelming number of Barack Obama’s desires and actions are antithetical to America’s essence, he is in fact anti-American.”).

106. See, e.g., *Growing Number of Americans Say Obama is a Muslim: Religion, Politics and the President*, PEW FORUM ON RELIGION & PUBLIC LIFE (Aug. 18, 2010), <http://pewforum.org/Politics-and-Elections/Growing-Number-of-Americans-Say-Obama-is-a-Muslim.aspx>.

107. Rush Limbaugh, for example, has characterized President Obama as “the first anti-American President.” See *The Rush Limbaugh Show* (Premiere Radio Networks broadcast Aug. 18, 2010), available at <http://mediamatters.org/mmtv/201008180035>.

the Tea Party movement. Those who act contrary to what Tea Party supporters believe to be the fundamental American values are perceived to be undermining or attacking those values; they are not merely Americans who hold differing positions; they are anti-American, and they must be defeated in order to save America.¹⁰⁸

The Tea Party view of the Constitution thus is the antithesis of Justice Holmes' notion that the Constitution was "made for people of fundamentally differing views"¹⁰⁹—in other words, that the Constitution establishes a framework for resolving fundamental differences through political and legal processes. In Skousen's and the Tea Party's view, the Constitution itself establishes the fundamental values—the Founders' principles—which are eternal and to which the nation must adhere if it is to survive. The Tea Party's Constitution does not merely provide a framework for resolving differing political views; the Constitution itself resolves those differences.

CONCLUSION

The Tea Party movement's enthusiasm for W. Cleon Skousen's *The Five Thousand Year Leap* and *The Making of America* has brought into the mainstream radical notions about the Constitution born in the ultra-conservative right wing of the Cold War era. These notions focus on the need to restore the Founders' true vision of the Constitution, including the centrality of natural law, understood to mean God's laws; the necessity for limited government that may not undertake welfare programs, redistribution of wealth, or interference in any way with private property; and the embrace of manifest destiny at home and isolationism in foreign policy. With the growing prominence and growing power of the Tea Party movement, Skousen's influence has spread beyond Tea Party activists, and several prominent Republican leaders—Texas Governor Rick Perry, former Massachusetts Governor Mitt Romney, Senators Orrin Hatch and Mike Lee, among others—have openly endorsed Skousen's views.¹¹⁰

The Tea Party's Constitution poses a challenge to popular constitutionalism, the theory that the people themselves should have ultimate

108. See, e.g., *Radicals or Slaves?*, ROGUE OPERATOR, (Nov. 11, 2010), <http://rogueoperator.wordpress.com/2010/11/11/radicals-or-slaves/> (stating that "the United States is being taken over, by stealth, subterfuge, and outright socialism, by a radical cadre of elites" who are advancing a "process of de-Americanization").

109. *Lochner v. New York*, 198 U.S. 65, 76 (1905) (Holmes, J., dissenting).

110. Wayne Slater, *Perry Uses Glenn Beck Favorite as Election Ally*, DALL. MORNING NEWS, Oct. 1, 2009, at 3A; Marc Hansen, *Best Part of Romney Interview Was Off Air*, DES MOINES REGISTER, Aug. 9, 2007, at B1; Hemingway, *supra* note 23. Senator Hatch spoke at Skousen's funeral and read a poem he had written to honor Skousen. *Funeral Program for Willard Cleon Skousen*, W. CLEON SKOUSEN, (Jan. 14, 2006), <http://www.skousen2000.com/funeral.htm>. Russell Pearce, the chief sponsor of Arizona's recent immigration law, is a devoted follower of Skousen. See *Iron Will Drives Pearce*, AGENDA, ARIZ. REPUBLIC, June 6, 2010, at A1.

authority to interpret the Constitution.¹¹¹ Some academic supporters of popular constitutionalism have suggested that, although they question the positions taken by Tea Party supporters, they welcome the movement to the national dialogue because public engagement on the meaning of the Constitution strengthens constitutional democracy.¹¹² Yet there is nothing inherently good about public discussion about the Constitution, any more than public discussion of race or other charged issues is always good. Although some may discuss racial issues in ways that advance understanding, others may employ racial rhetoric to incite hatred, misunderstanding, and violence, and the same is true of discussions of the Constitution.

The Tea Party's fundamentalist vision of the Constitution shows that invocations of the Constitution in popular politics can equally serve as a means of channeling nationalist and authoritarian impulses, just as it can promote popular democracy and human rights. As Sanford Levinson has argued, because the Constitution is a potent symbol of national values—the “sacred text” of our “civil religion”—invocations of the Constitution in popular democracy may emphasize shared values but just as easily may sow division and animosity.¹¹³ Tea Party supporters project onto the Constitution the values they hold most sacred. Because they ascribe foundational and constitutional status to their most cherished values, Tea Party supporters believe that those who do not fully support these values are not simply wrong but are un-American or even anti-American. The use of constitutional rhetoric to divide “true Americans” from “anti-Americans” is not a trend to be welcomed but should be condemned as a danger to constitutional democracy.

111. Larry D. Kramer, *Undercover Anti-Populism*, 73 *FORDHAM L. REV.* 1343, 1344 (2005); see also TUSHNET, *supra* note 7, at 182 (“Populist constitutional law . . . treats constitutional law not as something in the hands of lawyers and judges but in the hands of the people themselves.”).

112. Liptak, *supra* note 10; ANDREW E. BUSCH, *THE CONSTITUTION ON THE CAMPAIGN TRAIL* 8 (2007) (“All other things being equal, more constitutional rhetoric is better than less.”)

113. SANFORD LEVINSON, *CONSTITUTIONAL FAITH* 17 (1988).