

IF WE HAVE AN IMPERFECT CONSTITUTION,
SHOULD WE SETTLE FOR REMARKABLY
TIMID REFORM? REFLECTIONS GENERATED
BY THE GENERAL PHENOMENON OF “TEA
PARTY CONSTITUTIONALISM” AND RANDY
BARNETT’S PARTICULAR PROPOSAL FOR A
“REPEAL AMENDMENT” DESIGNED TO REIN
IN AN OVERREACHING CONGRESS

*Sanford Levinson**

There is, of course, no single template for “Tea Party Constitutionalism,” given that it is a large, somewhat inchoate movement that inevitably contains different, often conflicting, strains. As someone from Texas, I am tempted to focus on some of the more extreme ideas associated with various politicians wishing to take advantage of the anger projected by many Tea Partiers toward the national government. Thus at least two candidates for the 2010 Republican nomination for the Texas governorship (including the ultimately successful incumbent, Rick Perry) endorsed or at least flirted with nineteenth century ideas of “nullification” and even secession as a potential response to what is perceived as an overreaching national government.¹ More striking, presumably, was the proclamation by the (unsuccessful) Republican candidate for the Senate from Nevada, Sharron Angle: “Our Founding Fathers, they put that Second Amendment in [the Constitution] for a good reason, and that was for the people to protect themselves against a tyrannical government In fact, Thomas Jefferson said it’s good for a country to have a revolution every 20 years. I hope that’s not where we’re going, but you know, if this Congress keeps going the way it is, people are really looking toward those Second Amendment remedies.”²

* W. St. John Garwood and W. St. John Garwood Jr. Centennial Chair in Law, University of Texas Law School; Professor of Government, University of Texas at Austin (link). This is a version of remarks initially presented at a panel on “Tea Party Constitutionalism” organized by Professor Richard Albert for the 2011 meetings of the AALS in San Francisco. It was an excellent panel, and I regret only that it was held at the Hilton Hotel.

¹ See Sanford Levinson, *Commentary: States Can’t Nullify Federal Law*, AUSTIN AMERICAN-STATESMAN, Feb. 7, 2010, <http://www.statesman.com/opinion/insight/commentary-states-can-t-nullify-federal-law-217250.html> (link).

² Anjeanette Damon & David McGrath Schwartz, *Nev. Senate Hopeful Sharron Angle Talks of Armed Revolt*, SCRIPPSNEWS, June 17, 2010, <http://www.scrippsnews.com/content/nev-senate-hopeful-sharron-angle-talks-armed-revolt> (internal quotation marks omitted) (link).

But, to paraphrase former President Richard M. Nixon, it “would be wrong” to dwell on such almost-certainly unrepresentative, albeit prominent, public figures who have avidly promoted and embraced the “Tea Party moment” of our contemporary polity.

I have no doubt that my good friend Randy Barnett³ is far more typical of the median Tea Party constitutionalist, even if he is (somewhat) less prominent than, say, Ms. Angle or Governor Rick Perry. So I hope it suffices, for purposes of these comments, to focus on his own particular support for what he calls “the Repeal Amendment,” which he believes would offer a temperate path toward reining in the possibly overweening national government. The proposal would allow the legislatures of two-thirds of all states to repeal any congressional legislation.⁴ The *New York Times* accurately quoted me as describing this proposal as “a really terrible idea.”⁵ I want to take this opportunity to elaborate why I consider this to be the case, though, paradoxically or not, I also think that the proposal is also remarkably timid, in some ways not worth getting excited about. This is because it is so spectacularly unlikely to be truly efficacious in achieving the goals Professor Barnett is striving for, namely returning our polity to a presumed “good old days” when the national government was far more limited in its conception of what it could do. Those who share Professor Barnett’s basic fears about the national government ought to be far more concerned about his proposal than political liberals like myself, at least if one shifts from abstract arguments of constitutional and political theory to predictions about practical importance and impact of his proposal.

The proposal, whatever one thinks of its merits, captures a certain paradox presented by “Tea Party Constitutionalism.” On the one hand, at least some Tea Partiers adopt a stance of lamentable “devotionalism” vis-à-vis the Constitution, which leads to the suggestion that the original Constitution, at least correctly understood, was almost “inerrant,” to adopt a term from Protestant fundamentalism.⁶ This doesn’t prevent calling for amendments, such as repeal of the Seventeenth Amendment, but, of course, that

³ For the record, this is not simply an illustration of what might be termed “senatorial courtesy,” where the convention is that people who despise each other regularly adopt such nomenclature. Randy and I have been genuinely good friends for well over a decade. I admire him and his work greatly, even if, as illustrated in these remarks, I believe that some of his particular ideas are questionable and even “terrible.”

⁴ Randy E. Barnett & William J. Howell, *The Case for a “Repeal Amendment”* WALL ST. J., Sept. 16, 2010, <http://online.wsj.com/article/SB10001424052748703466704575489572655964574.html> (link).

⁵ Kate Zernike, *Proposed Amendment Would Enable States to Repeal Federal Law*, N.Y. TIMES, Dec. 19, 2010, <http://www.nytimes.com/2010/12/20/us/politics/20states.html> (internal quotation marks omitted) (link).

⁶ See, e.g., Samuel G. Freedman, *Tea Party Rooted in Religious Fervor for Constitution*, N.Y. TIMES, Nov. 5, 2010, <http://www.nytimes.com/2010/11/06/us/politics/06religion.html> (link).

would simply serve to return the Constitution to its original, pristine command that senators be selected by state legislatures.

On the other hand, some Tea Partiers want genuinely to reform the Constitution in light of contemporary realities, as has been true of many earlier important political movements. Professor Barnett is admirably disinclined to view the original Constitution as perfect and supports, for example, the Fourteenth Amendment, with its significant transfer of power to the national government and away from states with regard to guaranteeing rights. I strongly suspect that he supports as well the Fifteenth and Nineteenth Amendments, however shocking each might have been to eighteenth century sensibilities. Similarly, even the supporters of the Repeal Amendment would scarcely argue that it is returning us to the 1787 Constitution; rather, it is desirable in order to provide a new kind of check on a strong national government that was almost certainly not envisioned by the Framers. A de facto “living Constitution” requires what might be called “living amendments” designed to respond to contemporary realities.

These strains were well revealed in the now notorious fact that the House Republicans who insisted on reading the Constitution aloud—coincidentally, on the very day the AALS panel that generated these comments was being held in San Francisco—were willing to read only a bowdlerized version of the Constitution, one that omitted any reference, albeit indirect, to the shameful compromises over slavery that in fact made the Constitution possible.⁷ It was almost as if they were endorsing William Lloyd Garrison’s famous description of the 1787 Constitution as a “covenant with death, and an agreement with hell”⁸ requiring repudiation or, at the very least, abject denial if Americans are to be expected, in the twenty-first century, to have the requisite devotion to the Constitution. One might defend what I was tempted to describe as the Orwellian suppression of our national past on the grounds that one should be expected to read only the Constitution that is operative today and not the Constitution that structured our politics in say, 1850, when the Three-Fifths Compromise gave extra representation to slave states in the House of Representatives and the Electoral College.⁹ There might be something to be said for this argument, but one should recognize that it “works” if and only if one accepts the premise that the earlier Constitution was in fact grievously flawed and that the present Constitution is far, far better.

⁷ Jennifer Steinhauer, *Constitution Has Its Day (More or Less) in House*, N.Y. TIMES, Jan. 6, 2011, <http://www.nytimes.com/2011/01/07/us/politics/07constitution.html> (link).

⁸ J.M. Balkin, *Agreements with Hell and Other Objects of Our Faith*, 65 FORDHAM L. REV. 1703, 1708 (1997) (internal quotation marks omitted) (link).

⁹ See U.S. CONST. art. I, § 2, cl. 3, *superseded by* U.S. CONST. amend XIV, § 2 (stating that slaves would count as three-fifths of a person in determining House representative apportionment among the states) (link); U.S. CONST. art. II, § 1, cl. 2 (stating that the number of state electors for each state is determined by the sum of that state’s representatives and senators) (link).

Although Professor Barnett views his Repeal Amendment as a way of returning to the original expectations regarding the relative powers of national and state governments, it is glaringly obvious that the Framers never envisioned the particular mechanism that he advocates. Perhaps that is because they expected a Senate composed of de facto ambassadors from the state legislatures (though, of course, without the ability of the legislature to recall senators who strayed from the legislature's wishes) adequately to veto measures that invaded state prerogatives (in addition to whatever expectation some might have had that judicial review would also enforce the federal bargain when the national government overreached). Both hopes have proved chimerical. The first, of course, is no longer even thinkable, given the Seventeenth Amendment; the Supreme Court, with some exceptions, has proved far more a faithful ally of nationalization than of protecting state prerogatives.¹⁰ In implicit response to these realities, then, he would allow two-thirds of the states to repeal—or, perhaps more accurately, “suspend”—any and all federal legislation that the state legislators view as manifesting congressional overreach of its enumerated powers. The states' veto is “suspensive” rather than conclusive because, he suggests, Congress could override the veto simply by re-passing the legislation in question, thereby risking whatever political retribution might be attached to ignoring the wishes of the complaining states.

Why is this a “truly terrible idea”? The answer is really quite simple: Professor Barnett's desire to place a veto power in the hands of a two-thirds majority of the states further reinforces the already indefensible power assigned to small states in what I have called *Our Undemocratic Constitution*.¹¹ That is, the thirty-four smallest-population states (according to the new 2010 census) constitute approximately 32% of the national population.¹² Thus, Professor Barnett would give state legislatures representing less than one-third of the country's population the power to suspend (and

¹⁰ For starters, see simply *McCulloch v. Maryland*, 17 U.S. 316 (1819) (link) and *Gibbons v. Ogden*, 22 U.S. 1 (1824) (link), two seminal Marshall Court decisions that put the states in their place, so to speak, with regard to the ability to tax or to regulate commerce, not to mention an expansive view of national powers. Or, for that matter, see *Prigg v. Pennsylvania*, 41 U.S. 539 (1842) (preventing states from enforcing their “personal liberty laws” to provide semblance of due process to alleged fugitive slaves) (link). See also *Roe v. Wade*, 410 U.S. 113 (1973) (link); *Reynolds v. Sims*, 377 U.S. 533 (1964) (link); *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (link). There are, to be sure, some exceptions. See, e.g., *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (link). But, overall, the Supreme Court has proved a relatively “hollow hope” with regard to guarding state prerogatives against national majorities. See generally LUCAS A. POWE, JR., *THE SUPREME COURT AND THE AMERICAN ELITE 1789–2008* (2009); LUCAS A. POWE, JR., *THE WARREN COURT AND AMERICAN POLITICS* (2000).

¹¹ See SANFORD LEVINSON, *OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT)* (2006).

¹² According to the 2010 Census Apportionment Data, the fifty states have a combined population of 309,183,463, and the 34 smallest states have a combined population of 98,805,943, or 31.96%. U.S. CENSUS BUREAU, *APPORTIONMENT POPULATION AND NUMBER OF REPRESENTATIVES BY STATE: 2010 CENSUS* tbl.1, http://2010.census.gov/news/xls/apport2010_table1.xls (link).

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often outright to kill) any and all federal legislation. Professor Barnett's response to this point is simply to maintain, perhaps plausibly, that as an empirical matter it is unlikely in the extreme that, say, Vermont and Delaware will ally with Idaho and Wyoming in a revolt against some exercise of national power. Thus, he asserts, it is highly likely that any grouping of two-thirds of the states would include one or more large states like Texas or Florida, and thus would encompass more than 50% of the national population.

Perhaps he is right, but what truly mystifies me is why he won't accept an amendment to his own proposal that would require that the states claiming such a veto power indeed represent at least half the national population. If the veto passes that crucial test, why should we care if the objectors comprise of *less* than two-thirds of the states? What is so important about "stateness" that it trumps the actuality of "we the American people"? Perhaps Professor Barnett would reply that Madison and Jefferson were right in 1798—and secessionists thereafter?—that the Constitution was created by a compact among the states who retain their "sovereignty" within the confederal political order.¹³ But, obviously, that raises questions that go beyond a fear that the national government has overstepped its limited mandate of only assigned powers.

He insists that his current proposal won't really make a difference with regard to imposing *de facto* minority rule on the majority of Americans. But I would really be quite horrified in the case, however unlikely, that it *did* make a difference, so that the national majority could find itself stymied—at least for a period long enough for Congress to re-pass the offensive legislation, as is allowed by his proposal—by a minority of its fellow citizens. James Madison believed that treating all states equally, as in the allocation of voting power in the Senate, was an "evil" worth accepting in order to get the Constitution at all.¹⁴ Why in the world would one want to recapitulate this evil when there is no such present necessity to submit to the extortionate demands of small states lest they torpedo the entire constitutional project? The added power given to small states is patently indefensible in the twenty-first century, where the United States at least purports to be guided by "democratic" values, perhaps the most basic of which is majority rule.¹⁵ We are probably stuck with the United States Senate, but there is no excuse at all to model any contemporary proposals after that egregious institution.

To be sure, we do limit majority rule by protecting certain "fundamental rights" or safeguarding vulnerable minorities from invidiously discriminatory mistreatment. But it is a notorious truth that there is no agreement at

¹³ For the Kentucky and Virginia Resolutions, written, respectively, by Jefferson and Madison, see ANTHONY J. BELLIA, JR., *FEDERALISM* 47–57 (2011); THE AVALON PROJECT, http://avalon.law.yale.edu/subject_menus/alsedact.asp (last visited Feb. 26, 2011) (link).

¹⁴ THE FEDERALIST NO. 62 (James Madison) (link).

¹⁵ See, e.g., *Sims*, 377 U.S. at 566 (link).

all on what constitutes a “fundamental right” against state or national legislation per se.¹⁶ At the very least, Professor Barnett appears altogether unwilling to rely on the Supreme Court to enunciate such boundary conditions on national power. Still, he plays one of the rhetorical cards in the standard tropes of American politics: the necessity to protect minorities against “tyranny of the majority.”¹⁷

The obvious question, though, is how one defines the minorities that deserve such protection. Any system built on majority rule inevitably creates unhappy losing minorities, and the great riddle of constitutional theory is figuring out exactly when, and why, courts should intervene against the vagaries of the ordinary political process. Why would anyone, for example, believe that one should be so concerned with protecting the political interests—one can scarcely call them “rights”—of residents of small states that those residents should be given a truly extraordinary degree of protection unavailable to the benighted residents of large states such as California, Texas, Florida, or New York—who, of course, are grotesquely underrepresented in the United States Senate? Is Professor Barnett a closet Jeffersonian who believes that there is some virtue in living in small, rural states, and that states like Illinois (from which he comes) or cities like Washington, D.C. (where he now lives) are simply repositories of decadence and political evil?

If he agrees with that argument made by Jefferson—and there is little or no evidence that he does—then there is no evidence that he shares another important idea associated with Jefferson, which is the importance of democracy as popular rule. And here is where the essential timidity and near-irrelevance of the Barnett proposal is most striking. One can only wonder if Tea Partiers will be assuaged by such truly small beer, though the opposition of liberals like myself may lead them to believe, falsely, that they will score a mighty victory should the Repeal Amendment be adopted. After all, for opponents of federal legislation to win a point under the game estab-

¹⁶ For starters, simply think of the sequence of decisions, beginning with *Bowers v. Hardwick*, 478 U.S. 186 (1986) (link), dealing with issues involving the rights of gays and lesbians; the continuing jurisprudential and political turmoil generated by *Roe v. Wade*, 410 U.S. 113 (1973) and its aftermath; and the incoherence of the two cases involving “affirmative action” at the University of Michigan and its Law School, *Gratz v. Bollinger*, 539 U.S. 244 (2003) (link) and *Grutter v. Bollinger*, 539 U.S. 306 (2003) (link), where the only thing one can say with confidence is that seven of the nine justices believed that it made no sense to uphold one and strike down the other, but, of course, they split 4-3 on what would be a constitutionally permissible “consistent” result. *Gratz*, 539 U.S. at 247 (plurality split into seven overlapping opinions with, *inter alia*, Justice O’Connor and Justice Breyer holding that the school’s policy should be struck down) and *Grutter*, 539 U.S. at 310 (plurality split into six overlapping opinions with, *inter alia*, Justice O’Connor and Justice Breyer holding that the school’s policy should be upheld). And, perhaps especially relevant to the topic of federalism, the Court is bitterly divided with regard to protecting states against being sued in federal courts. See, for example, *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) (link) and successor cases.

¹⁷ See Randy E. Barnett, *The Tea Party, the Constitution, and the Repeal Amendment*, 105 NW. U. L. REV. COLLOQUY (forthcoming 2011).

lished by the Repeal Amendment, they would have to get the support of a minimum of sixty-seven state legislative houses in thirty-four states (sixty-eight if one of the dissenting states is not Nebraska, the nation's lone unicameral state¹⁸). At least in theory, one could imagine the twenty-six largest states, with approximately two-thirds of the national population, rising in protest against the rent-seeking agricultural legislation that owes its life to the indefensibly apportioned Senate. But under the Barnett model, the will of two-thirds of our population would fall well short of accomplishing what less than one-third of our population could do with ease, given that those people lived in what would effectively be the "more politically potent" small states. Should this really satisfy a populist movement that views itself as engaged in an insurgency against a near-illegitimate national government?

Consider a far more democratic alternative, which is to adopt a leaf from, say, the Maine Constitution. Section 17 of Article IV, dealing with the legislative power, provides as follows:

SECTION 17. PROCEEDINGS FOR PEOPLE'S VETO.

1. PETITION PROCEDURE; PETITION FOR PEOPLE'S VETO. *Upon written petition of electors, the number of which shall not be less than 10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition, and addressed to the Governor and filed in the office of the Secretary of State by the hour of 5:00 p.m., on or before the 90th day after the recess of the Legislature, or if such 90th day is a Saturday, a Sunday, or a legal holiday, by the hour of 5:00 p.m., on the preceding day which is not a Saturday, a Sunday, or a legal holiday, requesting that one or more Acts, bills, resolves or resolutions, or part or parts thereof, passed by the Legislature but not then in effect by reason of the provisions of the preceding section, be referred to the people, [and] such Acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until 30 days after the Governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a statewide or general election.*

2. EFFECT OF REFERENDUM. The effect of any Act, bill, resolve or resolution or part or parts thereof as are specified in such petition shall be suspended upon the filing of such petition. If it is later finally determined, in accordance with

¹⁸ *History of the Nebraska Unicameral*, NEBRASKA LEGISLATURE, http://nebraskalegislature.gov/about/history_unicameral.php (last visited Feb. 26, 2011) (link).

any procedure enacted by the Legislature pursuant to the Constitution, that such petition was invalid, such Act, bill, resolve or resolution or part or parts thereof shall then take effect upon the day following such final determination.¹⁹

I select Maine precisely because one does not ordinarily associate Maine with California, which for many has become a symbol of populist democracy run riot. Like Switzerland, it is, for most of us, a model of sobriety and “Down-East” common sense.²⁰ Not all referenda have had happy consequences, of course, but that comes along with *any* constitutional procedure. There are no perfect constitutions. But one can (and must) always choose between more (or less) democratic forms of rule. Ninety-eight percent of the American state constitutions (fourty-nine of the fifty—Delaware is the exception) contain provisions for some form of direct democracy.²¹ One might think that someone interested in fettering the national government might find a procedure like Maine’s appealing. But apparently Professor Barnett does not, in part because it is clear that democracy per se is not particularly important to him.

In that, he mimics most of the Framers in Philadelphia. Alexander Hamilton probably spoke for many of his fellow delegates in Philadelphia when he stated, on June 18, 1787, that:

All communities divide themselves into the few and the many. The first are the rich and well born, the other the mass of the people. . . . The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the government.²²

It is almost certainly unfair to attribute Hamilton’s liking for rule by “the rich and well born” to Professor Barnett, but it is clear that he has no desire for rule by “the mass of the people,” as recognized by Maine’s provision or, for that matter, Lincoln’s famous encomium to government “*by* the people” as well as “*of*” and “*for*” the people, the latter two of which require little democracy at all.

¹⁹ ME. CONST. art. IV, § 17, available at <http://www.maine.gov/legis/const/> (emphasis added) (link).

²⁰ I pick Switzerland, of course, because it probably relies on referenda for governance more than any other country. See REFERENDUMS AROUND THE WORLD: THE GROWING USE OF DIRECT DEMOCRACY 5 tbl.1-1 (David Butler & Austin Ranney eds., 1994) (link).

²¹ K.K. DuVivier, *Out of the Bottle: The Genie of Direct Democracy*, 70 ALB. L. REV. 1045, 1046 (2007) (link).

²² 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 299 (Max Farrand ed., rev. ed. 1966) (link).

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I personally find this to be one of the most interesting tensions within the thought of Tea Partiers and those broadly sympathetic to them, like Randy Barnett. Tea Partiers seem predominantly²³ to be populist, contemptuous of political elites, including “experts” who proclaim the possession of relevant knowledge and understanding that are not readily available to those who lack specialized training. Instead, they speak in the name of “We the People” and the concomitant ability of ordinary Americans to make decisions on matters that affect their lives.²⁴ But they also proclaim their veneration of the 1787 Constitution, which is about as un-populist as one can imagine within the framework of a “republican form of government.” If, though, one truly agrees with Professor Barnett’s arguments about the evils connected with a strong national government, then why should we stop with his almost painfully inefficacious Repeal Amendment? Why shouldn’t we go on to embrace the wisdom of the Down Easters of Maine? Is it sufficient to say, altogether accurately, that it would have appalled almost all of those who were present in Philadelphia and who supported the new Constitution? Many of them, of course, would have been equally appalled by the demise of slavery. So what?

Even though I most definitely do not agree with Professor Barnett’s general views of national power and the need to reinvigorate the states, I confess that I’m not sure where I would stand if his proposal were similar to the Maine procedure. It is obvious that much legislation gets through Congress, especially as part of “omnibus legislation,” without sufficient attention or public support. Would it be the end of the world if there were in fact a mechanism by which the majority of Americans, voting as part of a single electorate in which each vote would indeed be equal in weight to all others, could express their views on such legislation? I doubt it, and I can even imagine concluding that the world, or at least that part that contains the United States, would be better off.

At its best, “Tea Party Constitutionalism,” especially the wing attracted to such proposals as Professor Barnett’s, invites *all* of us to engage in a long

²³ This is based on observing contemporary American politics rather than any significant methodologically sophisticated analysis of the deep ideology of the Tea Party movement, which still seems to be lacking at this time (early 2011).

²⁴ Readers of a certain age might recognize overtones of the 1960s “new left” and its call for “participatory democracy” based precisely on the premise that people had the right and ability to make decisions on matters that affected their own lives. See, e.g., *The Port Huron Statement of the Students for a Democratic Society, 1962*, <http://coursesa.matrix.msu.edu/~hst306/documents/huron.html> (“As a social system we seek the establishment of a democracy of individual participation, governed by two central aims: that the individual share in those social decisions determining the quality and direction of his life; that society be organized to encourage independence in men and provide the media for their common participation.”) (link).

Perhaps it is appropriate to add as well Marx’s great reminder that historical events often take place “the first time as tragedy, the second time as farce.” Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte* (1852), <http://www.marxists.org/archive/marx/works/1852/18th-brumaire/ch01.htm> (link).

overdue national conversation about the efficacy of our eighteenth century Constitution, as amended, in our own time. The proposal by many Tea Partiers to repeal the Seventeenth Amendment, which moved the selection of senators from state legislatures to the general electorate, also invites a basic discussion about the degree to which we really wish to endorse a “strong” form of federalism, defined as the systematic protection of the institutional autonomy of states with regard to important policy domains. No serious person could possibly believe that the modern Senate has much, if anything, to do with federalism per se. One might believe that returning to selection by state legislatures would enhance “constitutional federalism,” though this would probably be even more likely if the United States were to emulate Germany, where the Bundesrat is composed entirely of political leaders and officials drawn from the various German *Länder*.²⁵

For many of us, the Tea Party is the equivalent of a very sour lemon. But we should also remember the old adage that if one has a lemon, then the task is to make lemonade. For me, such lemonade would be a civil national conversation, like the one in San Francisco, about basic visions of the American political order in the twenty-first century and what kinds of political structures are most suitable to achieve those visions.

²⁵ *Bundesrat Members*, BUNDESRAT, http://www.bundesrat.de/cln_152/nn_11006/EN/organisation-en/mitglieder-en/mitglieder-en-inhalt.html?__nnn=true (last visited Feb. 26, 2011) (link).