

## The Saviors of the Constitution

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*William Schambra*

TO MANY OBSERVERS of today's boisterously populist Tea Party, one of the movement's most striking features is its obsession with the U.S. Constitution. "More than any political movement in recent memory," Roger Williams University law professor Jared Goldstein writes, "the Tea Party is centrally focused on the meaning of the Constitution." Leading figures of the Tea Party itself seem to agree. For example, in *Give Us Liberty: A Tea Party Manifesto*, former House majority leader Dick Armey and co-author Matt Kibbe maintain that, "[f]irst and foremost, the Tea Party movement is concerned with recovering constitutional principles in government."

But some observers argue that this constitutional obsession reveals a deep contradiction within the Tea Party. In its efforts to recover constitutional principles, these critics contend, the Tea Party—an essentially grassroots movement—has tended to be fundamentally anti-democratic. Tea Partiers seek to restore an understanding of the Constitution that would re-impose limits on the reach of federal public policy, no matter how popular such policy might prove to be with American democratic majorities. Such a restoration could only further strengthen already powerful interests by preventing the government from regulating them. Goldstein concludes that the "Tea Party movement advances a broad anti-democratic agenda that seeks to rein in democracy by preventing majorities from enacting a large array of regulatory measures that have long been understood to be available through ordinary politics." In so doing, Goldstein adds, the Tea Party "expresses strong disdain for democracy."

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To the Tea Party's detractors, this internal tension—a democratic movement devoted to re-imposing constitutional limits on the popular will—is simply further proof of the incoherence of a movement that is, in Harvard historian Jill LePore's characterization, both deeply anti-historical and anti-intellectual.

The truth, however, is more kind to the Tea Party. Hardly a symptom of hopeless confusion, the Tea Party's willingness to use the means of democracy to address the problem of democracy and its relationship to the Constitution is an important first step toward recovering that document from the Progressive opprobrium beneath which it has labored for more than a century. For as the Tea Party senses, Progressivism acquired for itself an unfair advantage when it linked the notion of constitutional legitimacy to the cause of unlimited government powers in the name of democracy.

There is another view of the Constitution—a view closer to that of the founders, that arose in defense of the Constitution against the Progressives, and that finds no contradiction in the notion of a constitutionally limited or constrained democracy. It was articulated with great subtlety and depth a century before the Tea Party, in a debate that prefigured many of the issues that now confront our country.

The year 2012 marks the 100<sup>th</sup> anniversary of the American presidential election in which this very conflict of constitutional visions played a central role. And by revisiting the issues of the election of 1912—in particular the contest for the Republican presidential nomination between William Howard Taft and Theodore Roosevelt—we may come to appreciate the coherence of a popular effort to restore limits on the popular will.

#### CONSTITUTIONAL REFORM

Theodore Roosevelt's attempt in 1912 to reclaim the presidential office that he had vacated just four years earlier was grounded in an effort to correct what he understood to be the insufficiently democratic character of the American Constitution. His views received their fullest expression at the Ohio Constitutional Convention on February 2, 1912, in a speech titled "A Charter of Democracy."

In the "Charter" speech, Roosevelt embraced the full range of Progressive devices designed to substitute direct democracy for indirect, representative republicanism. "I believe in pure democracy," he affirmed, and so endorsed "all governmental devices which will make the representatives of the people more easily and certainly responsible to the people's

will.” These included the initiative, referendum, recall (including recall of judges and judicial decisions), and direct election of U.S. senators.

Most of these devices had been in political circulation since their promulgation by the Populists in the 1890s. Roosevelt, however, had remained skeptical as late as 1911, when he declined to join Wisconsin senator Robert La Follette’s National Progressive Republican League, a group that put Progressive structural reform at the center of its platform. By early 1912, though, Roosevelt had become persuaded that the Progressive *legislative* program he had championed since 1910—including the expansion of government initiatives like oversight of corporations, workmen’s compensation, regulation of labor performed by children and women, and workplace-safety measures—could not triumph without a Progressive *constitutional* program. Such a program, Roosevelt believed, would have to be designed to overcome the structural obstacles to change deftly manipulated by the reactionary establishment.

Roosevelt’s embrace of constitutional reform reflected a variety of intellectual currents then stirring the reading public. Among them was the growing scholarly view that the Constitution lent itself readily to the defense of the rich minority at the expense of the poor majority because that effect had been precisely the intention of the founders, themselves men of wealth living in fear of the depredations of the masses.

For instance, J. Allen Smith’s 1907 work, *The Spirit of American Government*, suggested that minor legislative reforms were pointless because they took “for granted that our general scheme of government was especially designed to facilitate the rule of the majority.” But in fact, Smith contended, the scheme of government had been crafted to *thwart* majority rule: “Democracy . . . was not the object which the framers of the American Constitution had in view but the very thing which they wished to avoid,” and its ratification represented “the triumph of a skillfully directed reactionary movement.” A Smith student wrote his mentor in 1912 that Roosevelt had eagerly read the book, claiming that “it is responsible for his present attitude toward the judiciary and his vigorous support of the referendum and recall.”

Nothing illustrates Roosevelt’s radical constitutional program better than his proposal for the recall of judicial decisions. Roosevelt was the foremost national champion of that idea, and he devoted almost a third of the “Charter” speech to it. When a judge decides “what the people as a whole can or cannot do, the people should have the right to

recall that decision if they think it wrong,” Roosevelt maintained. This form of recall—applied in his initial formulation to the review of state supreme-court decisions—would allow the people at large to override the “monstrous misconstruction of the Constitution into an instrument for the perpetuation of social and industrial wrong and for the oppression of the weak and helpless.” Since the “power to interpret is the power to establish,” Roosevelt argued, “if the people are not to be allowed finally to interpret the fundamental law, ours is not a popular government.”

Roosevelt was fully aware that the power to recall judicial decisions in fact amounted to the power of a majority to change the fundamental meaning of the Constitution, circumventing the cumbersome amending procedures of Article V. “Whether [recall of decisions] is called a referendum to the people or whether it is called a shorter and simpler way of amending the Constitution, to my mind matters nothing,” Roosevelt explained. “The essential thing is to get the power to the people.” The reason, he added, was that the “people themselves must be the ultimate makers of their own Constitution.”

By the time the Progressive Party platform was drafted, after Roosevelt and his allies had bolted the Republican convention in 1912, his determination to make the Constitution fully adaptable to the political demands of the majority had become even clearer. The new party pledged “to provide a more easy and expeditious method of amending the Federal Constitution,” or, as Roosevelt put it, “We propose to make the process of constitutional amendment far easier, speedier, and simpler than at present.” What precisely the Progressives had in mind was not spelled out, but Senator La Follette’s proposal may have been close: Constitutional amendments could be proposed by a majority of both houses of Congress or by one-fifth of the states, and ratified by a simple majority of voters distributed across a majority of the states.

Shortly after the “Charter” speech, Roosevelt would note that a great fuss had been made about his proposals. But in his view, the issue was “perfectly simple: Do you believe in the rule of the people? If you do, you are with us. If you do not, you are against us.”

The Ohio speech did indeed send shock waves through the Republican Party. Some of the party’s most powerful and influential leaders, who had otherwise hoped that Roosevelt would pluck the faltering party standard from Taft’s unpopular and uncertain hands, decided on the evidence of the speech to stick with Taft instead. Roosevelt biographer

George Mowry would describe the speech as “at once perhaps the most sincere and the most disastrous of all Roosevelt’s public addresses.”

#### CONSTITUTIONAL CONSERVATIVES

So startling was the speech that two long-time Roosevelt allies—New York senator Elihu Root and Massachusetts senator Henry Cabot Lodge—were among the Republican leaders driven into Taft’s arms. Root had served Roosevelt as both secretary of war and secretary of state; Lodge, meanwhile, was Roosevelt’s lifelong friend.

Senator Root’s decision to break with Roosevelt did not come easily, for he had in fact been a champion of Roosevelt in his battle for a Progressive legislative agenda. And nothing in Roosevelt’s “Square Deal,” according to Root, had been inconsistent with the principles of the nation’s founding or with the understanding of individual natural rights expressed in the Declaration of Independence and the Constitution. Root understood that the new era of industrialization and urbanization had introduced massive new institutions—corporations in particular—that required the counterweight of a far more active federal government to protect individual rights from abuse.

Root’s expansive view of federal power followed from his profession that he was “a convinced and uncompromising nationalist of the school of Alexander Hamilton.” While the Democratic Party, he argued in 1909, would “confine the powers of the National Government within the narrowest possible limits,” the Republican Party would “find in the Constitution all the powers that any nation can have except as they are expressly limited by the terms of the Constitution.”

Small wonder, then, that Root was Roosevelt’s first choice to succeed him as president in 1908. Root, he believed, “is really for the public programme that boys call the ‘Roosevelt policies.’ If he were to succeed me there would be no question about their being carried out.”

But once Roosevelt stepped beyond his progressive *legislative* program in the “Charter of Democracy” speech and arrived at a radical progressive *constitutional* program, Root had no choice but to separate himself from the “Roosevelt policies.” Although democratic government was the best means for securing rights, in Root’s understanding, it was nonetheless capable of foolish, and even tyrannical, measures. The keystone of successful government in America, Root argued, had been the Constitution, because it had helped to tame or moderate democratic tendencies toward

such measures, while at the same time remaining itself fully democratic. Roosevelt's plans to make the people masters of their Constitution would remove the moderating restraints on popular will, and would unleash the foolishness and tyranny that the Constitution had hitherto restrained.

Root's views on constitutional democracy were laid out most succinctly in his Stafford Little Lectures, delivered at Princeton University in April 1913 and published as *Experiments in Government and the Essentials of the Constitution*. (The lectures, he wrote to an admirer, were intended to develop the thoughts first articulated in the controversial keynote address he delivered to the Republican National Convention in 1912.)

In those essays and in other remarks in that period, Root argued that democracy was a problematic form of government, because it most faithfully reflected human nature—and human nature was, according to Root, “weak, prone to error, subject to fall into temptation and to be led astray by impulse.” In light of human fallibility, democracy had been a bold gamble, Root believed, because it was a departure from the old view that autocratic government was necessary to suppress the weakness of human character. Popular government rested on the rejection of the “theory that government must come from above, that the selfishness and cruelty and lust of mankind can successfully be controlled only by a class of superior men . . . bred to power.” Instead, Root contended, democracy entertained the idea that “the great masses of men, who had always been subject to repression, control, and direction, could be trusted to govern themselves.”

Understanding that all forms of government had weaknesses peculiar to themselves, Root identified the particular “weakness of democratic government” as “its liability to change with the impulse and enthusiasm of the moment, and, through continual changes, to vary from extreme democracy . . . to oligarchy and dictatorship.” Small wonder, then, that the American experiment had been greeted by “many of the wisest and best of mankind with the most gloomy forebodings.”

Happily for America, however, the founders were men of great practical wisdom who applied to their task a “knowledge of the material with which government has to deal, that is to say, human nature with its multitudes of feelings and impulses and passions and weaknesses.” They believed that “self-restraint is the supreme necessity and the supreme virtue of a democracy,” and that the way to nurture that virtue is for democracy “to establish for its own control the restraining and guiding influence of declared principles of action.” Indeed, “the supreme test of

capacity for popular self-government,” according to Root, was the “possession of that power of self-restraint through which a people can subject its own conduct to the control of declared principles of action.”

America had passed that test, because it had agreed at its founding to bind itself to certain principles of right and justice. As Root explained, “for that imposition of rules of conduct that formerly came from a monarch, our fathers substituted the imposition of rules of right conduct by the people, upon themselves,” in the form of the Constitution. Root elaborated:

In our Constitution we have embodied the eternal principles of justice; we have set up a barrier against ourselves. As Ulysses required his followers to bind him to the mast that he might not yield to the song of the siren as he sailed by, so the American democracy has bound itself to the great rules of right conduct, which . . . make it practically impossible that the impulse, the prejudice, the excitement, the frenzy of the moment shall carry our democracy into those excesses which have wrecked all our prototypes in history.

For Root, the freedoms claimed in the Declaration of Independence and the strictures supplied by the Constitution were inseparably linked. To “the end that individual liberty might be preserved . . . our Declaration of Independence was followed by those great rules of right conduct which we call the limitations of the Constitution,” Root argued. The Constitution “imposed its limitations upon the sovereign people and all their officers and agents,” forbidding them to do things “which would destroy or impair the declared inalienable right of the individual.”

Given Root’s belief that democracy needed constitutional restraint for survival, he was understandably appalled at Roosevelt’s program of constitutional reform, which would have struck directly at the heart of such restraints. The initiative and referendum, for instance, sought to short-circuit the principle of representation by replacing it with a more plebiscitary approach. But representation was “the only method by which intelligent legislation [could] be reached,” Root suggested, because it was “the method of full discussion, comparison of views, modification and amendment of proposed legislation in the light of discussion and the contribution and conflict of many minds.”

In Root's view, the crown jewel of America's representative system was the United States Senate, and that institution was threatened by another Progressive measure, the direct election of senators. Root (and Lodge) opposed the 17<sup>th</sup> Amendment—agitation in favor of which was well underway by 1912—because the Constitution's framers had grasped that “the weakness of democracy is the liability to continual change; they realized that there needed to be some guardian of the sober second thought; and so they created the Senate” with longer terms and indirect election. A Senate directly elected by the people, Root argued, would “do away with the benefits of discussion and comparison of views and mutual concessions, and that fair and open-minded yielding to the argument of our fellows, which is the essential of good legislation.” The result would be senators less likely to “protect the American democracy against itself,” as Root had expressed the body's purpose, and more likely to posture and preen for the public.

The recall of judges and judicial decisions, meanwhile, would deal dramatic blows to the protection of individual rights against inflamed majorities. Since “[n]o mere paper rules will restrain these powerful and common forces of human nature,” Root believed, the founders had wisely added an independent judiciary to our system of government to enforce the “observance of constitutional limitation.” “For the maintenance of those rules of justice,” Root argued, “our fathers provided that the government which may seek, under the interest of the passion of the moment, to override them, shall be withheld by the judgment of a body of public officers separated from the interests and passions of the hour.” But recall of judges would nullify the willingness of a magistrate to defend, for instance, the rights of a despised minority, because he “knows that if he decides against public feeling, immediately a recall petition will be signed and filed.” “Instead of independent and courageous judges,” Root feared, “we shall have timid and time-serving judges.”

Even more grave was the prospect of recalling judicial decisions, for such a recall mechanism would, in Root's view, “strike at the very foundation of our government.” If the majority were to decide in each instance whether to be bound by constitutional principles and restraints as enunciated by judges, then it would make little sense to speak of principles and constraints at all; nothing would be left but majority will. “In every case the question whether the majority shall be bound by those general principles of action which the people have prescribed for themselves will be determined in that

case by the will of the majority,” Root explained. Therefore, “in no case will the majority be bound except by its own will at the time.”

Taken together, Roosevelt’s proposals for radical constitutional revision posed the danger of undermining popular confidence in America’s institutions of government. As Root noted in his argument against the 17<sup>th</sup> Amendment, it is not wise to “contract the habit of amending the Constitution,” because “reverence for that great instrument, the belief of mankind in its perpetuity, the unwillingness of our people to tamper with it or change it, [and] the sentiments that are gathered around it” all constitute the “basis of stability in our government”; they are the “most valuable of all the possessions of the nation.” No wise legislator, Root believed, should ever seek to weaken “the traditions of respect, the conformity to custom, and the habit of obedience” that arise among people “towards their own, though perhaps illogical, institutions.”

This defense of the constitutional system of constrained democracy required Root to oppose Roosevelt’s bid for another presidential term in 1912 and to side with Taft. The break represented a significant divide over principle, for the personal ties between the two men were strong. As Root put it to a friend in 1912, “I care more for one button on Theodore Roosevelt’s waistcoat than for Taft’s whole body” (no mean statement, in light of Taft’s 320-pound bulk).

Other public figures who had been close to Roosevelt for years — George Meyer, Henry Stimson, even his own son-in-law Nicholas Longworth — concluded that they had to follow Root into the Taft camp. But perhaps no split with Roosevelt was more wrenching than the one made by his lifelong friend Henry Cabot Lodge. (So close were the men that Lodge would later publish a two-volume selection of their correspondence, which began in May 1884 and ended only with Roosevelt’s death in December 1918.)

Lodge, like Root, was a devoted custodian of constitutionally constrained democracy. In his 1911 speech “The Constitution and Its Makers,” Lodge defended the Constitution against the Progressive critique that it was undemocratic and needed to be made democratic through the initiative, referendum, recall, and other such devices. The founders, Lodge argued, had intended the Constitution to establish, not to thwart, democracy: “The makers of the Constitution not only knew that the will of the people must be supreme, but they meant to make it so.” At the same time, however, they “aimed . . . to make sure that it was the real will

of the people which ruled and not their momentary impulse, their well-considered desire and determination and not the passion of the hour.” To this end, Lodge argued, the framers built into the Constitution various safeguards “to make it certain that there should be abundant time for discussion and consideration, that the public mind should be thoroughly and well informed and that the movements of the machinery of government should not be so rapid as to cut off due deliberation.”

In short, Lodge agreed with Root about the need for constitutional constraints to tame the propensities of democracy. “Beside the question of the maintenance or destruction of the Constitution of the United States,” Lodge believed, “all other questions of law and policy sink into utter insignificance.” These included even questions of friendship. Although Lodge took no part personally in the campaign against Roosevelt, more than a million copies of “The Constitution and Its Makers” were distributed as tracts for Taft’s candidacy.

#### CHAIRMAN ROOT

Root, too, was reluctant to take up political arms against Roosevelt, declining to campaign in any primaries or make any speeches on Taft’s behalf that would compel him to make invidious comparisons between the two presidents whom he had served and befriended. But that did not prevent Root from keeping his pledge to stand as Taft’s candidate for permanent chair of the Republican convention of 1912, held in Chicago.

This was to be a task particularly ill-suited to a man who loathed making public speeches, for the convention was deeply and almost evenly divided between the Taft and Roosevelt forces (with a handful of delegates dedicated to La Follette). Emotions in Chicago ran extremely high; Governor Charles Deneen of Illinois was prepared to call out the National Guard, if necessary, to quell the riotous and fiercely antagonistic political crowds that seemed to have filled the city’s streets. Hundreds of policemen were detailed to stroll the aisles of the convention, and strands of barbed wire lay concealed beneath the bunting on the speaker’s platform to discourage assaults by disgruntled delegates.

Into this cauldron of political emotion was placed Root’s name in nomination for convention chairman on June 18, 1912. In the first major vote of the convention—the one that presaged everything to follow—Root narrowly defeated Roosevelt’s candidate, Wisconsin governor Francis McGovern, 558 to 502. The Roosevelt delegates shook the

hall with outrage, believing with some justification that their loss had been foreordained by an unfair allocation of contested delegates by the Republican National Committee.

The howls of protest only intensified during the keynote address Root delivered as the newly elected convention chairman. Unlike the typically bland convention keynotes designed to smooth feathers ruffled by the nominating contest and unite the party for the main event in November, Root's speech aimed to remind the Republican Party that, however Progressive it might become in other respects, it must never abandon its heritage as the party of constitutionally constrained democracy. Root insisted that "throughout that wide field in which the conditions of modern industrial life require that government shall intervene in the name of social justice... the Republican national administrations... have done their full, enlightened, and progressive duty to the limit of the national power under the Constitution." Taft Progressivism, however, did not carry over into questioning the fundamental institutions of American life.

"We shall not apologize for American institutions," Root shot at the Roosevelt delegates. "We cherish with gratitude and reverence the memory of the great men who devised the American constitutional system... their deep insight into the strength and weakness of human nature, their wise avoidance of dangers which had wrecked all preceding attempts at popular government." Root pledged the party to "make and vigorously enforce laws for the promotion of public interests," but promised that it would, at the same time, "observe those great rules of right conduct which our fathers embodied in the limitations of the Constitution." The Constitution was, after all, "a solemn covenant that between the weak individual and all the power of the people... shall forever stand the eternal principles of justice declared, defined, and made practically effective by... the limitations of the Constitution."

The Republican Party in particular, Root argued, was obligated to defend the Constitution, since it had been "born in protest against the extension of a system of human slavery approved and maintained by majorities." The Republican Party must remain the party of Abraham Lincoln, who had declared in his First Inaugural Address that "a majority held in restraint by constitutional checks and limitations... is the only true sovereign of a free people." Our duty, Root concluded, was not to reform the constitutional system, but to "humbly and reverently seek

for strength and wisdom to abide by the principles of the Constitution against the days of our temptation and weakness.”

For the next several days, Root calmly and patiently presided over a convention that was in a constant uproar. Even Roosevelt’s allies had to credit him with being the strong, dominant, persistent force that kept the convention going. William Roscoe Thayer wrote that “[a]t no other national convention in American history did a chairman keep his head and his temper so admirably as did Mr. Root on this occasion. His intellect, burning with a cold, white light, illumined every point, but betrayed no heat of passion.”

Root’s performance was all the more extraordinary given his strong aversion to public speaking, and considering that his only elected national office would be one term in that legislative chamber whose members were still to be regarded (in Root’s view) as lofty, venerable, wise statesmen. It might be said that Root in that moment embodied precisely the constraint and reserve that democracy requires to protect itself against its moments of heated passion.

However successful the Taft forces were in renominating their candidate, they understood full well that the chances of his success in November were very slim, since Roosevelt and his allies bolted the convention and began to lay plans for the new Progressive Party. Nonetheless, they firmly believed that they had accomplished the one thing essential in 1912 by preventing Roosevelt from winning the Republican nomination. They had thereby kept out of his hands the party’s magnificent electoral machinery, which would have almost certainly returned him to office, committed to a platform of radical constitutional reform.

As Taft put it just after the Chicago convention, he had “accomplished that which to me and to the country was the most important thing, to wit, the defeat of Theodore Roosevelt.” In so doing, he had retained “the regular organization of the party as a nucleus about which the conservative people who are in favor of maintaining constitutional government can gather.” Taft maintained that “the Chicago Convention just ended is in itself the end of a pre-convention campaign presenting a crisis more threatening and issues more important than those of the election campaign which is to follow between the two great national parties.”

Root agreed. “I think Taft was right,” he said, “in his statement . . . that the result of the Convention was more important than the question of the election,” because it settled the critical question of 1912 — “whether

the Republican Party should be seized and carried over to populism.” Root assumed that “the Roosevelt disaffection would probably beat the Republican candidate. This has not seemed to me to make any difference in our duty to hold the Republican Party firmly to the support of our constitutional system. Worse things can happen to a party than to be beaten.”

The party was beaten, of course, by Democrat Woodrow Wilson in November 1912. But though Wilson was of the Progressive mold and tepidly supported the initiative and referendum, he had staunchly refused to endorse the court reforms so important to Roosevelt Progressives. Indeed, the *New York World*—a conservative Democratic paper—had endorsed Wilson because, though he regrettably backed the initiative and referendum, he nonetheless “has proved himself sound on the independence of the judiciary. He has proved himself sound on the fundamental principles of constitutional government.” However much of Roosevelt’s Progressivism Wilson would go on to purloin, he showed no interest in the overt and explicit reform of constitutional institutions that commanded so much attention at the Progressive convention.

#### THE CONTEST FOR HISTORY

What Taft, Root, Lodge, and others could not have known, but certainly must have hoped, was that the tide of Progressive constitutional reform had in fact crested in 1912, and would begin to fall almost immediately. Never again would it rise to such levels of popular political support, or come so close to capturing the apparatus of the predominant political party. Even in the depths of the Great Depression, and faced with a Supreme Court that wielded the Constitution freely against his programs, Franklin Roosevelt refrained from suggesting that massive, explicit constitutional reform was necessary. The one time he tried to tinker with the constitutional system through his “court packing” scheme, he was dealt a sharp rebuke by Congress and later by voters in the ensuing mid-term elections. As historian George Mowry noted, the 1912 Progressive platform’s “content of political reform outweighed those proposed by either the later Roosevelt or Truman.”

The accomplishment of the constitutional conservatives of 1912 is implicitly confirmed by the fate of *Progressive Democracy*, the quirky and obscure second volume (the first was the magisterial *Promise of American Life*) published in 1914 by Progressivism’s supreme theoretician, Herbert Croly. The book’s central contention was that the election of 1912 had

ensured that Roosevelt's program of Progressive constitutional reform was now the "dominant formative influence in American political life."

Only in 1912 had Progressives at last come to appreciate that they were "confronted, not by disconnected abuses, but by a perverted system," Croly argued, stemming from the fact that "the United States never had been a genuine political democracy." Forced to "carry their inquisition to its logical conclusion—to challenge the old system, root and branch," Roosevelt Progressives were now "committed to a drastic reorganization of the American political and economic system, to the substitution of a frank social policy for the individualism of the past." Rallying feebly against the forthcoming complete emancipation of democratic rule, the conservative remnant could only fall back upon "an unqualified affirmation of the necessity of the traditional constitutional system to the political salvation of the American democracy," because it embodied "the permanent principles of righteous and reasonable political action."

For Croly, once the issue was thus starkly posed, it could hardly resolve itself in any way other than the triumph of Progressive democracy over constrained constitutional democracy. The fact that this assessment was published in 1914—two years *after* the tide of radical constitutional reform had begun to recede—only ensured that the book would vanish without a trace, just another failed political prophecy.

It is no exaggeration to say that the Taft victory within the Republican Party in 1912 determined that the nation would try to solve the perplexing new problems of the ensuing century without abandoning its fundamental commitment to limited government and constitutional constraints on majority rule. And the importance of that victory can be understood by considering just how different things would have been had Roosevelt won the presidency and driven through Congress and the states merely one piece of his reform platform—establishing a far easier and more efficient method of amending the Constitution. Today's Constitution would no doubt be almost unrecognizable, running to hundreds of pages and filled with each succeeding generation's peculiar notions of what seemed, on the spur of the moment, to rise to constitutional status—but would surely have been turned aside by the demanding Article V process after cooler heads prevailed.

#### THE REVIVAL OF CONSTITUTIONAL CONSERVATISM

Many Americans overlook the significance of this decision to stick with the Constitution largely as it emerged from the convention of 1787. This

indifference results in no small part from the fact that, even though the Taft forces won the political contest in 1912, they and their beloved Constitution have lost much of the ideological struggle since. Indeed, a great deal of what the Tea Party rebels against today is the degree to which conventional wisdom — shaped by nearly a century of academics and professional historians — misrepresents the Constitution's compatibility with democracy, tipping the judgment of history in favor of the Progressives and their understanding of our founding document.

For decades after the 1912 contest, historians faithfully reflected Roosevelt's assessment that the Taft conservatives were laissez-faire reactionaries who "distrust popular government, and, when they must accept it, accept it with reluctance, and hedge it around with every species of restriction and check and balance, so as to make the power of the people as limited and ineffective as possible." As early as 1913, Charles Beard's *An Economic Interpretation of the Constitution* would reinforce J. Allen Smith's earlier view that the government's protection of the interests of the wealthy few against the rights of the people could be traced directly to the Constitution itself.

Though historians' initial high esteem for the Progressives has gradually eroded under the re-interpretive onslaught of the Revisionists and other schools of historical thought, the Taft conservatives have remained in their eyes exactly as they appeared to Roosevelt: hopeless reactionaries committed to a doctrine of laissez faire that stymied even the most rudimentary of government functions. This slander has survived in the face of every piece of historical evidence that Taft, Root, and Lodge understood full well that laissez-faire individualism had long since been rendered obsolete by industrialism, and that a vigorous, Hamiltonian national government was now essential. It has endured in the face of the 1912 conservatives' insistence that their central objection to Roosevelt's Progressivism was by no means the aggressive federal legislative program that they had all supported faithfully, but rather a recklessly radical constitutional program that threatened all they held dear. And the calumny has persevered in the face of the men's oft-repeated claim that they (and the founders) were genuine democrats who believed constitutional constraints would ensure the survival of democracy, not frustrate it.

Fortunately, the historical interpretation of the 1912 contest has not been completely one-sided. Since the 1950s, new generations of scholars have engaged in serious re-examination of the principles of the

Declaration of Independence and the Constitution. Martin Diamond, Harry Jaffa, Herbert Storing, Walter Berns, Robert Goldwin, and many of their students have begun to restore the founders' notion that democracy can work only insofar as its passions are tempered by various constitutional devices that slow the impetuosity of popular majorities and that safeguard the Declaration's self-evident truths.

This new approach was exemplified in Martin Diamond's contribution to the Fall 1975 issue of the *Public Interest* devoted to the American bicentennial. Titled "The Declaration and the Constitution: Liberty, Democracy, and the Founders," Diamond's essay essentially picked up where the Taft conservatives of 1912 left off. Reaffirming the argument made by Root and his allies, Diamond argued that the notion of constitutionally constrained democracy arose from the founders' view, reflecting both ancient and modern political philosophy, that all forms of government have their peculiar strengths and weaknesses. Their concentration on the particular weaknesses of the democratic form, to which their scholarly critics pointed as evidence of their plutocratic elitism, in fact spoke to the founders' determination to establish nothing other than a democracy. But it would be a democracy so structured as to minimize its vices while maximizing its virtues. "Thus Madison coolly analyzed the 'inconveniences of democracy,' but only in order to deal with them in a manner 'consistent with the democratic form of government,'" Diamond maintained.

Since the chief vice of democracy is its propensity to violate rights, and since the point of government is, as the Declaration reminds us, precisely "to secure these rights," the founders turned for assistance to the "new science of politics"—the entire purpose of which was to introduce and effectuate a new understanding of individual liberty. There they would find devices that would permit popular rule, but in such a way as to ensure moderate, sober, rights-respecting majorities. These are the very same devices that were so vigorously defended by Root, Lodge, and Taft: the separation of powers, representation, the Senate, and the independent judiciary.

But Diamond's awareness of "the new science of politics" enabled him to deepen the argument made by the conservatives of 1912. He was able to put a dramatically different cast on the hard-headed "economic determinism" espied by Beard in the thoughts of the founders, especially in Madison's Federalist No. 10. Beard's Madison believed that the determinative laws of economics meant that politics could never be anything other than the eternal struggle between the rich few and the poor many, with the

founders necessarily looking out for their own wealthy class. Diamond's Madison, on the other hand, saw that modern economic arrangements could instead provide the resolution of that bitter bipolar warfare into the much milder and safer—and entirely democratic—struggle of a vast multiplicity of economic, religious, and political interests.

This interpretation is of interest precisely because the Constitution remains our central governing charter. And it remains our central governing charter because the Taft Republicans prevented it from being consigned to the ash heap of history. The Tea Party has rightly channeled appreciative attention toward, and placed renewed emphasis on, the framers of our Constitution. But the words and deeds of Root, Taft, and Lodge, too, deserve examination and respect—for these were the men who defended and preserved the founders' Constitution, and at high personal cost.

#### CONSTITUTIONAL CONSERVATISM TODAY

Their writings and speeches have also given us a means of understanding the Tea Party's stance toward the American Constitution and popular government. The legacy of 1912 refutes the claim that the Tea Party is self-contradictory, for that critique is valid only if one accepts the original Progressive view that any constitutional restraint on majority will is fundamentally undemocratic and illegitimate. But the political labors of Elihu Root and his allies, and the scholarly labors of Diamond and others, offer an altogether different understanding of democracy. In this view—which reflects the ideas of the founders themselves—constitutional limitations on democratic majorities are fully consonant with popular government. Indeed, they are essential for the preservation of democracy, and the alleviation of its tendencies toward the violation of those rights which, the Declaration tells us, are the true ends of legitimate government.

Although the Tea Party has drawn scorn for its alleged anti-intellectualism and ahistoricism, its understanding of the Constitution—as an instrument that can limit democracy while at the same time being fully democratic—reflects an intellectually respectable and historically grounded view of the American founding. If the Tea Party's reverence for the founders' Constitution also kindles in Americans an appreciation for the men who, in the summer of 1912, defended that Constitution in one of its moments of greatest peril, so much the better.

The Constitution of the United States is the supreme law of the United States of America. The Constitution, originally comprising seven articles, delineates the national frame of government. Its first three articles embody the doctrine of the separation of powers, whereby the federal government is divided into three branches: the legislative, consisting of the bicameral Congress (Article One); the executive, consisting of the president (Article Two); and the judicial, consisting of the Supreme Court. The Constitution thus establishes a framework for the exercise of political power. This framework can only be changed after very careful consideration. This is expressed in the special procedure laid down for amendment of the Constitution. Fundamental law is enacted by means of two identical decisions of the Riksdag. These decisions must be separated by a general election. Whereas the Constitution in draft form was circulated to the nation in both official languages, was vetted by the people at tinkhundla and Sibaya meetings; Now, THEREFORE, WE, iNgwenyamaâ€“in-Council, acting together with and on the Approval of the Swazi Nation meeting as the Swazi National Council assembled at Ludzidzini this 4th day of October, 2004, hereby Accept the following Constitution as the Supreme Law of the Land. \_ chapter I the kingdom and its constitution. The Kingdom and its territory. 1. (1) Swaziland is a unitary, sovereign, democratic Kingdom.